strategies against the crisis in Iran criminal law

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ABSTRACT: The main objective of criminal law is to reform the offender and his/her re-adaptation from the oldest formulation of criminal law, which goes back to 5000 years ago, until now. All penalties specified in the criminal law are based on this classification. But time and experience have proven that the number of offenders in the community has increased during the long years of criminal law to this day. Islamic Republic of Iran is no exception in this matter. Despite numerous criminal legislation from the solar year 1304 until now, the upward trend in crime has been seen. This caused failure and ultimately a crisis in the Criminal Law. Keep from these conditions requires major work and contemplation of the different aspects of the problem. In this regard, the causes of the crisis must be identified at first, then strategies must be taken to neutralize it. According to the causes of the crisis, factors such as criminal inflation, negligence to principles governing criminalization, religious rupture and inefficiency of criminal enforcement can be mentioned. By examining the causes and multiple solutions to avoid crisis in the criminal law, Experts have proposed three strategies by considering reform justice approach: Decriminalization, judicial removal, punishment removal. Obviously, the experience of other countries that have experimented these strategies must be considered for the success of these strategies and actions. We’re hoping to avoid the criminal law from crisis, and to achieve its goals.

Keywords: Crisis, Criminal Policy, Decriminalization, judicial removal, punishment removal.

INTRODUCTION

Among other judicial fields, criminal law has great significance because of the criminal enforcement associated with the freedom of individuals in the community. But the legislator should not criminalize the acts that aren’t really harmful to individuals and society.

Legislature approach will succeed when Criminalization is in the acceptance of public opinion and the international community while respecting the privacy rights of individuals. On the other hand, because of the interference with individual freedom, criminalization should consider the needs and requirements of time and place and also culture and politics of the society. Obviously, in practice, the legislation will be successful that is acceptable to the public and is aligned with the needs of the time. non-observance of these principles in Criminalization makes the law not only fail, but also obsolete laws. This phenomenon, causes negative consequences in the society. Most importantly, it makes legislator unfit in the public imagination and makes the criminalization an improper interference in private life of people. So they will notice no importance to these rules and will disagree with them.

Today, without specific principles and criteria, international authorities prevent governments from depriving persons of liberty which has been accepted in the international conventions and human rights and national constitutions. In some cases, the authorities decriminalize the actions that have been criminalized before. However, legislative, judicial and police authorities in the country should consider all aspects in decriminalizing such acts. And accept them if the criminalization of such acts is not useful based on cost - benefit, or does not cause confusion and disorder in the society.

However, Due to lack of efficacy in the prevention of crime and adverse consequences of criminalization and changes in social values and according to the appropriate time and place and also the public opinion, governments aligning with the international law in order to reduce the interference in the individual freedom of people, decriminalize certain acts that do not hurt much more the collective consciousness of the society.
Part I: Criminal Law, goals, causes, and consequences of criminal policy ineffectiveness

Chapter One: The concept of crisis

since the beginning of Criminal Law as one of the important branches of General Civil Law until now, it’s been about crime and criminal activity, and its main objective is intimidation, modify, and re-adapt of offenders. But history of Criminal Law and over time has proved that Criminal law not only failed to achieve its aims, but also faced with a crisis which requires scientifically accurate strategies to depart from crisis. The term Crisis means to create a set of problems and disorders in a system so that the system is halted or faltered and becomes out of the ordinary. (Kalantari, 2002) crisis means hazardous conditions and lack of confidence. Balance will disappear in a crisis. Edgar Morin says the crisis has four attributes:

- one or more problems that the system is not able to provide a solution for matters that had previously been able to solve them.
- Increase in irregularities and fluctuations that system is not able to control them anymore.
- hardening of system in which it is no longer able to adapt its movements to its surroundings.
- begin research activities to find solutions to the crisis (Najafi Abrandi Abadi, 1992).

The crisis in the criminal law has no much history. since the first half of the nineteenth century, the criminal justice crisis arises. First time, Luba, the Paris prosecutor, wrote an article in 1911 titled Punishment Crisis. Finally Zinivich Leon Rudd, the former head of the Institute of Criminology at Cambridge University in 1928, gave a lecture on the crisis and the future of criminal law. crisis in the criminal law means the present regulations and the judicial organizations do not satisfy the society and judicial system is unable to achieve its goals. Present crisis in the criminal law, is due to the development and is from a chronic crisis.

Chapter Two: The causes of the crisis

Section I: disregarding the principles governing criminalization

Disregarding the principles governing criminalization, gives the government free hand in indisputable freedom of individuals, which are accepted in the international conventions and also the constitutions of countries. These laws would become worthless without enforcement and makes people skeptical of the administration, the judiciary and their performance.

In addition, we must accept the fact that when most people do not believe in effectiveness of punitive regulations, Perpetrators of these crimes are being added day by day. That it will increase the quantity of available files in Justice. So to prevent the influx of crisis to the criminal policy of the country, we should document the criminalization according to the public acceptance and we shall not apply the criminalization without reasons. We shall accept this principle that criminalization should also respect the rights of individuals and people are treated with respect.

On the other hand, there is a rapid change in social value of the modern industrial societies. The rules should also be changed according to the changes and to be successful in practice, they must be in accordance with the wishes of the majority of citizens.

Section II: The fragmentation of religious beliefs

Another factor in the crisis of criminal policy of countries, is due to rupture and laxity of religious principles and religious trends in the community. (Frijhay Qazwini, 1991-1992)

In a society that is free from religious and social beliefs, individual interests takes precedence over the public interests of society and In this way individual prosperity and growth will take place instead of the development and welfare of the community in which he/she depends on it.

In this society, people take always care of their interests. So when your personal interests have priority over others, jungle law becomes dominant in society. (Pour Tabatabai, 1963)

Looking at the statistics, We see that faith holders commit crimes lower than others. Because irreligion destroys a person’s identity and gives them the absurdity of life.

Section III: Inefficiency of the Performance of the Criminal Enforcement

The main purpose of punishment is to reform criminals and to prevent repetition of offenses. Achieving these goals is a claim unless The perpetrator of the crime becomes low day by day and The prisons are empty of prisoners, and the statistics referred to court reduced. Looking at the statistics, Legislation in recent years has not only achieved success in fighting crime, but criminals do repeat offenses. This means that Criminal sanctions do not have the ability to fight crime and the criminal justice system has failed in dealing with this phenomenon. Here comes the security and educational ideas. Late Muhammad Baheri writes about it:

The reason why security and educational actions are accepted in modern criminal law is that During the nineteenth century, the neoclassical philosophy failed in the fight against crime, especially against repetition of offenses.
Experience shows that some of the offenders by habit and mental illnesses are unable to grasp the reality of punishments. And they do not feel the effect of frightening of offenses. Therefore they continue to do crimes.

Section IV: Criminal inflation, factors and outcomes
Explanation of Criminal inflation
Term of inflation in dictionary means the swelling, bloating. (Moin, 1983) In legal terms, Legislature attempt to enact continuous criminal provisions in order to maintain or reduce crime rate. With the notion that criminalization prevents from crime repetition and reforms criminals, is called criminal inflation. Therefore, the purpose of the criminal inflation, is to enact unnecessary criminal provisions and a large collection of Criminal Rules by new criminalization.

Criminal inflationary factors
First: Accept the punishment as the only reaction of society
One of the major causes of criminal inflation, is punishment-oriented and adherence to traditional goals of punishment. tendency to the criminalization of the state reflects the importance of the punishment role. While recent data of criminology and criminal justice history indicates the failure in all schools that have inspired by this thought. Despite the punishments, repetition of offenses has always been a growing trend. In support of this claim, the professor J.A.Roux says: Criminal tools, are not the best but not the only means that society has to defend itself. (Soudmand, 1996-97)

Second: The technical rules
Other factors causing criminal inflation, are enacting the technical regulations by the development of the technology. Although the technology and industry causes the welfare of the people, but on the other hand, it could be a loss of comfort. This is due to the necessity of discipline in the field of industrial development. The development of industrial civilization and the need to regulate the personal and social relationships of human beings, brings assignments and the new law to the community.

Third: Mixing the concepts of sin, perversion and crime
The main mission of the criminal law is the preservation of social order and supporting common values. But it should not interfere too much in people’s lives. Because human freedom is important. any criminalization is an entry in the field of individual freedom. What was already authorized, becomes a crime and shall be punished.

Iranian lawmakers have not considered it important. Rather, the scope of criminalization has extended to deviance and sins. so that the addiction and vagabond are considered a crime rather than deviation. the crime is any act for which the punishment is specified by legislature. Sin is called to behavior in which Sacred Legislator forbade it or leaving it is necessary. deviation includes any behavior that does not conform with social norms. though in practice, all the social norms have not the same significance And non-compliance with them may be neglected. Concerning sin, despite the explicit of Article 2 of the Criminal Procedure Code, All sins shall not be placed under the penal code. If we consider the deviation and crime situation, we’ll see that Every crime is a deviation But every deviation is not a crime. (Aalipour, 2002).

This leads to fragmentation in the sense of people freedom and makes them against the law or the law breaker.

Fourth: Fighting the temporal barriers
In some situations, legislator criminalizes some acts because of some disorders and critical conditions in society. However, it seems useful in that period. But with the elimination of the state, these rules in criminal law not only do not have any social benefit but also can cause the Criminal inflation. This example can be seen in revolutions or wars. When the criminalization of certain laws becomes necessary to cope with the disorders caused by this condition.

Fifth: Multiplicity of legislative authority
According to the Article 71 of the constitution of the Islamic Republic of Iran, Parliament on general issues, can legislate within the limits of the constitution. As this principle describes, the only legislative body in Iran is parliament. While there is currently institutions in which set the penalty like the Court of Administrative Justice and General Board of Unification and General Board of the Supreme Court under Article 270 of Procedure Code of General Court and Enghelab Court in criminal matters, Expediency Council, House internal
Committee, Directives and Regulations of the Council of Ministers Or a Minister or Head of the Judiciary. They cause Multiplicity of legislative authority and This causes criminal inflation.

**Chapter III: Consequences of Criminal inflation**

**Section I: increasing trend of delinquency**

Obviously when statistics show the reduction in crime and increase in respect for the adopted rules, the criminal law will be successful in its goal which is reform of offenders. While the increase in crime in the qualitative and quantitative aspect and its destructive consequences in individual and social life can be seen from the data presented.

**Section II: The retreat of the criminal law**

One of the adverse effects of criminal inflation, Which is caused by the failure of criminal law in the fight against crime, is Non-intervention approach of criminal law. Researchers at least in the West have come to this conclusion that Law enforcement of criminal justice did not result effectively in prevention of the crime. Possibly the best scholarly work in this regard was the Martinson article in 1974 that the result was “Nothing works”. It means that no method of dealing with the perpetrators of the crimes does not work. Although this theory has been replaced by “Something Works” theory in which certain methods are effective in some cases.

Luke Holman believes in this field that punishment organization should be abolished which is nothing but a criminal theatre.

**Section III: undermining the functioning of value - moral in penal law**

Excessive use of punitive reactions creates the illusion among people that the violence and force is the only way to solve problems. And the role of other institutions and social organizations are neglected. This causes people to become violent. In addition, criminalization is standing in front of effective social prevention policies and becomes an impediment to social and civic activities. While the legislative bodies have a limited capacity and have not the ability to change the penal law in time.

This makes the mismatch between crime and culture or particular conditions. This causes people to question the function of criminal law.

**Section IV: phenomenon of criminal labeling**

Labeling theory was introduced in the 1960s and 1970s, and for the first time introduced in 1962 in the book “Offender Confirmation” by U.S. criminologist Ericsson. Then the process was convincingly described by Chef. In his op-inion, who is placed in the category of mentally ill, should be regarded as the symbol of the disease and will always be mentally ill. Accordingly, even if a person returns to normal condition, is considered ill. The same process can be seen in court for offenders who are labeled criminal. Because they are expected to behave criminal.

**Section V: The rising costs of the criminal justice system**

One of the adverse effects of criminal inflation, is the rising costs of the criminal justice system. When the legislature due to lack of knowledge, makes people more likely to be charged to fight against the crimes. As a result, more people are being sentenced to punishments like imprisonment and, if so, the government should use technical experts and consultants in the prisons to reform the offenders and fight against the crime. So this case with the upkeep costs and feeding prisoners and other related costs, Imposes another cost on the budget of country.

**Section VI: fluctuation in the concept of justice**

Obviously, by increasing the criminal law, criminal titles increases. It makes disagreements between judicial and police authorities And thus creates a fluctuating and changing concept of justice.

Today, because of the multiplicity of criminal titles, Judges, police and criminal justice system have different opinions in fact detection of crime. This leads to the different issuance of decisions of various courts.

**Section VII: Increasing the black number of crime**

We should note all crimes that occur in society is not reported or recognized. But a small amount of it can be identified and prosecuted. In criminology, the difference between these two amount is called black number. So the black number includes the crime which has not been reported to the police and prosecuting agents. The high black number of crime in the community, shows that Laws have not the ability to deal with crimes. So it is necessary to be decriminalized. Otherwise, occasional implementation of the laws has no positive results But also has many negative consequences.
Section VIII: restricting the rights and freedoms
For human progress, flourishing the talents is needed. But criminalization prevents people from legitimate activities. to keep from the adverse consequences of criminalization, while respecting the will of the people, only a few of individual freedom should be withdrawn in order to maintain social order. And the criminal law is applied only in cases in which other legal tools are not effective.

Section IX: reducing the country’s international reputation
Countries as members of the great international, are effective and also impressionable in happened issues of each other. As far as we allow ourselves to judge the performance of others. Obviously our performance is not hidden from the perspective of international law. Because there are limits in terms of human rights and public freedoms, that no other criminal policy is acceptable beyond them. Excessive criminalization, makes Iran a country in the world where human rights do not have any value in it.

Part II: strategies against the crisis in the Iran criminal law
First issue: Decriminalization
Chapter One: Explaining the concept of decriminalization
Decriminalization includes processes in which the criminal jurisdiction for certain criminal behavior may be withdrawn. (Mehra, 1998)
In a simple definition: decriminalization i.e. removing criminal title from an act or a behavior. (Najafi et al., 1998)
Decriminalization was raised in sixties and seventies decades for the first time, with the view of new social defense and as limitation the criminal law and one of the important methods to control the criminal justice system. Although earlier scholars such as Bkarya had drawn the argument with emphasis on reducing the number of criminal offenses and removing some of the criminal titles. However, the efforts of the new social movement is undeniable with conscious of the need to adapt the criminal law to changes in European societies and the notice of the dire consequences of criminalization.

Chapter Two: Types of decriminalization
Decriminalization as one of the most important ways to reduce crime titles, takes place in one of the following two ways.
1. legitimate or officials decriminalization
2. judicial or practical decriminalization

legitimate or officials decriminalization
Parliament as a legislative body of the country, can also decriminalize and cancel the action which was previously illegal. This can be done in various ways such as official recognition of the action, neutral stance or recourse to other legal guarantees. This is called legitimate decriminalization.

judicial or practical decriminalization
Another form of decriminalization is judicial or practical decriminalization that is more prevalent in Iran, due to public demand and manifested in the performance of people and organizations in the community. Judicial decriminalization i.e. the phenomenon of gradual decline in the activities of the criminal justice system towards certain behaviors or situations, though jurisdiction is not changed officially and legally. (Zeynali, 1382, 153)
The performance of authorities or individuals who are involved in the criminal justice system, non informed reports of crime, non intervention of police in some crimes, and symbolic sentencing by Judge are instances of judicial decriminalization.

Third discourse: The principles and rules governing the decriminalization
Section one: The need to respect individual freedom
We must accept the fact that according to human nature, People want freedom and get rid of restriction. While the government is limiting the individual freedoms with the new criminalization and entering in the individual freedom of people. In fact, legislature makes new criminalization. Then what already was allowed, becomes crime and punishable.

Unaware of the fact that freedom is so fundamental that we can not play with it. We can not gamble with it (Bowie, 1980).

Section II: Alignment with the requirements of time and place
One another of the fundamentals of decriminalization is attention to the circumstances of time and place, and their undeniable impact on legislation. Obviously, law will be implemented like before when it matches with the requirements of time and place and social changes. Social changes are so rapid and extensive that institutions and legal regulations must synchronize with them or at least must chase them. i.e. with the passage of time, the tastes and different needs of human changes due to advances in technology, Decline of religious values and ideology, Changing political regimes and other factors. So the general criteria for the accurate diagnosis goes away. So what is good or desirable for a person or community will vary in another person and communities. (mirca, 1987).

The Islamic Republic of Iran’s Penal Code is divided into two parts. First set consists of laws that are based on the will of the majority of the population and is non – religion. Second set of rules are composed of religious doctrines and revelation. decriminalization in the first set is easily conceivable. Since when legislature criminalizes to maintain order and prevent damage among people, Any act against the religion may not be done. But the idea is not acceptable in the laws which are based on Islamic religion, due to the observance of the Islamic Penal.

Second issue: Punishment removal

From the legal point, punishment is for criminal penalties that must be imposed on offenders which is accompanied by pain and fatigue and these are the characteristics of the actual punishment. Punishment removal which is the example of restorative justice i.e. to remove punishment from criminal behavior. Punishment removal as partial decriminalization, is of the tools of criminal policy that includes reduction to remove of punishment. So the strategy leads to limit or eliminate the penalties. In modern criminal policy, penalties or punitive responses are one of the methods of responding to crime. For this reason, criminal law uses the term Punishment removal instead of decriminalization When criminal behavior title is remained and the penalties are removed. Because for social reasons, it may not be possible to decriminalize a criminal act. In the Punishment removal, non-criminal punishment is replaced by criminal penalties and criminal title remains the same. Therefore losses and damages can be charged. Punishment removal is a new movement under the systematic criminal policy that tends to moderate and proportionate criminal penalties , remove punishment from criminal behavior , and replace non-criminal activities in order to convict remediation. This must be done in harmony with the needs of social changes. Thus, the reaction of society towards crimes must be non-criminal fines as far as possible. Punishment is not the only solution to social regulations violation. Punishment shall not obstruct their way back into society. It must offer preventive factors of crime, and also pave the way to live removed in dignity for those who perpetrate crimes. the new social defense School scientists think the same way. They believe in interaction between environmental, social, personal and hereditary distinctions in the human personality and That punishment is not the only way to fight crime. Human behavior has the social origin. These actions must not have criminal response when they do not cause the disturbance in public order or hurt the public or when they do not need to have a serious reaction. To the extent possible, these behaviors must be away from the criminal process. The value and dignity of human requires not to impose punishment on human behavior.

Precision in the Quran and the Infallibles Hadith (peace be upon them ) reveals that punishment is considered in the last stage of the criminal response And criminal provisions are posterior to the human behavior.

Third issue: Judicial removal

Judicial removal means to refer the part of the violations in legal proceedings to the relevant institutions and organizations. the judiciary is not required to file a lawsuit in these cases Because of the explicit rules and also the subject of dispute is not so important. In such situations, the relevant organizations determine what to do. So the large volume of incoming files will be reduced in judicial system and other claims will be processed more quickly. Judiciary removal is certainly a relative matter and a technical solution to reduce congestion of the judicial proceedings. Relativity of this solution is obvious and logical because absolute Judiciary removal in the form of the closure of Justice and removing the task of judge, is from the duties of government. Unfortunately, the number of crime titles which is over 1,545 titles is high in Iran. This is one of the factors that justify Judiciary removal. According to recent Judiciary Chief Ayatollah Shahroudi, Islamic criminal titles is limited to only 6 titles. It must be gradually considered in macro policies, especially in Parliament. Waste of manpower, especially active and young people of the community, Family instability, Social and psychological annihilation of a human, are three main reasons to use Judiciary removal in some crimes. Other approaches to be used in the Judiciary removal include Specializing of courts, Strengthening judicial assistance institutions like the Bar Association and legal consultants, Referring some lawsuits to institutions outside the court system such as the Dispute settlement Council and tribunal of arbitration. to participate people in criminal justice and delinquency prevention i.e. The participatory criminal policy is the correlation between the government and the people.
The correlation causes reduction in the volume of lawsuits in the judicial system and increases efficiency and accelerates performance of this system through delegating some tasks of the criminal justice to people. This will reduce the budget of Justice and will make the criminal justice social and also cause reduction in the complexity and confusion of it in public opinion. In recent decade, Iran's criminal policy has been partially reached to this aim by establishing an organization called the Dispute settlement Council. This council has been formed with the following objectives on the implementation of Article 189 of the Law Of the Third Plan of Economic, Social and Cultural development of Islamic Republic of Iran, in order to reduce referrals to the courts and Development of public participation, settle a local dispute, Matters that don't have judicial nature or have less complexity:

1. Reviving the culture of peace and compromise to achieve true justice in society in order to promote public trust in government.
2. Development of public participation in the administration of justice
3. Preventing accumulation of lawsuits in the courts.
4. Quick resolution of client demands in the shortest time and reducing the cost of litigation.

Mediation is one of the methods of Judiciary removal. Penal mediation is a three-way process beginning with another person called the mediator to resolve disputes base on the prior agreement of plaintiff-victim and the accused-offender apart from the usual formalities of the Penal process. i.e. the victim and offender arrive at consensual agreement about their differences in multiple sessions, and meeting or if necessary letter writing and .... . The mediator does not impose his/her opinion on them. Arbitration development is one of the best ways to resolve disputes in the history and in all religions. Today this method has been welcomed by the world more than any other time. To the extent that disputes are resolved through arbitration in most contract on business and commercial transactions (domestic and foreign).

**CONCLUSION**

Criminal law has attempted to deal with crime and reduce the crime statistics by punishment and also has made use of various tricks to achieve the objective. But as time passed and today's Justice Statistics show the failure of the criminal law in order to achieve its goal in society. This caused a crisis in the criminal law. The crisis has led scholars to think to identify the causes of the crisis in criminal law and to provide operational solutions. Criminal lawyers have pointed out factors such as disregarding the principles governing criminalization, extreme criminalization, and eventually creating criminal inflation, religious rupture, prevalence of immorality in society, inefficiency of penalties in dealing with delinquency. Based on this action, they have sought practical ways to come out of this crisis. In this regard, the experience of European countries also come to the aid of Iranian lawyers. They have reviewed the report of the Council of Europe regarding decriminalization and by taking into account principles of restorative justice and the culture and ideology of Iran's society. They have investigated the possible of decriminalization, judicial removal and punishment removal in Iran's penal code. Any form of decriminalization is impossible in Islamic laws. But such solutions can be used in other penalties according to the society, moving toward globalization of criminal law, and considering the disadvantages of extreme criminalization. The use of non-criminal ways will be more effective. So criminal law will achieve its goal which is to prevent delinquency and amend the criminal by reducing congestion of Justice cases and improving the quality of that cases with the connivance of minor offenses. Regarding punishment removal, perhaps it will achieve its goals with the help of restorative justice and by recognizing the disadvantages of different punishments, especially imprisonment and provision of alternative punishment, which has been recently added to the Islamic Penal Code. Regarding judicial removal, choosing non-criminal and administrative solutions, instead of dealing with minor and unimportant offenses which increases the congestion of court proceedings, will help to get out of crisis by eschewing excessive notice on the criminal law which has negative consequences and identifying priorities for judiciary cases.

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