

## Decriminalization of Crime without Delinquency

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### Abstract

Nowadays almost all criminologists believe that in order to deal with Penal inflation Phenomenon and as well as the phenomenon of recidivism and secondary deviations, Decriminalization is necessary - At least compared to crimes, especially in cases where no attention Criminalization of criteria. In other words, according to the causality relation between Decriminalization or Criminalization and the Criminal policy crisis, So far in different countries such as the German Federal, Canada, Italy, Legislators because of fight against this crisis have done Considerable efforts towards the Decriminalization from criminal offenses and turning them into administrative crime, civil penalties, disciplinary or even deviation crimes. Deal with this crisis in our country, requires attention to Criminalization criteria and the Decriminalization from crimes that are not coordinated with the criteria, and it is appropriate. Some of these criteria include: 1. Existence of an undesirable or problematic behavior attributable to individuals; 2. the ability of the criminal justice system to deal with these behaviors; 3. the unavailability of Mechanisms of non-Penal, in better Confronting to deal with such undesirable and problematic behaviors; 4. not being heavier Social costs of undesirable behavior from its benefits. Advocates of decriminalization of crime without delinquency or crime with consent or adaptive crime, most of them include Liberals (social anarchists), and the secular philosophers and jurists (isolated religion). To justify and prove their opinion offer some reasons, this reason can be studied from several perspectives.

**Keywords:** Decriminalization. Criminalization. Crime without delinquency. Punishment.

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### Introduction

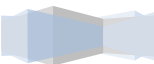
#### Section I: Philosophical Perspectives

However, history of criminology is based on observation and experience back to the last century. Criminology scientific, philosophical and ethical crimes life return to Life history of human society's life. Almost all criminologists or pioneers of criminology agree that criminology birth was concurrent with the human birth. And initially thoughts of criminology were created works of scholars and philosophers and they looked thoughtful and pedantically seen to Criminal phenomenon.

As the "Dating back of the scientific and philosophical and ethical criminology reaches to life of human societies", victimology also has a long life. The first concepts of victimology not wrote by criminologists and sociologists, it was founded by writers and poets. Although the relationship between the offenders

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and the victim and his role in crimes committed is not explicitly stated but implicitly seen in stories and poems it. In many of the works, victim transfer thinking of the crimes committed to the offenders, or crimes committed is the result of victim's action.

Another point that seen in works of literature and philosophy is existence of previous history such as friendship, Consanguineous and ... between offenders and victim, and thus victimization is not accidental, but is done selectively. They believed that the victim morally is guilty. However, from a legal perspective the steward is guilty. However, what is striking and important investigating the role of victim in the genesis of crime; it is important that this Subject have among ancient scholars and philosophers from birth of criminal law. From Code of Hammurabi to Iranian Greece and Rome law and ancient civilizations such as Egypt, China and in the great religions of God like the Law of Moses and true religion of Islam and even literary writings of the Church in the Middle Ages in all of them exist role of victims. Philosophical argument for opposition is based the crime without the victim on the basis of "freedom" and related topics. From the perspective of philosophers enlightened age in the Europe, man was born free and should live and act freely and the range of human freedom is very broad and includes their physical, life, property and belongings, and the red line on his release is "injurious to others". It means that Where human freedom of action don't Damage and harm to the rights of others, is supported.

Thomas Hobbes writes about basis of the punishment: "while people contracts with government have agreed that betake of a part of their rights and privileges, and in return the government can Support their remaining rights this requires that the government punish the aggressor of the rights of individuals, and here is formed basis of the punishment. John Stuart Mill says: The only purpose, for which against the freedom the members of a civilized society justified, is Prevent of loss objection to other. Personal good, whether corporeal or spiritual, is not sufficient justification. The idea of "freedom" supporters believes that: government has neither duty nor right support me from hurting or endangering myself. The duty of government is that support me against of you and also you against me. it is opposite change police state.

Man in this view known as naturally free, equal and rational person. Such attitudes to human took place by appealing to human "brain" and independent of 'revelation', so human identify as one-dimensional and corporeal creature, and Free of any supernal shackle, Naturally, Such a perception from "man" will follow such an expression of "freedom" .

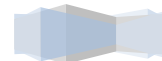
## **Section II: The Legal Perspective**

The history of appearance scientific victimology back to the 1948 . However, before it was written some works, that was look like to the criminology. But they were not included victimology science discussion. This legal effect can be referred to "significant criminal trials narratives" of Feuerbach's book that was written in 1846. In a part of this book he tells the criminal trial proceedings and believes the own victim is the crime reason which happen for human.

Another English jurist called "JC" in a book entitled "The murderer and his motives," believes that, some people have put expose themselves death. These people because of their provocative behavior or speech are disposed to being murdered. A term of victim in 1949 by an American psychiatrist named "Frederick Wrotham" was enacted. He used this word for the first time in his book entitled "Showing violence".

Nonetheless, first victimology is a scientific fact, In order to understand the cause's delinquency and the role of victim as a causing crime have been studied many research. Today, this trend continued as one of the main currents of the victimology. This current that can call it as penal victimology, is placed against a general victimology.

Decriminalization as a highlight of the retreat criminal law approach refers to restriction the range of intervention of criminal law to process law. During a criminal act has no this description and enter the



realm of personal freedom followers of criminal law. Acts of this process occurs formal and practical methods, about No victim of crime Where the offender and the victim is a person, for reasons of avoiding disadvantages of radical Criminalization that is a Kind of excessive intervention in the privacy of individuals and because of Passage of time that prove Failure of the criminal law in the inhibitory works and also because of the necessity of resolve the crisis in the criminal justice system and remain immune from criminal label people who adverse consequences Penal inflation. However, in creating this process Governments should consider the principles and criteria, and relied on it and also taking into consideration the cultural and religious beliefs of each country attempted to do Decriminalization. On the other side, Necessity of attunement to the international community, respect needing to individual freedoms and consent of the people and accept this reality, that Excessive interference in the freedom of people not only have followed their opposition, and cause undermine and being abandoned rule, but also is separate people way and government and Creation field Decriminalization In this area is reinforced. So in order to resolve the current crisis in the criminal justice system and trying to improving the quality of Handle cases which is required to reduce the criminal justice system, Decriminalization from crimes such as addiction, abortion, some ethical crime, crime technical and insulting religious sanctities seem necessary. Criminal policy refers to collection of criminal acts that Islam for the creation of criminal justice and ensuring material and spiritual rights of members of society and to prevent cruelty has taken. In other words, the criminal policy of Islam, Includes general approach that Islam For the implementation and enforce the criminal laws, is considered, Such as the judiciary and the collection its related, Public funds, and Charity affairs. Therefore, the purpose of criminal policy, is the outlines of criteria and General criteria, Using original sources (books and traditions) been extracted. Accordingly, can pay to organize and structure of criminal justice, which is one of the most obvious examples support victims of crime.

Fans of Decriminalization crime without victim In terms of legal rely on the the two elements of "victim" and "damage". This group of lawyers believes that Criminal law has come to keep people to harm others, prevent the harm humans to each other. Proponents of this theory believe if a behavior don't harm to the property or freedom of others, not was considered as a crime, and no to punished.

"Ezzat Abdel-Fattah" Canadian criminology during his investigating of Criminalization of an act, wrote that: the behavior should be Actual or potential Harmful to others, Or at least should violated the basic rights of others. As long as an act has not Ability to objection of actual or potential harm to others Government intervention to control such behavior by means of criminal law is unjustified. These experts also believe that For the Criminalization of behavior, In addition to the element of "damage" the "victim" must exist, if the behavior involves physical or financial harm, but the "victim" is not there, Criminalization of its act is not necessary. Therefore, if the behavior of (a) involving physical or financial harm for his own, Or behavior (a) have follow the harm to the (b), But the (b) it accepts, and don't identify himself as a victim, any crime tacked place.

This principle: "If the victim is not, there is not any crime." By this group of lawyers has been proposed and accepted. According to them, if there is not the victim, there is no damage, and if there is no damage, Compensation for the loss is not possible. If Compensation for the loss is not, there's nothing that about it warrant was issued, in such circumstances, there is nothing that would constitute crime.

Since then, according to this group only the acts harm the rights of others, may be criminalized, therefore, they suggest Cancellation of rules about Drugs, alcohol, sex, gambling, smuggling, suicide, etc.

### **Section III: Perspectives on Social reconciliation**

Of the view, what caused the opposition of many crimes without victim and efforts to Decriminalization of this crime the issue of prison population and the Penal justice system costs are staggering. Today, in



many countries, there is a large prison with populous pitiable condition that a huge part of the population of the prison is sentence crime without a victim. Every day a large number of to charge sex, alcohol and drugs, gambling and other crimes where the victim is does not exist, are imprisoned, And therefore imposes enormous costs on society that the prison administration costs is a part of them, Of course the costs that imposed on society, which the costs of prison administrating is part of them, and of course the cost of that society, families and relatives of these defendants, police, prosecutors, courts and incur, should also be considered. So utilitarianism perspective Not only didn't see benefit in criminalizing, chase, trial and imprisoning of accused because of without the victim's behavior, But also believes that the social interest demands to avoid such costs on society and the government.

Regulations applicable to the crime without victim may have in the action seek to have the opposite results. For example, counter-narcotics, Distribution of this material is placed in the hands of criminals and by creating an artificial shortage of drugs Distribution and retail sales it is very profitable. In such circumstances, Prevention of desired behaviors to be fails. The issue of "displacement delinquency" is also another effect of failing to prevent the crime without a victim. Displacement delinquency means Recurrence of criminal acts, after applying the precautionary strategies that committing a particular crime make more difficult, or Increases the risk of being arrested. Various types of movement may be occurred: Offenders may be focused to a different time the unprotected targets exist at that point; May adopt a different approach to the crimes committed; or may turn in other forms of illegal activities.

Another issue that is after the criminal policy and justified to opposition to no victim crime, is "label" theory. It is the first time in 1962 by Ericsson American criminology in "verified offenders" was introduced, Mean that When a person is described by others In the a particular format,

Because of social pressure he change the perception of and behavior, that to be coordinated with this definition. Another criminology called sheaf believe that, who is Placed In the classification of mental illness, finally, it should represent a "disease" and then trapped forever and forever; In such a situation, because how could he regain his health, show back to normal? This process, In the case of offenders arrested with approved procedures and encountered confessed to the crime and criminal conviction in the courtroom, and officially label make them guilty as a result their relatives who are waiting for their criminal behavior. Howard Becker in the field suggests that deviation is not the quality that sentenced person committing do, On the contrary, Kind of consequence of Acts of rules and guarantees of performances that others about a "criminal" are implemented. In this sense, the deviant is a person who this label is used to form successful for him. Deviant behavior is behavior that would be the same shape and with title are labeled. Label theory of crime without a victim - Give More than other crimes the majority of these crimes are actually happen at a young age - More than other crimes worthy of reflection and precision. For example, if a teenager influence sexual lust has committed illegal sexual intercourse, labeled guilty to him as "adulterous", "homosexual" or ... identify and introduce him in the community. And he Also in the process of interrogation and trial with own confession such description be deemed about himself, how can we expected him in the future away from Label of "adulterous" or "homosexual" and act in a different way of an adulterous or homosexual? So good of the individual and society demands Behaviors such as sexual relations with the consent in principle is not criminalized and their perpetrators don't prosecuted, tried and punished. Situational crime prevention is based to this view that criminal behavior by breaking a link in the chain of events can be neutral. Accordingly, if the result of situational measures, the crime be sterilization or neutral, it does not exist assurance that Potential offenders, for crimes committed don't go to elsewhere. The measures taken from this type of prevention cause Displacement of criminal activities in the place, and ways of committing the type of crime, this

result may be joy of citizens in protecting their property or people, But For Policymakers that their aim is reduce crime in the community, It is not pleasant; crime displacement caused Fans of preventable situational are met with skepticism.

Prevention literally means "prevent and disposal" And prevent means "barricade" that is consistence with it concept of idiomatic Criminal Science, Criminologists also Prevention of crime know as general and specific concept. In the general concept, Prevent crime includes any actions that prevent the crime and create a barrier against it. According to this definition, any action, including Penal and non-Penal is designed to deal with crime and reduce rate of delinquency and crime, in the field of prevention science is defined. In a certain concept, Preventing of any strategies is criminal policy that its purpose is to threaten criminal acts, and limiting the crimes by the way is impossible, difficult or reduces the likelihood of their occurrence, Without having to resort to Acts of retribution, Preventive measures mainly In the three levels: first, second, third and Penal approaches, situational, social, environmental, or a combination can be design and implementation.

#### **Section IV: human rights perspective**

One problem in In terms of social considerations is Factor to justify the crime without victim opponents' idea in the order to Decriminalization of this crime, because of provisions relating to this crime is a serious threat against the private individuals. Explaining what during Criminalization of behavior, Society judge who there is no private interest in that act; But the provisions relating to crime without victim threatens the privacy of innocent people; Because Acts of these laws requires monitoring and research. Since the none of the crime without victim counselors does not report it to the competent authorities, to implement this kind of legislation, Officers and employees have an extensive monitoring, eavesdropping and information control suspects and community. Since the crime without victim often By mutual consent or the consent of the parties involved in the crime or at least someone that would be affected by of crime are performed; the steward of these crimes are not only reluctant to declare and reporting of these crimes to police and intelligence officials, But also their benefit is hide the occurrence of crime and In this respect Any action will be useful, surely do it. In contrast, if the police and security officials are seeking discovery of this crime, Have no choice but monitoring and even interference in the privacy of individuals and trampling on their privacy through outgoing and incoming control, and eavesdropping. In such a situation it is Violation of the right to privacy and will be Atmosphere of security and policing in the community and even this can be an excuse For the Governments kept their opponents under their supervision. Some US scientists believe: "The government of the United States, more than any other state use crime without victim to control its citizens. Prosecutions crime without victim cause violation of the Universal Declaration of Human Rights, Families are destroyed and caused many people to live in prison. Theorem ridiculous crime without victim innocent people caught and shattered their life.

Trampling the right to privacy of individuals by the state to prosecution excuse crime without victim, Issue is that the parallel with technology and increase communication and information equipment and the equipment and facilitates monitoring on citizens through these means, has become increasingly important. The length of history of human civilization is the idea of human rights; Thought that peaked after World War II; The government is also trying to adapt their actions, follow of rules of human rights. This issue where individual rights are involved, it becomes more. The following described the limitations of human rights will be reviewed Implementation of preventive measures situational.

#### **1- Violation of privacy and the right to privacy:**



One of the issues that today associated with the development of human society has a special place, Discussion of privacy and their right to privacy. In fact, this red line indicates the position of individuals in relation to each other and governments.

It is believed that situational prevent of personal freedoms through the limitation of desired public spaces and environments, with the participation of trustee public and private institutions Specializing in securing and local participatory institutions limited. Since In this type of prevention the principle was monitor the behavior of individuals, and is concerned to the quality of the private lives of persons, Human rights are being undermined. On the other side, Prevent situational represents a surrounded, military community. Naturally, in such communities Residents accessibility to open spaces, is limited, the offenders that are looked for Opportunity to crimes committed, Keep away of crimes committed. Access to parameters such as walls or fences, doors, and sometimes it can be controlled and monitored by security forces; Something that increase in the communities and was quickly gripped countries like the United States. Thus, we can say that this kind of prevention, the risk of exceed of privacy and the privacy of individuals, that protection of Article 12 of the Universal Declaration of Human Rights and International Covenant on Civil Political Rights and Article 1-17, Followed and May cause undesirable consequences to rights and freedoms of individuals. In other words, situational prevention strategies with Acts of individual freedom, Openness of living and working space, Freedom of movement of people while remain unknown, and free transportation of property that in the rule of law and democratic society are considered a rigid values and achievements , Is incompatible.

## **2 - Violation of civil liberties:**

Civil liberties and security are considered two fundamental pillars in the every civilized country and It known as Foundations of human life in the present day Hence, the restriction of civil liberties and incidence of insecurity As a result of situational prevention implementation of program, follow creating A society of type "big brother".

Generally, situational preventive lifestyle changes, work and social presence, the hours of daily activity, traffic place, Waiver of some interests and wishes such an expensive cars for the professional thieves are tempting. Some rights and freedoms under the situational strategies is Limited or even eliminated; any measures that can control stimulate and even any kind of map with a powerful electronic surveillance equipment and advanced identification.

Some believe that Excessive use of situational prevention strategies cause people Alienation growth and Destruction of communities, because more situational prevention strategies through the empowerment of individuals to monitor their environment, is Against the interests and goals of strengthening and social control. It remembered the design goal of "Defensible space" by Oscar Newman was offered in 1972 to residential. Indeed, an obvious increase in security measures people and general citizens because of fear being victims walk in the street and sidewalks less. These cautionary behaviors destroy the capability the care, intervention, and other activities to the prevention of Organized Crime Street.

## **3- Discriminatory treatment prescribed:**

Situational prevention need to Massive investment. Security alarm installed on the car Imposes additional costs on a car owner. Install the camera and hired janitor is costs that may be inhabited buildings are not able to pay. Hence, we can say that situational preventing provides a kind of discrimination security to



individuals; So that the rich and powerful and wealthy private and public institutions are better able to protect themselves against crime.

In situational prevention because members of society is compelled to operate Situational prevention strategies to their own expense and responsibility and don't attention to causes of crimes the duty of crime prevention, be delegated to Potential victims and perpetrator of offenders and other social factors causing crime ignore, and of economic and social injustices that lead to crime, it can be neglected.

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