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Criminal policy

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ABSTRACT

Criminal policy as a governments determinative policy in fighting against the criminality, usually applies various tools and techniques faced with it. Perhaps the most important instruments in fighting the criminality can be known as Decriminalization, Depenalization, and Diversion. The present writer seeking the explanation and understanding of the tools in fighting against the criminality.

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INTRODUCTION

Criminal policy in a broad concept takes into consideration a meaning beyond the penal policy and it means the government strategy in fighting against the criminality which apply different tools in following to achieve this aim. Decriminalization means removing labels, depenalization as decreasing or eliminating the punishment in reaction to crime, and diversion means using alternative dispute resolve ways instead of formal justice are considered as the most common methods of criminal policy. In this paper, the author seeking to investigate the concepts and the used instruments of criminal policy.

Criminal policy:

“Criminal policy is a field of study, which based on the scientific data and criminology findings try to develop and create retributive and preventive doctrines which are applicable toward the criminality” [8] and in fact, it is known as organized and considered reaction of society against the crime.

Criminal policy is used in both narrow and broad senses that in narrow concept, it is a penal policy which means devise and remedy of penalty, but in the broad sense it includes all the non- criminal ways to Inhibit the crime. in the broad concept the administrative warrenty, prevention, and restitution are applied that in fact, they are non- criminal responses for crime inhibition. Foer Bakh knows the criminal policy” as the retributive methods which the governments via them shows reaction against the crime “. [6] the main aim of the criminal policy, whether in narrow concept or in the broad sense, is controlling and preventing from the increasing rate of the crime. Today, criminal policy is defined as both a science and a technique that human rights have a role in developing them. Unfortunately, the collapse of moral values and proposing sub-culturs in one side, and lack of coincidence of criminal law with new values in other side, cause the criminal policy contrivances lose their efficiency and usually we are witnessing its failure in different communities.

Criminalization:

“Criminalization means the legal process of treating an action or omitting as a crime, that behavior implicates criminal laws”. Knowing an action as a crime will create more offenders. As much as knowing a behavior as a crime can be useful and helpful, it can be inefficient and harmful as well. The main source of criminalization is the law and “the legislative criminalization” is the most significant kind of criminalization in all of the societies that arises “the principle of legality of crime ” it means that each behavior just based on the law is known as a crime. The principle 36 of the constitution of Iran emphasizes on this meaning that “sentence of punishment and its execution must be performed only by a competent court and according to the law”. Another kind of criminalization is “Judicial criminalization” which occurs by court judges. In fact, when the judge is in the position of comparing, interpreting in fact, a case with the law, criminalization via the “Judicial

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procedure” is created. Indeed, the judge in the position of interpreting the law produces new criminal behaviors that may not be considered by the legislature at all.

Unfortunately, today the societies are faced with the “criminal inflation” means the excessive increase of the number of crimes and there are many official, hygienic, economic, and tax laws that violating them have punishment and in fact, the societies are faced with “extreme criminalization” that the result of “criminal inflation” is the existence of “anomie” in the communities, because the number of crime is so great that it is really unclear what behavior is allowed and what is prohibited. The results of this excessive criminalization are freedom restraining, restricting the freedom of people, losing of the social status of people, imposing costs of prosecution, investigation, and executing the punishments for the governments. For these reasons the significance of decriminalization becomes highlighted.

Decriminalization:

“Decriminalization means removing the criminal label of a behavior and its aim is criminal deflation and also decreasing the numbers of crimes in criminal law”. “Decriminalization is limited realizable and no one suggests decriminalization from the murder, theft, and fraud” [2], and “it means decreasing the number of criminal prohibitions in the criminal law”. [9] The proponents of “Labeling Theory” approve the necessity of decriminalization because by it, more actions in the field of anti- social behaviors are considered as the crime and the possibility of labeling more people will be realized. Today, the general belief is based on resorting to criminal law in the last level as “the latest weapon” and principally the criminal law system must be a mechanism for preserving the social order and the law is considered as a technique which keeps the effect of the punishment permanently. “For considering the specific kind of behavior as a crime, it should be announced this behavior can be done or not because the threat of penalty is organized to persuade the public opinions to prevent of doing a behavior” [1].

“The majority of law philosophers have acknowledged the principle of “the last resort of criminal law” implicitly or explicitly even though they do not explain about it” [10]. Of course, it is an idealistic opinion and relates to an ideal criminal law. Actually by this rule tries to describe the criminal law as it must not be as it is; however,” the judicial procedures are so simple and easy which increase the numbers of the crimes and it is more correct to state the criminal law is the first solution”. [1].

Therefore, most of the scholars are worried about the extreme tendency to legislating the criminal law and what is called “criminal inflation” is being raised as the crises of the majority of the countries. Non- standard and abundant criminalizations increase the statistics log of the prisoners year by year. As a result, the principle of “the last solution of criminal law” must be considered extremely in criminalization.

Depenalization:

Depenalization means incomplete decriminalization. It means that for an action as a crime instead of punishment a social devise is considered. Moreover, depenalization is more useful than the decriminalization because in depenalization the crime feature of the act is not removed, but the severity of the penalty is reduced or the criminal feature is eliminated (Ansel, *ibid*, p. 130).

Depenalization is in the result of the legislature or the actions of the judicial authorities. For instance, the court considers the robbery as a larceny or pursues the attempt of murder as a battery or the judge proceeds the “dequalification”. It means considering the crime as a less trivial one.

All of the forms of the adjustment in the criminal system, which are for commutation, such as commutation, elimination of the it, or replacing a non- criminal action instead of the crime are counted in the depenalization. For instance, it is kind of depenalization if instead of the prison some alternative measures are used. If in the level of prosecution, prosecutor based on “the opportunity of pursuit principle” withdraws the prosecution, its result ,is recording the file that is a way of depenalization.

Diversion:

Diversion in terms means turning or changing the natural way of something [4]. In fact, it is a mechanism for restricting the judiciary institutions competent in favor of other institutions and investigation methods, which its result is omitting the accuser from the formal criminal process and in fact, it is absolution or appealing to the non-criminal ways [9].

Diversion is also known as “relinquishment investigation technique” which first in the juvenile and youth crime area was applied in order to prohibit from their trails and to avoid the labeling to the youth. Some techniques such as prosecuting authority decision in avoiding to start the prosecution, postponing the sentence, and implementation of administrative authority are samples of diversion.

Child, Youth and Family Act approved 1989 New Zealand is a successful experience of using diversion in Juvenile Crime. Also, Youth Offenders Act approved 1994 Canada applies the diversion techniques widely.

Conclusion and suggestions:

The aim of the criminal policy is fighting against the criminality and reducing the increasing statistics of crime in each society. Therefore, via criminal and non-criminal techniques seeks to achieve it. Decriminalization is a kind of preventing the possible future crimes and even can be done practically, it means that legally the action is crime yet, but it is not punished practically.

All of the decriminalization, depenalization, and diversion seeking to restrict the formal criminal justice intervention in the criminal area, which are included in the non-intervention theory that tries to achieve to the "horizontal justice"- a justice which put the offender, victim, and the society in one line- in contrast to "vertical and imposed justice", which puts the criminal justice authorities on the head and top of the victim and the offender.

"Non-intervention theory" following to use the "alternative dispute resolution" instead of the formal instruments like applying negotiation, and arbitration instead of judgment and punishment" [11]. Negotiation and arbitration are known as the "intergroup therapy" that each one has its own specific rules and has a principle role especially in commercial cases at the international level. As a result, diversion is a useful technique in preventing and controlling crime, especially about trivial crimes such as home and neighborhood quarrels, local problems disposition, and those crimes which their sources are divorce and custody of children. Diversion considers the "mutual understanding", "tolerance" and "mutual respect". [3]

In Egypt, "the diversion and depenalization techniques occur about the family, administrative, criminal, and legal disputes with the free and mutual consent of the quarrel parties with avoiding formal judgment" [7]. Therefore, today in all of the countries the government use the non-criminal dimension of criminal policy and depenalization also diversion to seeking to fight against the criminality and reducing the increasing statistics of the crime.

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