

## **CONCLUSION**

- **Conclusion and suggestions:**

In this research "decriminalization" has been discussed in detail. With the aim of gaining a greater understanding of the realm of the system of penal justice "on criminalization and its position" in customary law, Iranian and Islamic law some conclusions were put forth precisely. In addition, "restorative justice" and "its theoretical framework" which are in fact the three fold mechanisms of "de-penalization", "diversion" and "decriminalization have been studied" vis-à-vis criminality due to the importance attached to it.

"The system of prevention" and "strategies" in two areas of penal justice and restorative justice were also reviewed due to the mutual relationship between decriminalization and the system of prevention.

In this research "the decriminalization of drugs" was analyzed comparatively as an example in a relatively detailed way within the criminal policy system of the west, Iran and Islam, so that the scope for decriminalization in the criminal policies of the west and Iran within this collection of materials could be further revealed and clarified. By way of conclusion, the following conclusions will be precisely stated in two separate parts.

- **Conclusion:**

1. By way of summing up, it can be said that broad criminalization and the vast use of costly penal justice system, reduce the efficiency of the system because of heavy burden on the court.

Such burden affects the quality of judgment and ultimately the justice is the victim. These situations have brought about the creation of new attitudes towards the foundations of the system of classic penal justice which has been introduced under the title of "system of restorative justice".

2. Concepts of the system of restorative justice under the title of "alternatives of classic penal justice" have entered into the literature of penal law with two inclinations of "abolitionism" and "limiting the competency of the system of penal justice" since 1980's and its pillar is laid down on the basis of maintaining rights, interests and benefits of the victim of offense and contributing the civil society in different methods against criminality.

"The theoretical frameworks of restorative justice" are "de-penalization", "diversion" and "decriminalization" which are in fact the alternatives to classic penal justice both in terms of "punishing" and or within the framework of "correction and rehabilitation" which has been noticed since 1990.

3. The second half of the twentieth century is the beginning of the attitude towards "system of prevention". Prevention of crime is one of the key concepts in the literature of criminal science. In criminology and penal theory "every kind of measure, method and way which deter the occurrence of crime either by enforcing punishment or non-penal framework is called prevention". In this direction, the prevention measures which are placed within the format of penal justice system are introduced as the "suppressive

reactive responses" and its basic strategy [mechanism] is called "criminalization". But the functional (action) measures with non-suppressive nature under the title of "preventive responses" are also of the latest outcomes of criminal policy which have been put forth outside the realm of penal law and the three fold of mechanisms of de-penalization, diversion and decriminalization are its basic strategies [mechanisms] and can serve as alternatives for classic penal justice.

However, the concept of "prevention" in criminology includes the measures and suggestions of "penal alternatives". These non-penal measures are divided into two categories of "social prevention or individual-oriented prevention" and "devised prevention" [preventive measures prior to criminality]. Social prevention is designed to overshadow and prevent the process of forming the character of the individual or his surrounding environments. The devised prevention considers the whole society, keeping in view the risk of crime commission its programs are enforced through monitoring and controlling of the individuals' freedom and rights by taking the assistance of security and police personnel.

4. The non-suppressive prevention strategies have been divided into two groups by the advocates of reorganization of the interference of the penal system:
  - a. "Pervasive reactive strategy" by using the mechanisms of criminalization and decriminalization,

- b. "Specific reactive strategy" by using the mechanisms of de-penalization and diversion,

But it seems that this classification demands changes, because the mechanisms of de-penalization, diversion and decriminalization, due to the concepts they apply follow a kind of withdrawing strategy in the criminal law in different proportions. Therefore, in general, the new way of categorizing prevention strategies can be as follows:

- a. "Aggressive and forward moving strategy through the mechanism of criminalization",
  - b. "Withdrawing and back warding strategy through the mechanisms of de-penalization, diversion and decriminalization".
5. Decriminalization does not mean the removal of punishments in an absolute sense and the legalization of the crimes. The process of decriminalization involves two stages within itself. In the first stage, "it abolishes and makes illegitimate all or most of the punishment of a legal behavior" and in the following stage, "it gives legitimacy to an action or behavior whose criminal title has been eradicated earlier, that is to say it is legalized". Decriminalization is the stage prior to legalization and legalization is one stage ahead the decriminalization.
6. Due to social necessities, one of the acceptable "instruments of criminal policy" is resorting to "decriminalization" which needs, on one hand, the change in attitudes towards "the objectives of penal justice and punishments" in a society with regard to the

indigenous basic culture and values and on the other hand, necessitates that after identifying the respective behavior for decriminalization through comparative studies or centralized studies, at least the risk of extension or spread of that behavior to other crimes be estimated, so that the unfavorable side effects of that behavior be reduced to a minimum and becomes insignificant.

Failure in adopting the process of decriminalization with regard to some "criminal behaviors" and "petty punishments" can cause the discredit, abatement and degradation of a system of penal justice in terms of the public opinion. At the same time, one should take note that decriminalization should be conducted in such a manner that "the abolishing of legal punishment" even of "petty actions" not to be considered as in lack control crimes or reduction of people's fear in committing or repeating it. And its enforcement should not cause weakness and impose harm on public order and security and disturb the basic values of the society. Basic objective is to reduce the occurrence of such behaviour. In the event that decriminalization causes negative results and effects, the process should be stopped.

Decriminalization is either limited or even obstructed and becomes impossible for ethical reasons in the religious societies. But decriminalization on consideration of economic and financial, disciplinary, social, cultural, training, health and treatment criminals, if undertaken in different societies successfully, it could adopt in religious societies identifying common factors without affecting the ethical reasons. By adopting this mechanism, the volume of the load of penal justice system could be decreased.

7. In the theory of "legal morality" attitude, in order to support ethics in general, the punishment should be used for violation of ethical rule. Followers of legal morality should permit criminalization of an action which is exactly unethical and or at least it is considered unethical in the whole society.

The ethical rules are not fixed because with the passage of time they are subject to change and what has been unethical and punishable in the past, is today mostly considered as non-criminal behaviors. Thus decriminalization may be introduced keeping in view the ethical consideration.

8. The guarantee of individual freedom at the stage of judicial investigation before committing crime in the criminal law is considered as a basic value and manifestations of human rights in many societies. In this direction, the criminal policy of UN dealing with the principles of human right at the international level and to recommends and emphasizes the non-suppressive measures within the format of the strategy of "prevention of crime" and the UN also obliges and commits the governments to fulfill the obligations and adopt policies and mechanisms such as de-penalization, diversion and decriminalization, so that in this way , in addition to the prevention of crime, the personal, social security and citizenship rights may be secured and guaranteed. However, in order to observe the economic, social and cultural rights of an individual, this organization permits the governments for resorting to suppressive measures.

9. The foundations and spirit of divine religions are coordinated in accordance with the necessity of conditions of time and place and needs of human society. One can observe that there are different features of various commandments. In Islam, the divine commandments and canons come within the format of a set under the title of "Religious Commandments" and they have an "integrated nature" and gradually they have been revealed to the prophet (p.b.u.h.) during twenty three years on different occasions which have been legislated on the basis of considering the interests of the public. The penal codes of crimes and punishments are considered so called "religious criminal commandments".

In the criminal law of Islam, "the religious commandments or exact wordings" determine the crimes and punishments and have been divided into two categories namely "assigned" and "legislated" commandments. An assigned commandment is that in accordance with that commandment, Shariah, the action or abandoning of an action is asked from the responsible person and or make him/her decided between doing or abandoning an action and the legislated commandment is also in accordance with its necessity becomes a cause, or condition or obstacle for another issue.

10. The spirit of the canons in Islam becomes fixed with the fixed needs of the individual and changes in accordance with his changing needs. The fixed commandments remain the same in all conditions and the changing commandments change in terms of time, place and social conditions within the framework of divine orders. Therefore, Islam accepts change with regards to its

commandments due to adaptation with real needs of human based on economic, political and social changes of the time. But abolition has no place in the Islamic commandments and by change, it means something different from abolition.

- 11.** In the Islamic system of criminal law, the fundamental values such as life, assets, dignity, generation and lineage, reason and religion and public security which are considered as bases and vital principles of society will never be changed or altered in response to social change or scientific progress and are always fixed and perpetual.
- 12.** For the purpose of safeguarding the public interests and healthy continuation of the pillars of life and infrastructure of the society, Islamic criminal law, by determining fixed punishments under the format of penal mechanisms of "prescribed punishments", "retaliations" and "blood moneys" has provided sufficient supports to the society and the principle on which it is based is certainty of the enforcement of those punishments and decriminalization does not apply to them. But with respect to the prescribed punishment, in terms of the necessities of conditions and time, it has entrusted the right to the Islamic ruler to enforce or minimize the punishment by maintaining the foundations and principles of Shariah.

Decriminalization is not also possible with respect to the punishments of "retaliation" and "blood moneys". Because in the case of retaliation, as long as the "holder of the right" does not forgive, it is not be possible to negate the punishment and even in the case of his forgiveness, due to

"the public aspect of the crime", i.e. "discretionary punishment" which is the right of the society, if the Islamic ruler discerns, the whole or part of that punishment will be negated for the materialization of public interest.

**13.** The basis of the criminal policy of Iran has been shaped to defend the interests of the society on the basis of "criminalization." The necessity of its modification in the criminal policy is inevitable. On the other hand, in the penal canons and regulations, the scattered manifestations of incomplete decriminalization are observed. The mechanisms of forgiveness, abatement or suspension of punishment and conditional release are the institutions which are placed in the realm of legislative de-penalization. Thus, employing the mechanisms of de-penalization, diversion and decriminalization in the legal system of Iran in an integrated form is fully sensible and these advanced measures should be developed and promoted.

The establishment of monitoring suspension institutions, multi-stage imprisonment, quasi imprisonment, using electronic monitoring devices or releasing with the promise of dignity, effective interfering of the victim of the offense in the process of investigation, observing the basic principles of fair judgment and maintaining the defensive rights of the convicted person in accordance with jurisprudential regulations and international documents are models which remind the necessity change in policy and correction of codes and they should find their place in the criminal justice system of Iran in an outstanding form and this deficiency in the criminal policy should be removed.

- 14.** The key idea behind the decriminalization of drugs in the criminal policy of the West , is the belief that no one should be sent to the prison for the consumption of drugs and the idea of penal interference and crime consideration of drugs misuse or addiction have been decriminalized. In some countries, resorting to the alternative policies of penalty including treatment at the stage of discovery and prior to judicial investigation or after trial and issuance of verdict are mechanism which are followed and the governments are obliged that in addition to the adoption of the treatment penal model, the treatment based on medical model are also encouraged without the interference of penal system. After discharging the addicts from the treatment centers or prison, they are subjected to care by increasing the awareness and technical skills, in order to deter them so that they may not develop the tendency of the addicts and repeat the crime.
- 15.** The Iranian criminal policy on drug addiction is a combination of penalizing and treating. Decriminalization has no place and using this mechanism is a complex issue which demands further deeper and pervasive study and it is not so simple to change the legal ban or criminality of addiction in the penal policy of Iran, but limiting the realm of the system of penal justice and greater inclination towards adopting non-suppressive measures in this relation is an inevitable issue.
- 16.** Through classification of the drug consumers, the identification and gathering data on the number of consumer groups, the estimation of the resources and facilities, reviewing the local and foreign threats are the measures which should be taken to

determine the criminal policy, so that, on one hand it could supplement the penal policies and on the other hand modify it.

- **Suggestions:**

- 1. For the criminal policy of Iran :**

- 1-1. The prevention policy as one of the characteristics of applied criminology and with the purpose of etiology of crime in order to remove the grounds of its emergence should be practiced in the criminal policy of Iran seriously.

- 1-2. A penal policy formed according to the findings of applied criminology should be balanced and free from any kind of sentimentalism and irregular violence which is resulting from the conditions and nature of the revolution and war periods. By maintaining the religious criminal titles, the penal codes relating to the public order should be corrected according to the basis of the needs of the society and necessities of the condition of time. Only in the event that there are superior interests, criminalization should be conducted such as crimes terrorism, cyber, internet and environment.

- 1-3. According to the religious teachings, at present no one gives proposals for the decriminalization of the behaviors which is considered to be crimes according to the dominant cultural values of society and also foundations of Shariah having major punishments. Due to social changes, the necessity of adaptation of conducive canons arises.

Numerical increase in titles of crimes would certainly increase the burden of courts which may lead to lack of quality of judgment. Concept of fair justice may become victim. In order to avoid this situation certain petty offences may be dealt by the bodies beyond the criminal justice system. Further for some offences prevention policy and theoretical framework of restorative justice may be adopted while maintaining the jurisprudential and customary regulations.

- 1-4. In accordance with some regulations, the petty offenses of the guilds, employees, workers and members of different centers are administrated according to guild, administrative and labor directives. This method can also be extended to other similar institutions and organizations such as arbitrary councils, and board of administrative offenses which may be vested with the power to deal with the cases of insignificant economic, financial, disciplinary, social and cultural nature. In this direction, first, the insignificant crimes should be identified fully and then it should be classified coherently. The domain of practice of Quasi-Judicial Organization of Arbitrary Councils must be developed up to the limit of districts. Regarding the determination of the investigation scope, these councils must be detached professionally, i.e. on one hand, the insignificant financial and administrative crimes should be shifted to some of its branches, and on the other hand, insignificant acts crimes of family and family assignments

must be referred to its other branches and in accordance to the rule of "انما افضى بينكم بالبينات والايمان", the investigations must not associated with prolongation or sluggishness and the emergence. Such problem should be prevented by attracting competent individuals and by giving professional and essential skills to them. These institutions and organizations which become substitutes for the courts and perform their roles by using the sociological and psychological findings similar to the role of Community Boards. They can make friendly dispute settlement between the offender and victim of offence in particular in the crimes against ownership. In the event that this technique is not successful, the method of reference to arbitration for restoration and reconciliation should be used. Resorting to the system of penal justice can be practiced only as the last resort, the load on penal justice system in particular and also High Administrative Court will be reduced to some extent. However, it must be ensured that reducing the load of criminal justice system should not lead to making new other organization over burdened.

- 1-5. The institution of prison punishment is so glaring as compared with its advantages and prison should enforced on the cases of those offenders whose freedom will endanger others and the society and temporary detention or imprisonment should be considered an exceptional issue before the judge. It seems that the age of the broad use of the punishment of imprisonment has come to an end and

prison punishment thus has become ineffective and its deterring factor is fading. The punishment of prison is on one hand contrary to the individuals' rights and freedom, and on the other hand, it is costly. So the costs of prison should be also spent on prevention policy such as health, education and employment and in fact, the punishment of imprisonment should only apply to "heavy crimes".

- 1-6. The mutual criminal policy, due to social changes and adaptation of canons with the conditions and necessities of time should be laid down through formation of a constant studying core *Criminal Policy Think Tank*<sup>1</sup> in order to study the reasons of violence, prevention and control of crime and promotion of the system of penal justice and reinforcement of the effects of prevention and deterrence.

Reviewing the existing codes, identifying their deficiencies and completing them, adapting canons suited to the conditions and demands of time and also constant coordination of criminal policy may be performed by criminal Policy Think Tank.

The main focuses of study of the Criminal Policy Think Tank can be recommended to be as follows:

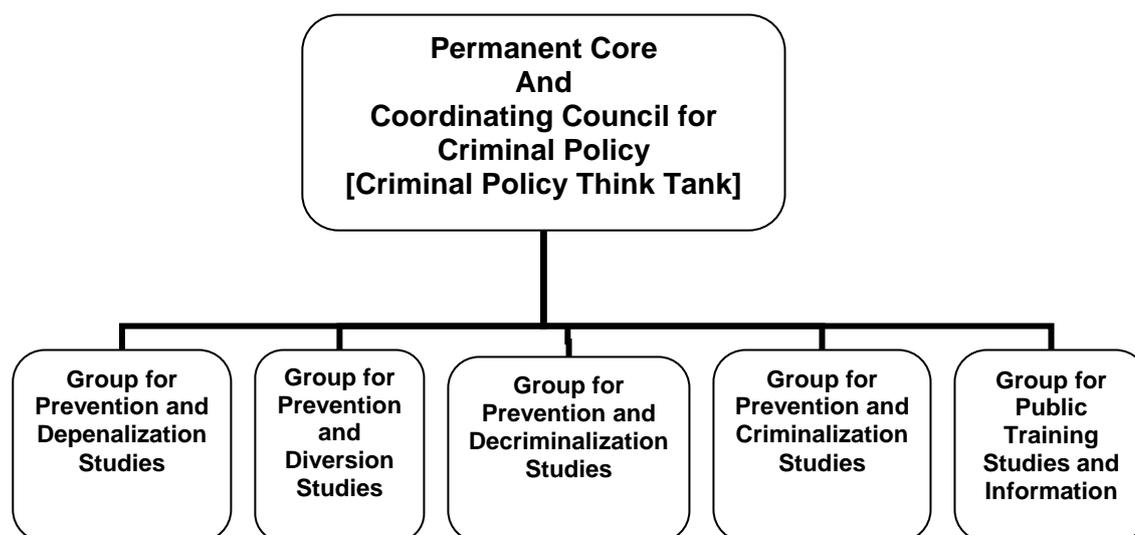
- A) Determining public prevention measures and policies.
- B) Review the actions which must be taken away out of the circle of criminal regulations and their criminal title may be removed. This should be done by way of comparative studies

with great care and by considering all aspects and observing the technical aspects of the issue and various factors.

- C) Identify those crimes, which can be investigated outside the judicial branch and should be transferred to the alternative legal systems as alternative solution.
- D) Identifying and elaborating the crimes in accordance with the cultural values; determining the contour of crime, considering the factors of crime and reviewing the benefits of criminalization.
- E) The cases which should be criminalized due to priority interests and time necessities and their punishment should be determined.
- F) Reviewing and determining the measures of social defense through grading the standard and dangerousness state of criminals
- G) Reviewing and determining the measures to use the alternative institutions to convert the aggravation degree of punishments into lighter degree for less dangerous criminals.
- H) Reviewing and determining the principles of just judgment and the more effective intervention by the victim of offense during the process of investigation and also maintaining the defensive rights of the convicted person.
- I) Preventing of the destructive effects of criminalization and decriminalization.

- J) Filtration, classification and determining crimes and punishments with an attitude to the back warding and non-penal strategy having in view the mechanisms of de-penalization, diversion and decriminalization in order to reduce the burden of criminal courts.
- K) Providing punishments being rhythmic and balanced and proportional with crimes.
- L) Reviewing the methods of de-imprisonment in those cases which are losing the element of deterrence.
- M) Identifying and detaching the two realms of considering religious unlawfulness and legal criminalization.
- N) Reviewing to adapt the Shariah commandments with the conditions of the day and determining alternative punishments.
- O) Reviewing and determining the acceptable customary punishments with adaptation with the principles and foundations of Shariah.
- P) Reviewing and planning to change the attitudes of the aboriginal and national culture and understanding of the society towards criminal policy and public teaching of the citizens.
- Q) Revising, correcting and developing the set of effective and useful criminal codes in order to reduce the volume of canons and bring down the excessive and irregular cases.

This "Criminal Policy Think Tank" can be comprised of penal judges, skillful lawyers, professors who are experts on criminal sciences and criminal jurisprudence from both seminary schools and universities, the criminal police, sociologists and psychologists and within the following organizational structure:



## 2. For the criminal policy of the west:

Though the full abolition of the penal system in the western criminal policy is not ideal to everybody, but the jurists and penal criminologists who support "alternative measures" and "abolition or re-organization of the realm of penal justice system" have stepped up the path by taking model of the movement of "diversion", "de-penalization" and finally "decriminalization". They have recommended and practiced resorting to the three mentioned methods in the penal realm by adopting the policy of non-penal and informal social control. But concerning the positive results of these alternative solutions and using these mechanisms after

about a quarter of century, the "minimum of assessment" towards the efficiency of each of them should be noticed and it must be studied to see whether or not the broad use of these mechanisms have really been useful.

The existence of eminent social and judicial experiences, in particular about diversion and de-penalization should not lead to extremism in decriminalization and legalization of certain behaviour i.e. homosexuality, prostitution, alcohol and drugs. Such decriminalization in some of the western countries, are in contradiction with the spirit and nature of the humans such measure has caused irreparable damages to the western societies which face dangerous challenges.

Thus, the policy of decriminalization and legalization of the behaviors which have disturbed the firmness, stability and cultural and indigenous entity of the western societies and have imposed grave and plenty damages on individuals and society, though they are limited to the personal life of individuals should be stopped. It has been proved that by decriminalization of these groups of behaviors, does not result in reduction of crimes, but ugliness of the behavior raised its head in the society and it has brought about unfavorable, destructive and irretrievable results.

Hence, it is submitted that necessarily, the adoption of the mechanism of decriminalization about some behaviors should be changed and employed within an appropriate realm.

**REFERENCES**

1. Criminal Policy Think Tank: A group of experts who does research and providing advices on criminology, prevention, restorative justice, penal system, judicial system and security, social, psychological and cultural matters to determine the criminal policy.

**Self Test**

1. What is the concept of crime and express the sociological, psychological, political and legal viewpoints of crime?
2. Explain three suggested general principles by the criminologists as ruling standards over the domain of criminalization?
3. What is the concept of restorative justice and describe its theoretical models and frameworks?
4. What is the concept of prevention in criminology and explain the existing views, its range and dimensions?
5. Define the prevention strategies and its mechanisms?
6. What is the concept of decriminalization and explain its realm?
7. Evaluate theories and schools of decriminalization and state the most important reasons of creation and development of the movement of social defense?
8. Describe different kinds of decriminalization?
9. Evaluate the theory of thinking trend of legal morality, and the main principles the theory of lack of necessity of supporting ethics and express the relation of each with the realm of decriminalization?
10. Explain the role of non-penal strategies with securing and guaranteeing of human rights?
11. Express the effects and results of the attitude towards non-penal strategies and most important reasoning of pros and cons of decriminalization?

12. Describe the realm of criminalization and decriminalization on the base of Islamic penal teachings in the jurisprudence of five schools of thought (sects)?
13. What are the strong and weak points of criminal law of Iran and describe its causes?
14. State the record of the realm of strategies of decriminalization, de-penalization and diversion in the Iranian legislative system?
15. Explain the macro viewpoints and reasons of drugs decriminalization in the criminal policy of the west?
16. What are the policies and measures adopted by European Union towards drugs?
17. Explain comparatively the differences of criminal policy, performance and judicial procedure of England, France and Ireland?
18. What is the position of drugs decriminalization in the criminal policy of America and describe the judicial procedure and performance of that country towards drugs?
19. What is the criminal policy of Iran in drugs decriminalization and evaluate the judicial performance and procedure of that country towards drugs?
20. Express the consensus of the jurisprudents of Islamic five sects in relation with drugs?