

## Criminal Retreat in Support of Women Victims

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### Abstract

Often when speaking of supporting vulnerable victims, including women, everyone's offender-oriented approach turns to a specific criminalization or aggravation of punishment, however the question is whether such an approach is in the best interest of the victim and will lead to maximum support for her. It seems that constant recourse to criminal intervention is not only insufficient for stopping victimization of women, but sometimes criminal intervention apart from significant costs can lead to aggravation or recurrence of victimization. It seems that providing extra-criminal protective options, decriminalization, or depenalization of behaviors that some women are forced to commit in certain circumstances provides better protection for women victims rather than focusing solely on criminal punishment. In this article, an attempt has been made to use analytical-descriptive method, while referencing the current criminal law and its shortcomings in protecting women victims, to suggest some measures such as decriminalization of abortion after rape or accepting extra-criminal options in crimes including domestic violence in light of restorative justice teachings as an alternative or supplementary approach.

**Keywords:** Decriminalization; Extra-Criminal Protection; Women Victims; Criminal Retreat.

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## 1. Introduction

Although in order to protect vulnerable victims such as women, the main demand of the criminal legislature has been resort to special criminalization or aggravating of punishment for crimes against women, but just as the criminal legislature failure to preserve the public interest by criminal mechanism to protect women victims can be criticized, excessive interference and maximum criminalization in this area is not expected from a wise legislator. By resorting to the minimalist theory of criminalization, criminal advance can be minimized, and it can be acknowledged that protection of women victims, does not achieved only through criminalization and aggravation of punishment. commitment to this principle not only ensures the optimal use of criminal law, but also prevents fruitless criminal inflation. Criminal law is not only the appropriate tool to pursue and protect the legitimate norms and interests of a society, but it is also the last option among the available options. This tool should be used only when the rules of civil and administrative law and of their enforcements fail to achieve the goals of the legislator.<sup>1</sup>

In reflecting the achievements of the second stream of victimology<sup>2</sup> in criminal law, in addition to the fact that in criminology and sentencing, the most appropriate option should be chosen in terms of the victim's interests, it should be remembered that in response to victimization, punishment is not necessarily the most appropriate option. Cesare Beccaria emphasizes in his treatise on crimes and punishments: Punishment must be useful and the purpose of punishments is to prevent the offender from harming society in the future and to dissuade other citizens from committing the crime. Useless criminal intervention will have no effect other than inflation of criminal law and imposing significant costs of punishment on society, the offender and the victim. by retreat of criminal law in the light of the principle of minimal intervention, especially for crimes that seek to maintain the relationship between the offender and the victim (such as domestic violence), we can hope to open an interactive and restorative space to reduce harms of victimization. Accordingly, second-stream victimologists call for a new shift in criminal

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1. The principle of minimal criminal law or criminal law as a last resort is the basis for the emergence of an approach that in criminal policy is referred to as the minimalist approach and it was emerged in the German legal literature, emphasizing the need for proportionality in government intervention, including restrictions on criminalization by the government. For further reading, Hossein Gholami, "The principle of minimal criminal law", *Quarterly Journal of Criminal Law Research*, no. 2 (2012): 44.

2. Gradually, victimologists, realizing that mere study of the victim's contribution to the occurrence of victimization does not lead to much success in preventing victimization and repairing the damage caused by it, They went through the first stream of victimology, i.e scientific victimology and talked about supportive victimology.

policy toward victims that focuses on repairing the impacts of victimization instead of emphasizing punishment and retribution. The focus of some of these measures is the acceptance of various supportive and remedial options for extra-criminal measures with priority given to the interests of women victims, and the focus of others is the depenalization of some criminal behaviors that such vulnerable women sometimes have to commit in certain circumstances. It will be discussed in this article in two sections.

## **2. Marginalization of Punishment by Considering the Interests of Victim**

Although the punishment of criminals is often in favor of the victims, it should be noted that sometimes resorting to this mechanism without considering the interests of the victim, not only does not benefit the victim, but also causes repeat or aggravate victimization. In this regard, three prominent approaches have often been recognized in legal systems; in fact, three basic principles are considered as the basis and justification of criminalization and sentencing: legal moralism<sup>3</sup>, paternalism<sup>4</sup>, principle of harm.<sup>5</sup> Among these three prominent approaches, it seems that approach based on the principle of harm pays more attention to the interests of victim;” But it should be remembered that the mere fact that a behavior is harmful is only one of the justifying reasons for criminalization, and in other words, it is a necessary condition for criminalization, not a sufficient condition.”<sup>6</sup> Any intervention needs to be justified and in this regard, the decision-making authority must provide the reasons for the necessity of the intervention and its useful effects for each intervention (positive justification); Not merely expressing the results of non-intervention. In fact, in criminalization, the principle of usefulness should be considered and in this regard, the reasons for the need for intervention, its costs and explaining the inadequacy and inefficiency of other options as well as interests of victim

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3. Legal moralism does not see the sole criterion of criminalization as harming oneself or another. In this approach, some behaviors are considered a crime because of their immorality, inconsistency with socially accepted norms, and conflict with its core values.

4. Paternalism or legal protectionism is the restriction of an individual's liberty for his or her own good. For more information, Elham Gholam Hossein and Mohsen Borhani, *An Introduction to Public Criminal Law*, Vol. I (Tehran: mizan, 2016), 80.

5. "The only purpose for which power can be exercised against every individual in a civilized society against their will is to prevent harm to another," says John Stuart Mill in an article on freedom. According to him, no one can be held accountable for committing behavior that does not harm anyone. This, in principle, is the most powerful principle in the liberal model of criminalization. The strength of this principle stems from the insight that behaviors that are not harmful to anyone are irrelevant to others. In this view, individual liberties and privacy are strengthened and the need to minimize criminal interference and not invade the privacy of individuals is emphasized.

6. Rahim Nobahar & Fatemeh safari, "Injured Materials and the Qualities of Criminology", *Legal Journal of Justice*, no. 93 (2016): 231-258.

should be considered.<sup>7</sup> Furthermore, it should be noted that criminalization and sentencing alone cannot result in restoration, and in this regard, we must anticipate various options in repairing the harms caused by the victimization. In addition, while emphasizing the need to consider the interests of victims in criminalization and sentencing, examples of women's victimization will be pointed out in which it seems that criminal retreat and acceptance of extra-criminal protection options will be more beneficial in supporting women victims.

### **1. 2. Domestic Violence and the Need to Resort to Restorative Justice**

Schonsheek, in a method called the purification method, believes that three things should be considered in order to criminalize and determine the punishment; First, is there the conduct in question in an area in which the government has the authority to enter and prohibit that conduct in the form of a criminal offense? In the next step, it must be determined whether such an intervention must necessarily be of the criminal intervention type? Finally, the type of criminal response must be determined by examining the practical aspects of criminalization and punishment by calculating its cost and benefit, and also by considering the interests of victim<sup>8</sup>, Especially where there is a close relationship between the victim and the offender and the continuation of this relationship is favorable to society and even the victim, a clear example of which is domestic violence, Where there is often an emotional connection between the victim and the offender and The parties do not want the relationship to collapse. The need to protect family members, especially the most vulnerable members, is undeniable in criminal law; However, such an action should be wise and deliberate due to the special nature of this institution, and the effectiveness of the intervention should also be considered in justifying the criminal intervention. A clear example of this is criminal intervention in the form of imprisonment for the crime of refusal to pay alimony to the wife.<sup>9</sup> Imprisonment without regard to the current needs of the victim will not only not cure her pain, but also the absence and unemployment of the husband due to imprisonment will aggravate her and other family members victimization. By criminal retreat in some domestic victimization, the space for dialogue, education and other non-criminal measures can be opened with a restorative approach. Article 2 of the Convention on the Elimination of All Forms of

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7. Gholami, "The principle of minimal criminal law", 31-65.

8. Jonathan Schonsheek, *On Criminalization* (Netherlands: Kluwer Academic Publishers, 1994).

9. According to Article 53 of the Family Protection Law adopted in 2012, anyone who, having financial means, fails to pay alimony to his wife or refuses to pay other obligatory alimony payers, will be sentenced to a sixth-degree imprisonment.

Discrimination against Women also aims at improving the situation of women and combating discrimination against them, is not limited just to punishment and criminal enforcement and in paragraph (c) of this article requires governments to adopt a supportive approach and ensure effective protection of women. Accepting the teachings of restorative justice, especially in domestic victimization, can be one of the most appropriate extra-criminal mechanisms in which, unlike traditional criminal justice, the main goal is to repair the injured relationship between victim and offender through a process of peaceful negotiation not punishment. "In this process, all parties involved in the crime come together to negotiate with each other and, under the supervision of an official, mediator, or impartial person who facilitates or promotes the process, to make a joint decision on how to deal with the harm."<sup>10</sup> In this way, restorative justice moves away from the traditional response to crime, that is, punishment, trying to think about repairing the relationship by establishing an interaction between the victim and the offender.<sup>11</sup> In this process, the punishment become less important, the role of the victim in the trial becomes more prominent, attention to her needs takes precedence over the imposition of punishment.<sup>12</sup> However, in the view of criminal justice, the priority is to establish public order and security through the imposing of punishment, which sometimes leads to the aggravating of victimization; For example, it seems that the criminal response in most domestic victims is fruitless and may leads to revenge. "In restorative justice, however, we demand that those affected by the crime come together and agree on repairing the damage."<sup>13</sup> It is worth mentioning that the agreement between the parties is not limited to the obligation to compensate, it can include asking for forgiveness, declaring remorse and regret and performing some customs and rituals.<sup>14</sup> The teachings of restorative justice are not limited to protecting the victim, but also benefit the offender; because merely imposing punishment without identifying the needs of the offender will not help prevent crime. For example, in the case of

10. Ali Hossein Najafi Aberandabadi, "From Classical Criminal Justice to Restorative Justice", *Specialized Journal of Razavi University of Islamic Sciences*, no. 9 and 10 (2003): 18-26.

11. Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women states that one of the tasks of States in improving the situation of women is to modify the social, cultural and behavioral patterns of society. Creating the right environment for peaceful dialogue and producing the right media content to promote this can pave the way for moderating harmful patterns.

12. In this process, the punishment is not removed altogether, but only marginalized, and are used as a last resort when restorative options failed.

13. John Braithwaite, "A future where punishment is marginalized: realistic or utopian?" *UCLA Law Review, University of California, Los Angeles, School of Law*, no. 46 (1999): 1727-1750.

14. For further reading, Howard Zehr, *Restorative Justice*, translated by Hossein Gholami (Tehran: Majd Scientific and Cultural Assembly, 2003): 11.

domestic violence due to the couple's addiction or lack of anger management skills, the need to support the offender in the form of addiction treatment or learning communication skills<sup>15</sup> is felt more than the imposing punishment.

## **2. 2. Psychological and Emotional Support**

Protecting the victim is not limited to providing criminal options and punishing the offender. Providing various legal solutions according to the type of impacts of victimization, including financial support, medical and psychological support, as well as emotional support, shows the legislator's attention in adopting a victim-oriented approach and trying to compensate them. An examination of current legislation shows that the legislature's greatest concern in responding to victimization is the punishment of the offender, however there are examples of financial support in innovative measures. In this regard, in addition to legal innovations in order to equalize the rate of women's blood money, according to the note of Article 551 of the Islamic Penal Code adopted in 2013<sup>16</sup>, it can be noted to the instructions and executive rules of assistance and protection of victims approved by the Cabinet on July 22, 2009 that according to Article 3, this assistance and support is merely gratuitous financial aid and assistance, and psychological and emotional support can be counted among the forgotten options. In fact, there is no place for clinical victimology, which seeks to recognize the pain and suffering caused by victimization, compensation and ultimately, treatment and rehabilitation.<sup>17</sup> In our criminal law literature. However, due to the type of common crimes against women, namely sexual crimes and domestic violence, psychotherapy and emotional support is one of the most appropriate options to repair the injuries and prevent the recurrence or aggravation of the victimization. Despite the undeniable role of psychological counseling in improving the relationship between the parties and preventing domestic violence, these options such as obligation of couples to go to counseling centers have not been significantly welcomed by legislators and judges. Such an obligation by the legislature or the judiciary, given the general

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15. In other examples of non-criminal offender-oriented solutions, we can refer to one of the essential methods in conflict resolution, called "social perspective taking" in which the person is taught to look at the issue from the perspective of the other party. Teaching this technique through psychological counseling has been considered as a mediator to prevent marital violence in recent years. In this technique, while maintaining their independent identity, individuals can empathize with the other person and look at the issue from his or her point of view, K Corcoran & B Mallianckrodt, "Adult Attachment, Self-Efficacy, Perspective Taking and Conflict Resolution", *Journal of Counseling and Development* 4, no. 78 (2000): 473-483.

16. According to the Islamic Penal Code, women's diyat (blood money) is half of men's diyat, According to this note, in all crimes where the victim is not a man, the difference is paid from the Bodily Injury Fund.

17. For further reading, Abolghasem Khodadi and Maryam Iftikhar, "Rehabilitation of the Victim in the Light of Clinical Victimology", *Journal of Criminal Law Research*, no. 17 (2016): 127.

reluctance of men to consult a psychologist<sup>18</sup>, is an effective step in improving the couple's relationship. Numerous field studies indicate that training through psychological counseling, including communication skills training, active listening, problem solving and emotion control skills, has helped to strengthen the relationship and reduce conflicts and strengthen life and emotional relationships.<sup>19</sup> Such an option is of considerable importance in repairing injuries, both in the area of domestic victimization and in sexual offenses in which the victim experiences severe psychological and emotional harm; Injuries that negligence and failure to repair will result in unpleasant social consequences.<sup>20</sup> In many cases of rape, the inadequacy of punishment in relieving the victim has been observed, even if the rapist has been sentenced to death penalty.<sup>21</sup> "Social and supportive interventions such as providing safe houses and social emergencies in crimes such as domestic violence, will be an effective step in preparing victims for independent and healthy living."<sup>22</sup> Formal and traditional intervention of criminal justice does not necessarily leads to the satisfaction of the victim, she needs social approval and support<sup>23</sup> above all and also an opportunity to express the feelings of the victimization. Unrepaired injuries can lead to extreme damaging behavior. An example of this can be seen in Ilam, which has turned this city into a city of self-immolation for women. "Self-immolation as one of the most painful forms of suicide is a loud cry in protest of the current status and as a fatalistic suicide<sup>24</sup>, it announces the passivity

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18. Research shows that there is a strong resistance in men to talk about the problems and challenges in their close and private relationships. For more information, Deryl Goldenberg, "why men are resistant to therapy", PSYCHALIVE, 17 Oct 2021, <http://psychalive.org/why-men-resist-therapy>
19. for further reading, Leila shekarchi Asadollahi; Mehrmaz Azad Yekta & Seyed Mahmoud Mirzamani Bafghi, "The Effectiveness of Couple Relationship Enrichment Training Based on Emotional Approach on the Quality of Marital Relationships", *New Advances in Behavioral Sciences*, no. 32 (2019): 19.
20. Seventeen-year-old Dutch teenager Noa Pothoven is an example of a large number of rape victims who have lost their lives due to lack of treatment and rehabilitation due to severe psychological trauma caused by the rape. After experiencing rape at the age of 14 and enduring severe injuries, she eventually lost his life after refusing to eat or drink after publishing a book called "Winning or Learning" to recount his sufferings, [www. Euronews.com/2019/06/05-noa-pothoven-abused-girl-17](http://www.Euronews.com/2019/06/05-noa-pothoven-abused-girl-17)
21. In the case of the rape of a child in Marvdasht, which eventually led to the execution of the offender, the victim's father stated that the death penalty did not help them and that his child was still suffering from nightmares.
22. Soodabeh Rezvani and Maryam Ghanizadeh Bafghi, "Safe Homes as a Clinic for Domestic Violent Women", *Legal Journal of Dadgostari*, no. 106 (2019): 143-167.
23. This is while the court is actually challenging the victim to prove his honesty. In most rape cases, there is blame and insistence on forgiveness; For example, in a conversation between a judge and a victim, it is stated: "Something happened 9 years ago, now you have come to complain about what? Come, consent and go".
24. According to Durkheim, this suicide occurs when the existing order in society is excessive and the individual is severely subjected to social subjugation and imitation. All aspects of persons` life in such controlled societies deprive people of the right to choose. The individual finds himself under a system of dictatorship and compulsory conditions that have no way of achieving his goals and aspirations; Therefore, the body surrenders to its fate and destiny and ends its life for liberation.

and distress of the victim who, in dealing with the state of society has no power to influence and hope for improvement and change.”<sup>25</sup>

### **3. Decriminalization and Depenalization in Support of Victim**

Sometimes the victims risk the punishment because they are called offender rather than victim. Sometimes the victim's attempt to repair her condition and return to pre-victimization status is criminalized by the legislature. In order to adopt a supportive approach to the victim, it is necessary to pay attention to the necessity of some decriminalization or depenalization, two examples of which are mentioned below.

#### **1. 3. Abortion after Rape**

In the debate over the legitimacy of abortion, what is most in focus is the right to life of the fetus, and the interests of the mother are often overlooked; but in the case of rape victims, the mother's obligation to protect the fetus and to bear the consequences is unfairly imposing the vicarious liability on victim and is contrary to verse 18 of Surah Fatir, according to which no one bears another sin. In support of this claim, some believe that the right to life is not the right not to be killed; It is the right not to be killed cruelly. “Therefore, a person has a duty to preserve the life of the fetus if she has entered into sexual intercourse voluntarily and has accepted the resulting obligation.”<sup>26</sup> in unwanted pregnancies due to voluntary intimacy we can talk about the woman's obligation to protect the fetus, because the woman voluntarily provided the ground, but in the case of unwanted and violent sexual intercourse, the obligation to preserve a fetus who will be deprived of many social rights due to illegitimate descent and who does not have the emotional support of parents, does not seem fair and defensible. Rape victims, half of whom suffer severe psychological consequences<sup>27</sup>, are not only unwilling to accept such an unwanted and painful pregnancy; have no choice but to have an illegitimate abortion to repair their injuries and prevent the disclosure of their victimization and the loss of their reputation in some societies such as Iran.<sup>28</sup> However, due to the criminal nature of abortion and the reluctance

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25. Khadije Safri and Zahra Rezaei Nasab, “Qualitative Studies of the Phenomenon of Self-Immolation of Women in Ilam”, *Quarterly Journal of Women and Society*, no. 1 (2016): 123-142.

26. Judith Jarvis Thomson, “A Defense of Abortion”, *Philosophy and Public Affairs*, no. 1 (1971): 37-56.

27. Given the high prevalence of depression among rape victims, they are disable to accept such a responsibility.

28. However, due to the prevailing atmosphere in the society, exposing the sexual victim, which is inevitable in case of pregnancy, imposes additional social pressure on the victim, prevents her from returning to her former life, and therefore, one of the main demands of the victim and her family is concealment of rape, some strangely, unfamiliar with the atmosphere of the society in which they live, believe that the conviction and the public execution of the punishment will restore the defamation!! Hence, they insist on preserving the fetus and entrusting it to state-run institutions after birth.

of the medical community to do it (To avoid the punishment provided for in Article 624 of the Islamic Penal Code, according to which abortion is punishable by 2 to 5 years imprisonment and the payment of blood money) they are forced to resort to underground and illegal abortions, which sometimes due to non-compliance with medical and health standards, has become a risky action that can exacerbate her victimization.

According to UNICEF, every seven minutes a woman dies as a result of an illegal and unhealthy abortion.<sup>29</sup> It should be added that eighty thousand abortions are performed annually in Iran, most of which are illegal and unsanitary.<sup>30</sup> The World Health Organization (WHO) has expressed concern that countries' policies on criminalizing medical services, such as abortion, which only women need, are a form of discrimination against women.<sup>31</sup>

There is no dispute about the wrongfulness of abortion in Islam, but according to the teachings of jurisprudence, abortion is permitted under certain conditions based on rules such as *la haraj* (no blame) & *la darar* (no harm). Dispute in this article is on determining the cases of *la haraj* and *la darar* rule and in fact, extending Note of Article 718 of the Islamic Penal Code adopted in 2013 to pregnancies due to rape. At present, according to the note of Article 718 of the Islamic Penal Code, abortion whose survival is life-threatening for the mother is allowed with the approval of a forensic doctor. The question is whether such a Note can be extended to abortion after rape according to jurisprudential rules?

Despite the enlightened approach of many jurists in this regard, the Iranian legislature has taken a strict approach to this issue and has not determined a legal option in order to abortion for rape victims.

However, it is expected that the legislature in addition to formal training on emergency contraception methods by community educational institutions<sup>32</sup>, will not limit its protection of rape victims to the punishment of the rapist, and by decriminalizing abortion in these cases, will provide the victim with the opportunity to return to her pre-victimization status and limit the adverse consequences of victimization. Such an action, on the one hand, leads to greater

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29. For further reading, Ismail Balali, "Women and the Consequences of Abortion", *Quarterly Journal of Women's Strategic Studies*, no. 22 (2003): 156.

30. For further reading, Abbas Nikzad and Gholam Ali Joursarai, "Study of Abortion from a Jurisprudential Perspective", *Quarterly Journal of Islam and Salamat (Health)*, no. 1 (2014): 29.

31. WHO, *Safe Abortion: Technical and Policy Guidance for Health System*, 2012: 17.

32. Unfortunately, in the past, education in this regard was offered at the university as a family planning course, but in addition to the lack of public access at the time of its teaching, the same non-inclusive education was removed from university courses in line with the policy of encouraging childbearing.

compliance of domestic criminal policy with the guidelines of international organizations<sup>33</sup> and on the other hand, is in line with the views of many contemporary jurists.<sup>34</sup> For instance, Ayatollah Khamenei says: “Pregnancy due to rape definitely puts a lot of stress on the mother. In such a way that both during pregnancy and after the birth of an illegitimate child, the mother suffers severe hardship; therefore, it is not unlikely that an abortion can be allowed in this case.”<sup>35</sup>

The legislature, by neglecting the maximum protection of rape victims and by failing to reflect the progressive and victim-centered views of contemporary jurists, by not distinguishing between legitimate and illegitimate fetuses in the crime of abortion, has led to the rape victims will receive the label of criminal from the legislator if she had an abortion.<sup>36</sup>

### **2. 3. Punishment of Women Who Commit Sexual Offenses**

Although the perpetrator of any crime at first glance is considered a criminal and deserves punishment, but with a deeper look at the perpetrators of some crimes, including sexual crimes in certain circumstances (for example, prostitutes or victims of trafficking who have been forced into prostitution) it seems We are facing a victim rather criminal. When we face the victim in the face of criminal, her entitlement to punishment will be questioned. Such a doubt does not conflict with the equality of persons before the law, as enshrined in the Constitution and the Universal Declaration of Human Rights, the denounced discrimination in these instruments, as well as the Convention on the Elimination of All Forms of Discrimination against Women, means any discrimination, exclusion or restriction based on sex, the result or purpose of which is to undermine or deny the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic and economic, social, cultural, civil and other fields. Remember that one of the main purposes of punishment, especially in sexual crimes, is to rehabilitate and return the offender to society, if imposition

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33. One example of a World Health Organization permit for abortion is abortion caused by rape or incest. Paragraph 2 (c) of Article 14 of the Protocol to the Charter of Human Rights and the African People on the Rights of Women, authorizes abortion for the purpose of rape. Some see women's lack of access to abortion in rape as a potential violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, contrary to Articles 7 and 17 of the International Covenant on Civil and Political Rights.

34. For further reading, Marjan Hosseini Mohammadabad and Ali Chehkandi Nejad, “Jurisprudential and Legal Study of Abortion Caused by Rape”, *Quarterly Journal of Jurisprudence and History of Civilization of Islamic Nations*, no. 47 (2016): 47.

35. Ali Hosseini Khamenei, *Treatise on the Answers to Religious Questions*. Trans. by Ahmad Reza Hosseini (Tehran: Hoda International Publications, 2001), 77. For a similar view, Mohammad Fazel Lankarani, *Jame'at al-Masa'il* (Qom: Mehr Publications, 1988), 55.

36. The proposal to review and amend the note of Article 718 of the Islamic Penal Code approved in 1392, has been submitted to the Cabinet by author of the article.

of punishment is an obstacle to her return to society and frustrate the main purpose of the punishment, the legality of such a punishment will be questioned. The victim-oriented protective approach calls for a serious reconsideration of the application of the hadd punishment of fornication or the punishment of Article 637 of Islamic Penal Code<sup>37</sup> in order to protect women victims of prostitution. In this regard, it is necessary to pay attention to the purpose of the Shari'a in imposing the punishment for fornication. In the fight against prostitution, Islam considers criminal repression as the last resort and has avoided punishment as much as possible. Many sex offenders have been victims of the unfavorable socio-economic conditions of their families and communities, and in escaping from these conditions, they have been trapped by people who have found no other way to survive but to cooperate and submit to prostitution. In this regard, some consider the feminization of poverty as one of the important reasons for the prostitution. Global poverty and unequal income distribution have severely affected women. Of the world's 1.3 billion poor, 70 percent are women and children under their care which causes them to voluntarily turn to trafficking and prostitution gangs with their own will, in order to provide for their livelihood and that of their families.<sup>38</sup> "Prostitutes, unlike people who want free and numerous sex, often enter the profession under very bad conditions, and they want to leave it, if the conditions permit so."<sup>39</sup> Ignoring the economic and social contexts of prostitution and neglecting to take protective measures and being content with mere criminalization and imposition of punishment will not lead to pleasant event in this area. By creating and linking the two categories of poverty and delinquency, some emerging criminal policymakers have labelled these groups of citizens deprived of wealth and power as prostitutes (homeless and street women) without answering the fundamental question of whether they have fulfilled all their responsibilities to these citizens.<sup>40</sup>

Recognizing this, the international community has reflected in some international instruments, such as the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, known as the Warsaw Convention,

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37. According to this article, a man and a woman who do not have a marital relationship between them, commit illegitimate sexual relations other than fornication, Such as kissing or hugging each other will be sentenced to up to 99 lashes.

38. For further reading, Mustafa Elsan, "Trafficking in Women and Children for Sexual Exploitation from Global Prohibition to Protection of Victims", *Social Welfare Quarterly*, no. 16 (2005): 344.

39. Rahim Nobahar, "Trafficking in Women for Prostitution from the Perspective of Islamic Teachings with a View to International Law and Iranian Law", *Quarterly Journal of Modarres*, no. 47 (2006): 187-220.

40. For further reading, Morteza Arefi; Mohammad Jafar Habibzadeh; Jalil Omidy & Mohammad Farajiha, "The Contexts of Criminal Intervention in the Field of Poverty, from the Policy of Fighting Poverty to the Policy of Fighting the Poor", *Quarterly Journal of Criminal Law Research*, no. 26 (2019): 102.

the need to depenalization of prostitution in trafficking cases. Unfortunately, such a policy is not pursued in many criminal jurisdictions.<sup>41</sup> Although the Anti-Human Trafficking Law was passed in Iran in 2004, this law is punitive in nature and its focus is on punishment the traffickers, so, it has neglected to take protective measures against victims or depenalization similar to the Warsaw Convention.

There are gaps in preventive measures to protect sex offenders who have committed crimes in special conditions such as severe poverty or trafficking. It is noteworthy that in Iran's criminal policy, the motive for women's sexual crimes is not relevant in determining punishment. In this regard, we can refer to the executive regulations of the Support and Rehabilitation Centers for Girls and Women at Acute Social Injury and Socially Injured Women, approved in 1997, in which women who make a living through prostitution are referred to as "special women"<sup>42</sup>. The regulations stipulate that these women are referred to rehabilitation centers due to lack of housing and other conditions after serving their sentences. In fact, this law, although it has tried to take a supportive approach to these women, has not ignored their punishment. However, the fear of punishment can be a deterrent to these women visiting these centers. Apart from the fact that the fear of punishment is a deterrent for these women to go to these centers, the labeling process<sup>43</sup> that is achieved through trial and imposition of punishment, sometimes causes a criminal identity to be established for the individual, then she believes herself more and more as a criminal, so, her will to return to society is weakened.

Prostitution does not have an independent punishment in Iranian criminal law and can be punished as a fornication. Although the certainty of the execution of a sentence is a general rule governing hudud<sup>44</sup>, this does not mean that the punishment should be carried out under any circumstances. The certainty of the execution of punishments is a necessity of an efficient penal system, but it does not contradict institutions such as repentance, pardon or the fall of punishment in a state of emergency. Perhaps one of the concerns in

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41. An unfortunate example was the case of a girl named Tatyana, who was trafficked to the United Arab Emirates with a promise to work and was forced into prostitution after seizing her passport. She could escape finally but she was sentenced to three years in prison for working in a brothel instead of receiving a victim-centered response. For more information, Elsan, "Trafficking in Women and Children for Sexual Exploitation", 345.

42. In order to avoid labeling these women, the legislator seems to have used the term "special women" instead of the term prostitute, which has a less negative connotation.

43. Labeling is summed up in a social process in which society attaches a deviant title to the individual, as a result of which the individual is excluded from society, a negative identity is established in him, and he tends to deviate further. For more information, Tahmineh Shahpour and Tahmourth Bashirieh, "Approach to the new Iranian legislative system based on the theory of labeling", *Journal of Legal Research*, no. 87 (2019): 278.

44. In the religion of Islam it refers to punishments that under Islamic law are mandated and fixed by God.

discussing decriminalization or depenalization of particular behavior is the elimination of moral culpability of that behavior, although this concern is justified; But resort to punishment is not only option to show a bad behavior. "It should be remembered that talking about depenalization is not synonymous with recognizing a behavior as permissible."<sup>45</sup>

We cannot insist on punishment these women without taking account the impact of factors such as poverty and social deprivation on the fate of these people. Rather than deserving of punishment, they deserve a protective approach that seeks to prevent the recurrence and continuation of prostitution while seeking to alleviate the deprivations that lead to the offense with the help of psychotherapy.<sup>46</sup> The legislator's focus on punishment without providing financial assistance and medical and psychological services to improve their situation and return them to society is one of the shortcomings of the legislation.

Depenalization in this area also has significant jurisprudential justifications such as prohibition of research in sexual crimes and strictness in the evidence of proof and after proving the crime, it is possible not to punish the perpetrator according to some jurisprudential institutions such as duress, necessity or repentance.<sup>47</sup>

#### 4. Conclusion

Examination of the current criminal policy in Iran shows that the criminal legislator does not take a conscious and systematic stance on crimes against women as vulnerable victims and does not have a proper understanding of their needs and demands. Although the predominant emphasis of criminologists in supporting women victims is on criminalization and aggravation of punishment, this study acknowledges that sometimes criminal interventions do not only lead to the protection of women victims or the prevention of their victimization; Rather, it cause their revictimization or its aggravation. Therefore, it is necessary for the legislator, adhering to the principle of criminalization as last resort, to retreat from

45. Firooz Mahmoudi Janki, "Decriminalization as a Change", *Journal of Private Law Studies*, no. 1 (2008): 321-335.

46. Numerous field studies have shown a markedly low self-esteem in prostitutes. They are unable to have successful relationships because of a sense of worthlessness, and because they do not feel approved or accepted by others, they accept any humiliation. Medical counseling in the form of psychotherapy can help to improve the self-esteem of these people and reduce the rate of prostitution. For further reading, Parvin Mirenayat; Mohammad Reza Abedi & Razieh Izadi, "The Effect of Psychotherapy based on Performance Analysis on the Quality of Life and Self-Esteem of Prostitutes", *Journal of Applied Psychology*, no. 68 (2017): 28.

47. Defending the impunity of victims of prostitution will never mean encouraging prostitution. The protectionist approach does not advocate a strict and inflexible attitude in the application of punishment, especially huddud, nor does it believe in removing the wrongfulness of sexual promiscuity. There are precise boundaries between these concepts. For further reading, Rahim, "Trafficking in women for prostitution", 214.

criminal interventions in some field of female victimization and not to limit his protection of female victims to a criminal approach. If the legislature is concerned with the protection of women victims, it should focus on the victim's interests in criminalization and sentencing with a victim-oriented approach, and choose the most appropriate response by calculating the costs and benefits of punishment.

This is especially necessary where maintaining relationship between the offender and the victim is desirable, such as domestic crime. Criminal retreat in this area can pave the way for the implementation of restorative justice teachings. An approach that, instead of focusing on the punishment of the offender, thinks of repairing the damaged relationship between the offender and the victim through a process based on peaceful dialogue.

It is worth noting that the protection of the victim is not limited to the punishment of the offender; providing a variety of extra-criminal options focusing on repairing victim trauma, especially emotional and psychological trauma, would be an effective step in supporting women victims. This is now one of the forgotten options of criminal law and highlights the need to pay attention to clinical victimology in this area.

An examination of current criminal policy shows that sometimes the legislature thinks more about punishment rather the protection and return of the victim to society. For example, the Iranian legislature, despite the enlightened approach of many jurists regarding the permissibility of abortion due to rape, has taken a strict approach to this issue, and has not considered a legal way for abortion for rape victims. However, it is expected that by depenalization of abortion in these cases, the adverse consequences of this victimization will be more limited.

Another example of the legislature's preference for punishing the victim over her protection is the punishment of perpetrators of sexual crimes. One of the main purposes of punishment is to return the offender to society; if the offender's situation is such that the imposition of a penalty prevents his return, the doubt about the validity of such a punishment will become more pronounced. The victim-oriented approach calls for a review of the punishment of women victims of prostitution who have sometimes resorted to such behaviors due to extreme poverty or trafficking. It is more appropriate for the legislature to pursue a policy of depenalization for some offenses in line with some international instruments; In particular, the basis for such an approach (depenalization of some sexual crimes) has been provided in Islamic jurisprudence despite numerous institutions such as amnesty, repentance, urgency and reluctance.

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