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Conceptual Study of criminal policy

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ABSTRACT

Basically a society cannot be silent towards a crime which threatens its entity but, instead it should apply all its efforts in order to challenge control and campaign any criminal behaviour so as to achieve individual and social order. Such issue, for sure, will require targeted and proactive planning and policy making, since one cannot arbitrarily fight against social anomalies. How should we proceed with such planning and policy making? What programs one must follow to contain these wrong doings? Who will administer and carry out such Tasks? The answers for these questions are given in the meaning of the criminal policy. barristers have different meanings for this term . Still one cannot find a cut and dried answer for it since they are ambiguous. When we study the development process of this term as from the beginning we will find out that such policy starts from narrowly defined concept and ends to an absolute broad sense .In each of these processes one should observe such behaviors which destroy social norms. These behavior starts from attempting a crime and ends with committing or consummation a criminal wrongdoing. Agents and administrator charged with controlling and containing anti – social behaviours start with government–oriented attitude and ends to society – oriented tasks. Finally they include words such as preventing from criminal offense and advising the wrongdoers. In This article we will try to study such term in all aspects.

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Introduction

Barristers in their Literature use both the term of criminal and penal policy. some of them believe that both these two terms are the same and they also think that there is no particular implication for policy. Their idea is normally based on the view that the state is the sole body to fight against crime and to control the same. Such duty is performed Judicial and police authorities. They think that all enactments and penal codes both substantive and procedural in penal justice are performed to crack down the crime. In the meantime they deny penal policy.(See Abrand abadi.s.y.1998 page 38). Most of the jurists and lawyers are of the opinion that both criminal and penal policy are the same. They think penal policy is the Narrow meaning of the criminal policy. It is in fact, Part and parcel of criminal policy and the core issue of the same. These two terms, in their opinion , Are not unique But, however, they are not distinct from each other. Some jurists distinct these two terms. They differentiate between the time when criminal policy considered as an academic study by the scientist on the one part and its implication in practice on the other.

This group of legal scholars are of the opinion that criminal policy has come into being parallel with penal law as from the far reaching and remote past commencing from middle age through the end of 18th century. They however believe that since then such policy has not been systematic, methodical and self- understanding but has come into being as from the same time. Society has virtually applied such policy at the end of the 18 and at the beginning of in 19th century. (see Gowdarzie.s.y.2003,paye 15)

These legal scholars also believe that the criminal policy is as old as penal law. But however there is no doubt that roles and procedures of the earliest primitives have been applied first and

for most for the peace order and security in community but however making rules and legal provision in modern society has always aimed to scientific research technology progress and epistemology in their essence. The method and modality in primitive Society however had been instinctive and without reasoning. Some of the Jurists observe , although the ancient human society had reacted to criminal wrong Doing which were threatening their being but However , such Reaction cannot be termed as Real criminal policy, because it was primitive instinctive without scientific survey once the wisdom or at least scientific research comes into being when criminal policy will be borne (Ansel.s.y.1370 page 5).

History of criminal policy in Iran and the world

It is very important to Know when at what time any by whose initiatives the term of criminal policy has been applied in both Iran and the world. We can understand such implications as from the beginning of such term and its processes of development. Through such method we will be able to study and assess its meaning. The term has so far been interpreted from western texts and have come to our legal terminology.

History of criminal policy in the world

Most of the jurists believe that the term of criminal policy has been first applied by a German citizen named Anselm phon feuer Bach on 1803(see Delmass marti. s.y.1998.page 23).

But some of these lawyers however believe that a Dutch lawyer entitled khoze Damour has selected this term as a world in his book scientifically before feuer Bach (Gowdarzie supra page 17).

So the terms «crime control policy» and «criminal policy» are the same and have however spent 200 years of life and has been initiated by feuer Bachand clanishrad. This word has been substantiated as penal policy and often attributed to Anselm Von

feuer Bach, a german scholar(Nadjafi Abrand Abadi.s.y.1383-84 page 2119).

Such term has sometimes in the past gone to oblivion again after second world war and its aftermath at the beginning of 1970 it has come to our notice. It was revived by lawyers and scientists especially by mark Ansel who for the first time prepared a broad definition for the same and has developed such term in the formal notion of social defense movement.

History of criminal policy in Iran

Criminal policy has been applied in Iran both in broad and narrow sense for about 80 years.

But it attend in our legal literature at the beginning of 1990 through creating several articles and books by Iranian scientists and legal scholars specially DR. Ali Hossein Nadjafi Abrand Abadi (L.L.D) in this respect. He composed his treatise for L.L.D degree on 1990. this proficient legal scholar has rendered magnificent services to Iranian society by translating a book in 2 volumes entitled «Great systems of criminal policy » created by MRS Meyer delmas marti and a book entitled «an introduction to criminal policy» created by Mrs Christian lazreth. Ministry of science research and technology in Islamic republic of Iran has finally allocated 2 units in its curriculum of scientific career in L.L.D grade to criminal policy on 1999 nowadays Mr.nadjafi is the superior veteran of this term in Iranian legal literature.

What do we mean by criminal policy

Legal scholars have maintained several terminology for this word. Up to now however there have been no clear cut from and content for this term. There are too much ambiguities in this respect. 2 definitions have been prepared in general classification.

- 1.narrow meaning of criminal policy
- 2.Broad meaning of criminal policy.

Whether penal policy has been applied to different broad and narrow meanings, it depends to types of visions that legal scholars look to it. Some of the Jurists believe that crime is a criminal phenomenon, therefore in order to challenge this phenomenon one should only regard to the boundaries of criminal law. Since criminal law is essentially in state field. Approached to crime as a crime as a general term are only made by the state itself such notion is a narrow meaning of criminal policy. other scholars believe that since crime is first of all we come to the conclusion that reaction to this social event cannot be merely located within the penal law frame work.

Moreover, crime cannot and would not be of repressive nature because other penal sciences in addition to penal law will come to the service of criminal policy in order to challenge with crime.

Since the boundaries of scientific discipline to be used in criminal policy are far more broader than the penal law, therefore remedies in fact must be provided for by both Government and institutions together with civil society in this respect. This knowledge is a basis for the broad meaning of criminal policy (see nadjafi abrاند abadi.s.y.1998 , page 24).

3-1-narrow meaning of criminal policy it is very important to have the type of vision towards criminal phenomena and to use those sciences which are profitable for policy making and management of world doing in order to have a remedy for crime. Such vision is effective for the meaning of criminal policy. Anselm von feuer Bach a German citizen , was the person who has brought the import of criminal policy meaning to the integrity of penal law and criminal science. He observe

criminal policy as criminal policy includes all repressive methods through which the state will show some reaction against crime (Delmas Marti. s.y.1998, page 23).

Jurists believe that such definition made by feuer Bach of criminal policy imports narrow meaning of it . In his definition criminal policy is the same as criminal policy, which has confined the thinking to the scholar during 19th and 20th in centuries. Therefore remedies for crimes in this respect are all of criminal point of view and regard the aftermath of the crime committed . Some believe that such vision towards penal policy are solely based on crime, sentence, acts and judiciary. Reasoning will also contribute in this respect, (see hosseini.s.y.1376-page151). von list a german scientist also Believes that criminal policy includes all rules and principles that the state and society both through them organize to fight against any wrongdoing. (lazreth supra page 41).

Scientists however Believe that such definition of criminal policy imports narrow sense since this term and other terminologies brought about by them before the new movement of social defense, all the same as provided by mark Ansel from criminal policy.

In their opinion is the Reaction of the state against crime and such responsive remains a always to be punitive and repressive. we However come to the conclusion that narrow Meaning of criminal policy is in fact the same as criminal policy

Broad meaning of criminal policy

Some of the scientist, while confronted with narrow meaning of the from provide a broad meaning for the them such import has been observed by most of the western states thought revising the criminal policy by some state as the beginning of 1970s .

They have gradually parted with narrow sense of such policy. The policy with such import is not therefore limited to penal law but instead submit that other scientific disciplines are to be at the service of criminal policy. By this words we However do not believe that criminal policy should part with penal policy, but criminal policy instead in this respect will include main part of hard core of criminal policy. But criminal policy However is not Limited to them. it will for there Expand beyond the penal policy and will maintain a more developed import. Legal scholars in this respect believe that the criminal policy in its broad meaning includes two different terms (Nadjafi Abrand Abadi supra pages 33, 34)

1-Relatively broadened criminal policy .

2- Absolutely broadened criminal policy .

2-1 Relatively Broadened criminal Policy.

Person who initiated new movement of social defenses behave that criminal policy includes scientific observation and reaction against crime on the one part and Artistic Aspect on the other the purpose of this issue is to relationally organize and observe supportive aspects based on scientific descriptions in relation to reaction agent delinquency (see Ansel.s.y.1370 Page 54).

Jurists behave that mark Ansel is the creator of relation brand criminal policy. He has observed both Practical and theoretical aspects of penal policy altogether. He has not limited the planning for criminal policy and its executive remedies to Judicial and policy of the state. But instead he believes that public departments organs of a government. Judicial, executive and security in their highest level intervene in planning, policy making and performance of criminal policy. As a matter of fact the importance of criminal policy meaning in this vision is

transfused to a social – political sense and remain in the realm and public policy of a country of state (Nadjafi Abrand Abadi.s.y.2003.page 213).

Such vision is much broader than the narrow meaning of criminal policy and because such policy in a relatively narrower vision regards exactly to both crime and deviation as social facts. Both repression and Prohibition are accountable for in this view . Social Remedies such as health and cultural issues also will have their own effect for policy in making in crime and deviation and plays a role in Planning policy making and their enforcements.

Absolutely Broadened criminal policy

Lawyers in this respect are not only willing to consider both crime and deviation as social facts. but these issues will be resolved beyond criminal law. Society will also contribute to criminal phenomenon. Here criminal policy means " the total modalities to be used by the society in order to resolve the Criminal issues (Delmas marti. supra page 214). Some of the urists in fact behave such definition as an improved vision mark Ansel (Nadjafi Abrand Abadi supra Page 25-30) This is the most complete definition is its entirety as observed by lawyers to be applied for criminal policy .

What do Iranian lawyers mean by defining criminal policy?

Implications used by Iranian Lawyers for criminal policy Are deserved to be mentioned here.

When we observe gradual improvement for this nation in Iranian law we will both find out that criminal policy is used in both broad and narrow terms. if we study Iranian expires view in this respect from 1314 to 1360 (approximately compared with A.D from 1945 Up to 1981). It shows that most of their opinion are based on foreign resources especially from French language references were available for these lawyers. Iranian layers have different in this regard that mostly relates to the tape of inferences they get from there foreign Authorities. therefore they have used different themes such as punitive policy, penal policy and criminal policy these respects (Nadjafi Abrand Abadi supra pages 25-30).

Criminal policy in their views, first of all means the narrow term and then signifies relatively Broad term and quite recently it Refers to Absolutely Broad term. Due to the Effects of Forgone source through Applying them by Iranian lawyers we can observe that Iranian visions in Different terms Almost are the same as foreign lawyers, so they ,ve been overlapping and similar in their improving processes .Iranian lawyers in their most comprehensive definition of this term submit that the knowledge of criminal policy including the study of practices in different Range of remedies provided by both the state and the civil society (through its different constituent parts) espically made for repression of criminal facts prohibition from them ,supporting the victims affected either directly or indirectly by delinquencies and through enactment of different Rules and procedures.

All these provisions will be completed in order to react to crimes to be committed, to situations related to and before any crimes and wrongdoing, finally to redress damage, losses and effects caused by the crime including inhibitory decisions to prevent from repetition of a crime(supra page 37).

Outcome Although legal schools have different meaning for the definition of a crime in accordance with different schools of criminal teachings (see Ali Abadi.s.y.2007 page 41). but penal law observe that crime1 is violation of social norm and due the importance of norms, legislator has accompanied the violating

of them with the guarantee of penalty enforcement. Deviation is some sort of violating social norms without sanctions and penalties. Deviation also said to be former situation of wrongdoing. Nowadays lawyers believe however both crime and deviation are to be social facts.

Article 2 of Islamic penalty law says:

Each action to be done or left to which penalties have been determined in law is considered as a crime. Society however is obliged to prevent and contain criminal and deviant phenomenons as to safeguard social and individual order. Therefore it should follow targeted and sysmatic planning and policy making in this respect that have been implied to be criminal policy and since those who commit these wrongdoing are human beings, so adopted criminal policy must observe the wrongdoers and at the same time to be concerned with their punishments as well as their social improvement and rehabilitation. All this factors are to be recorded in an agenda. Certain conditions are to be met to prevent from crime committing, deviation and being criminal and since the government cannot fulfill those obligations alone, civil society will be the most basic institution to play an effective role in criminal policy. lawyers therefore behave that both deviation as a situation prior to delinquency as well as crime itself, should be taken into considerations to stablish individual and social orders. They are also of the opinion that society must keep from happening the crime and repress the wrongdoers, improve and restore them to healthy and also pay attention and give weight to the victims. Both state and civil society must contribute whole heartedly towards each others. This is the absolute broad implication of criminal policy.

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