



The Need to Retreat of Iran's Penal System in Support of Women Victim

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Received Date: March 03, 2021; Published Date: March 16, 2021

Abstract

Although often when it comes to supporting specific victims, including women, everyone's mind is turned to specific criminalization or aggravation of punishment for crimes against women, But permanent resort to criminal intervention is not enough to stop women's victimization; Rather, sometimes criminal interventions can exacerbate or repeat the victimization, in addition to incurring significant punitive costs. Therefore, in order to protect women victims, sometimes instead of focusing on the punishment of the offender, it is necessary to look for extra-criminal protective options according to the interests and needs of the victim. And sometimes, in order to repair the injuries of the victimized women and to help bring them back to their pre-victimization status, decriminalization of some behaviors that the victimized women are forced to commit in certain circumstances, is necessary. In this article, an attempt is made in an analytical-descriptive manner, with reference to the current criminal laws and its shortcomings, to make suggestions for the criminal retreat of the legislator in order to protect women victims in some victimization.

Keywords: Women Victims; Depenalization; Decriminalization Extra-Criminal Protection

Introduction

The main demand of the criminal legislature in order to protect vulnerable victims such as women has been to resort to specific criminalization or intensify punishment in crimes against women, but excessive interference and maximum criminalization in this area is not worthy of a wise legislator.

Given the principle of minimal criminal intervention, the only desirable destination for protection of women victims, is not criminalization and aggravation of punishment. Commitment to the principle of minimal criminal intervention not only ensures the optimal use of criminal law in the right place; but also prevents fruitless criminal inflation and paves the way for the realization of criminal justice [1].

Criminal law is not the only appropriate means to properly pursue and protect the legitimate norms and interests of a society; but it is the last resort among the available options and it should be used only when the rules of civil and administrative law do not have the necessary ability to achieve the goals of the legislator [2].

Schonscheck believes that in order to criminalize and determine the punishment, three points must be considered, first, whether the behavior in question is in an area in which the government has the authority to enter it in the form of criminalization. The next step is to see if such an intervention must necessarily be a criminal intervention. Finally, the type of criminal response should be determined by examining

the practical aspects of criminalization and imposing punishment by calculating its cost and benefit according to the interest of victims [3].

Reflecting the achievements of the second stream of victimology in criminal law, it should be borne in mind that in response to victimization, punishment of the offender will not necessarily be the most appropriate option. With such an approach, in order to find the most appropriate option, we should consider the victim's interest that is, repairing the injuries and returning the victim to the pre-victimization status and preventing the recurrence of the victimization.

Accordingly, victimologists have demanded a new change in the criminal policy towards the victims, which, instead of emphasizing punishment, should focus on repairing the victims' injuries. The focus of some of these measures is to decriminalization and to welcome a variety of protective extra-criminal options, examples of which are given below.

Extra-Criminal Protections

Victim protection is not limited to anticipating criminal options and punishing the offender, Predicting various legal remedies according to the type of injuries caused by the victimization, including financial, medical and physical, and emotional support, reflects the concern of a legislator in adopting a victim-centered approach and his determination to respond to all of victims' injuries. However, an examination of the legal options available in Iran suggests that the legislature's greatest concern in responding to victimization is the punishment of the offender and in recent innovative measures has been just relied on financial support. In this regard, it can be referred 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 and executive rules of assistance and protection of victims approved by the Cabinet on 2009, according to Article (3) of which The purpose of helping and supporting the victim is only to provide gratuitous financial assistance and psychological and emotional support can be considered as the options that is forgotten by the legislature. Going through the some victimization and reaching the stage of restoration and pre-victimization status undoubtedly requires protections beyond criminal protection or financial options. In fact, clinical victimology, which seeks to recognize the pain and suffering caused by crime, compensation for the injured and ultimately their treatment and rehabilitation [4], is neglected in our criminal law literature. However, due to the type of common crimes against women and the resulting injuries, 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 rooting out many cases of domestic violence and providing solutions to repair the damage and prevent its recurrence and improve the relationship between the parties, these options have not been significantly welcomed by legislators and judges, while Similar to court orders in supplementary penalties, couples can be obliged to consult a psychologist by judges. Such an obligation by the legislature or the judiciary, given the general reluctance of men to consult a psychologist, is an effective step in improving the couple's relationship. Numerous 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 [5]. Such an option in restore the victim, whether in the field of domestic violence or in sexual crimes, the victim experiences in addition to physical injuries, severe psychological and emotional injuries; it is of considerable importance. In the rape cases has repeatedly been shown to be inadequate in relieving the victim's pain, even if the offender has been sentenced to death penalty. Predicting a criminal or financial option without treatment and emotional support cannot return the victim to normal pre-victimization circumstances. 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 [6]. The most important needs of sexual victims are to participate in the judicial process, to be approved by the society, not to be blamed and to see the responsibility of the criminal justice system in demanding their rights. Formal and traditional intervention of criminal justice does not necessarily lead to the satisfaction of the victim, she needs social approval and support the most and an opportunity to express feelings caused by victimization [7]. Unfortunately, At present we do not have anything like victim impact statements(VIS) found in other legal systems and Victims do not have access to some supportive institutions provided in other jurisdictions, such as the support prosecution (who accompanies victims of domestic violence to provide security in the proceedings in U.S.A).

Decriminalization or Depenalization in Support of the Victim

Sometimes the attempt of the victim to return to her pre-victimization status is also criminalized by the legislator and provides the ground for aggravation of her victimization. The victim-oriented supportive approach in response to the victimization not only must consider the victim's interests in choosing the most appropriate option but also it is necessary to pay attention to the necessity of some decriminalizations or depenalizations, two examples of which are mentioned below [8].

Abortion after Rape

Advocates of the freedom of abortion, arguing for a woman's right to her body and physical integrity, consider abortion a symbol of women's right to control their own body and believe that although the fetus has the right to life [9]. But if the mother does not want the fetus for any reason and in fact does not allow her fetus to use her body, she has the right to remove it from her by abortion [10].

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. 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 [11,12].

rape victims, half of whom suffer severe psychological consequences, are not only unwilling to accept such an unwanted and painful pregnancy; Rather, in an emergency, they 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. However, due to the criminal nature of abortion and the reluctance 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 [13]. It should be added that eighty thousand abortions are performed annually in Iran, most of which are illegal and unsanitary [14].

Abortion is considered a crime according to the teachings of jurisprudence but according to the same jurisprudential teachings, abortion is allowed under certain conditions based on some rules. For instance, inflicting injury and harm is prohibited even if it is against the person herself, which is called the no-harm rule or some prohibited behaviors are allowed in emergencies and very difficult situations which is called hardship rule.

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 ruling 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 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 compliance of domestic criminal policy with the guidelines of international organizations and on the other hand, is in line with the views of many contemporary jurists.

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 receive the label of criminal from the legislator if she had an abortion.

Depenalization of Special Women Who Commit Sexual Crimes

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 not criminal. Remember that one of the main purposes of punishment, especially in sexual crimes, is to rehabilitate and return the offender to society, now if imposition 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-centered supportive approach calls for a serious review of the punishment of women victims of prostitution. If we consider the purpose of criminalizing prostitution as a kind of legal protection in form of legal paternalism in which the legislature, recognizing the interests of its citizens, does not allow them to act against their interests, Such a goal will not be achieved in certain circumstances, such as prostitution in emergencies, such as poverty and lack of shelter, merely through criminalization and punishment.

Many sex offenders are victims of adverse economic and social conditions in their families and communities. 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 [15].

Ignoring the economic and social contexts of prostitution and neglecting to take protective measures and rely on criminalizing and imposing punishment, it will not help to prevent their victimization or delinquency.

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, the need to depenalization of prostitution in trafficking cases. Unfortunately, such a policy is not pursued in Iranian criminal law. 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 [16].

There is a lack of preventive and protective measures for sex offenders in certain circumstances in Iranian criminal law. In fact, there is a lack of law to look down on such women who have committed prostitution as victims not criminal. It is noteworthy that in Iranian criminal policy, in principle, the motive in sexual crimes is not relevant in determining punishment.

Perhaps one of the concerns in 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 [17].

The society and the legislator should blame themselves more than insisting on punishment in these cases, as they have not been able to prevent these people from being drawn into behaviors that damage their dignity and cause serious damage to their body and mind. 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. 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. In addition to the fact, according to the teachings of jurisprudence, from one hand the prohibition of research in sexual crimes and strictness in the evidence of proving such crimes is emphasized, and from the other hand, after proving the crime, it is possible not to punish the perpetrator according to some jurisprudential institutions such as duress, necessity or repentance.

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 victimization or its aggravation. Therefore, it is necessary for the legislator, adhering to the principle of criminalization as last resort, to withdraw from criminal interventions in the some field of female victimization and not to limit his umbrella of protection of female victims to a criminal approach.

Protection of the victim is not limited to the punishment of the offender; Anticipating 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 that is one of the most forgotten options in criminal law and highlights the need to pay attention to clinical victim ology in this area.

A look at current criminal policy shows that sometimes the legislature is more concerned punishing the offender than protecting and returning 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 of abortion for rape victims. However, it is expected that the protection of these women victims will not be limited to the punishment of the rapist, depenalization of abortion in these cases will pave the way for the victim to return to her pre-victimization status.

Another example of the legislature's preference for the punishment of the victim over her protection is the punishment of perpetrators of sexual crimes. The victim-centered supportive approach calls for a serious reconsideration of the punishment of women victims of prostitution, who have sometimes resorted to such behaviors due to extreme poverty or trafficking. Ignoring the economic and social contexts that lead people to these behaviors and

neglecting to take supportive measures to return them and emphasis on mere criminalization and imposition of punishment, will not lead a pleasant event in preventing their victimization or delinquency.

It is more appropriate for the legislature to pursue a policy of depenalization for such crimes in line with some international instruments, In particular, the basis for such an approach, is provided by numerous institutions in Islamic jurisprudence such as amnesty, repentance, urgency and duress.

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