

## Sociological and criminological analysis Decriminalization of minor drug related crimes

Omid Milanlouie<sup>1</sup>, Seyed Mahmoud Mirkhalili<sup>2\*</sup>, Shahraddar Darabi<sup>3</sup>, Mahdi Sheidaeiian<sup>4</sup>

1. Ph.D. Student of Criminal Laws and Criminology, Azad Islamic University, Qom Branch, Iran.
2. Associate Professor of Criminal Laws and Criminology, Farabi Pardis, Tehran University, Tehran, Iran.
3. Assistant Professor of Criminal Laws and Criminology, Qom Branch, Azad Islamic University, Qom, Iran.
4. Assistant Professor of Criminal Laws and Criminology, Farabi Pardis, Tehran University, Tehran, Iran.

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### Abstract

**Purpose:** In line with their function to fight, control and combat crimes, governments have duties and powers. One of these tasks is criminalization, punishment and prosecution of crimes. Drugs are one of the major challenges facing societies and the scale of its destructive challenges is still added in current age. The resort to criminalization and the penal combat with this phenomenon has been a common practice of our country and other ones.

**Methodology:** The present research is applied in terms of purpose and content analysis method. In the organization of research, the documentary and library methods have been used and the information analysis has been obtained qualitatively and based on the inference of the researcher on the sources and texts.

**Findings:** Considering the legal status of our country, it is considered that, by respecting numerical proportions (math and Aristotelian) and paying attention to the amount of narcotics, the legislatures have criminalized the use of narcotics, especially minor narcotic drugs, in any amount. **Conclusion:** looking at the statistics of the cases brought to the judiciary, attention to the number of prisoners in the country, the statistics of the prisoners belonging to this group of crimes, and, on the other hand, paying attention to the community, despite the application of repressive criminal policy in the country, regarding drug crimes, in particular crimes of minor crimes, suggests that this (repressive) approach to the fight against and control of crimes related to narcotics has not been successful in the country.

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\*Corresponding author email: Erfan871387@gmail.com

## 1. Introduction

Criminalization is a governing instrument of countries in fighting and controlling crimes and delinquencies. Such tool, on the one hand, is in authorities of countries and, on the other hand, is in their tasks and assignments. In executing such authorities and tasks, each country should respect relevant principles and fundamentals governing this process. Disrespecting criminalization principles and fundamentals have destructive effects which sometimes lead not only into not realizing criminalization goals in relevant issue but also to destructive and ruining impacts. Therefore, as the first steps in playing its role in curbing illicit drugs, criminalization is a complicated and hard process while right criminalization needs to respects its governing principles and fundamentals (Mahmoodi Janaki, 2008: 45).

Since past decade to now, in illicit drug criminalization, legislator has experienced various penal policies in treating it. Despite of this, the law on modifying illicit drug campaign which expounds penal policy and administration's attitude toward illicit drugs needs contemplation and revision by changing the approaches in some aspect of conducted criminalization considering past experiences and successes of other countries and our current domestic conditions (Milanloei, 2015: 53).

Each country has achieved results after years of varied experiences and tests in fighting illicit drugs and taking necessary initiatives including both penal and non-penal ones especially in criminalizing types of crimes. In this path, some countries have achieved successes by their taken measures that studying and recognizing them can help us to modify or foster current criminalization process. Among such countries, one can refer to European nations especially Switzerland and UK (Milanloei, 2015: 53).

Nowadays, illicit drug has become a global dilemma due to human multilateral advancements in communications, transportation, equipment, industries and different sciences and mostly all nations are engaged with a challenge called illicit drugs. According to statistics released by United Nations Office of Drug and Crime (UNODC) in 2013 and Eurostat, the value of illicit drug commerce is annually over US\$456 billion of which US\$84b belongs to Cocaine trading. However, all countries are not similarly and identically engaged with this problem since some countries are illicit drug producers, some countries are neighboring these producers and some of them are the third layer of illicit drugs flow and transit. On the other hand, due to their poverty, richness, employment rates, illicit drugs production, illicit drugs consumption, neighboring/not neighboring to producers, advanced/advancing nations and other components as the factors of committing and intensifying illicit drug crimes, countries are varied concerning their encountered illicit drug challenges and its related crime. Therefore, there are varied approaches on fighting and controlling illicit drugs, criminalization, and types of penal policies and other aspects (Rajian Asli, 2013: 101 – 103).

On present paper, considering minor illicit drugs criminalization in Iran, we intend to explore whether one can take steps to decriminalize some criminal titles mentioned in abovementioned law on illicit drug related crimes by studying fundamentals and principles of criminalization and decriminalization on the one hand, and studying the laws of other countries like Switzerland and UK as the advanced European nations and using their experiences, on the other hand. Which penal policies and approaches are taken by these countries on minor illicit drug crimes? Do UK and Switzerland have similar and identical policies like us in criminalizing and curbing minor illicit drugs? Can we use the achievements of both countries in decriminalizing some illicit drug related crime titles? Here, we address to mentioned issues. By repeating such discussions, we hope to be effective in penal policy and in fighting against minor illicit crimes in the society.

## 2. literature Review

Cultivation, consumption and trading metal stimulants has been existed since the outset of human civilization. In 20th century, USA began a full war against illicit drugs. In the same century, both USA and UK prohibited marijuana. In two wars against China for illicit drugs so-called Opium 1 and Opium 2 wars,

UK attempted protect its illicit drugs commerce. In different societies, various motivations have paved the way for opposition against illicit drugs freedom over history. For instance, one can refer to religious motivations, insulting minorities on increases in violence and public health protection. Those who agree illicit drugs freedom categorize such motivations under subtitles like religious impatience, racism and so on. On the other hand, illicit drugs freedom proponents believe that current prohibiting laws should be removed; among their arguments, one can note individual rights, individual freedom and negative consequences of illicit drug prohibition. Since 20th century, movements were formed on illicit drugs freedom and cancelling prohibition laws worldwide. Most movements are organized by fans of liberal democracy and liberalism. However, supporting illicit drugs freedom is trans-party and trans-ideology issue which involves all groups. Current proponents of illicit drugs freedom call for removing illicit drug laws totally or to become at least easier.

### 3. Methodology

The present research is applied in terms of purpose and content analysis method. In the organization of research, the documentary and library methods have been used and the information analysis has been obtained qualitatively and based on the inference of the researcher on the sources and texts.

### 4. Findings

Routine answers in criminal policy on illicit drugs in Iran and other nations: In Iran, like many judicial systems in human communities, some responses were prepared to answer drug – related crimes as below: (a) penal approach: such punishments mentioned in the law on modifying Anti – Drug Act after criminalizing drug – related crimes; (b) official responses: article 14 of Domestic Employment Law in which one of the employment conditions is lack of drug addiction; (c) civil legal responses: in Iranian civil laws, for instance, husband’s damaging drug addiction is seen as condition for divorce right as mentioned in article 7(b) of marriage deed; (d) disciplinary response: according to article 5(c) of the law on modifying Bar Association, one of disciplinary offences is illicit drug addiction; € banking laws: in industrial nations, one important initiative in drug traffic prevention is to prohibit dirty money transfer. In Iran, article 11 of a law approved by Cabinet On 2008 has addressed this issue; (f) among the conditions for presidential candidates is the lack of drug addiction; and (g) preventive initiatives (Mahmoodi Janaki, 2008: 45).

The history of drug related crimes legislation in Iran: The first law on illicit drugs in Iran titled “Opium Renew Law”, was Iranian National Parliament in 1910. In this law, no limitation was forecasted for opium cultivation and production and 300 Dinars was determined as tax for 300 Mithqal while about 52 laws, manuals and recipes were approved between 1910 through 1978.

The Law on Illicit Drug Importation Prohibition (1922) was ratified by the beginning of cocaine and morphine traffic into Iran and in 1928, opium and hashish cultivation was monitored by government through approving the Law on Exclusive Governmental Opium and Hashish Cultivation and Governmental Exclusive Institute was founded. In 1932, the Law on Punishing Drug Traffickers was approved and in 1938, Cannabis Cultivation Prohibition Decree was implemented in 32 regions inside Iran. Due to international pressures and internal reactions, Iranian government submitted an Act on Iran Unconditional Adherence to International Agreement to Parliament and by its ratification, Iran signed Hashish Cultivation Prohibition Decree and Fighting against Traffickers and Treating Addicts. However, this law was voided in 1947 and hashish cultivations was announced as legal. In 1952, the Law on Forbidding Preparation, Buying and Selling illicit drugs and Alcoholic Drinks was approved again and in article 13 of its recipe, Opium Control Organization was forecasted. By approving this law, broad activities were conducted against illicit drugs production, traffic and abuse in 13 years. In 1968, the Law on Permitting Cannabis Cultivation and Opium

Exportation was ratified by Parliament. In 1978 and by the victory of Islamic revolution, anti-drug laws, regulations and structures were revised. In 1980, the law on intensifying illicit drug criminals and discretionary, therapeutic and employment of addicts was approved by Islamic Revolutionary Council. In 1986, Islamic Revolutionary Committee was assigned the anti – drug responsibility. In 1988, Expediency Council ratified Anti-Drug Law and Drug Control Headquarters was established and this law was modified in 2010 (Milanloei, 2015: 53).

**Criminalization:** Before discussing on decriminalization, it is necessary to address criminalization briefly. Obviously, criminalization process is the introduction of decriminalization. Without criminalization in a given issue, there will be no room for criminalization. Here, it is necessary to consider important issues in clarifying this process including concept and types of criminalization, principles and fundamental, relevant limitations and consequences and side effects of improper criminalization.

**proponents of criminalization in drug – related crimes:** Due to the emergence of industrial drugs and recognition of their harms and damages as well as side effects of traditional drugs, some connoisseurs believe that criminalization should be pursued in order to prevent such harms and to fight against illicit drugs phenomenon. Main reason mentioned by them is that releasing and decriminalizing drug – related crimes would yield to increases in drug production and consumption. On the other hand, police can prevent penal process by such techniques as alarming and situational prevention tools (Raijian Asli, 2013: 101 – 103).

**Criminalization principles, fundamentals and measures:** Considering above points and criminalization definition, it is necessary to know that some principles are governing criminalization and social deprivations should be conducted efficiently. Among governing principles, one can refer to criminalization necessity principle, minimum criminalization principle, human right respect principle, the principle of homogeneity to public expectations, expedience principle and so on. On the other hand, concerning substitute punishment one point out such principles penal commensurate with action, deterioration principle, etc.

Along with governing principles on criminalization and substitute punishment, criminalization has traits such as dynamism and efficiency. A method to control and mitigate criminalization is decriminalization. If it intends that legislation plant only produces criminal regulations and establishes the arsenal of crimes and punishments, the goals of criminal laws and penal policy will be certainly overthrown. As mentioned before, criminalization should be based on fundamentals, principles and goals. Decriminalization should be also alongside with such components.

**Proponents of drug crimes decriminalization:** People believe that the benefits of drug crimes decriminalization are more than their criminalization and they provide their own arguments to prove such claim including (1) the failure of penal policies in illicit drug control, (2) lower prices of illicit drugs, (3) savings for treasury, (4) the impacts on drug crimes, (5) medical benefits, (6) irrationality of prohibition, (7) elimination of organized crimes, and (8) penal population density.

In this way and by a glance at judicial systems of other countries, one can say that the dominating theory worldwide is criminalization (Mortazavi, 125 – 127) while there are various differences among countries in the number of criminal titles, types of illicit drugs, the possibility of drug consumption by medical prescriptions, the amount of announced illicit drug amounts, drug consumption and addiction, drug transition and types of punishments as discussed below. **Drug decriminalization and its benefits:** Drugs decriminalization proponents believe that drug related crimes should be encountered with more controlled and lower punishments than current laws. For instance, one should use cash fines without registering records for consumers or relevant incumbents instead of imprisonment. Drug decriminalization is something between prohibition and full freedom of illicit drugs. However, critics say that it has the worst trait of both inside. Some believe that one should target macro sales and production so that police's time and budget is more spending on fighting against professional traffickers and producers instead of arresting minor sellers or consumers.

Portugal is among the first counties which decriminalized all types of drugs and achieved positive results. If someone possessing drugs is arrested in Portugal and if this amount is for his/her personal consumption, he/she will not be imprisoned. Portugal was followed by Spain and Italy.

Drug decriminalization has paramount bad social and economic impacts. Drugs prohibition would lead into creation and expansion of such problems as burglary, violence and corruption which increases illicit drug prices. In most developing countries, drug production is a way to escape poverty. Milton Freedman estimates that drug decriminalization is the reason of over 10,000 deaths annually in the United States and the number of innocent killed persons in conflicts between police and drug traffickers will be highly decreased. Governments' inadequacy in fighting against illicit drugs is criticized by freedom proponents. For the same reason, drug war is criticized.

Most discussions on economic ramifications of drug legalization are around bell curve of demand and sensitivity of consumers concerning falls and downs of drug prices in illegal market. Legalization proponents assume that the amount of addictive drugs consumption has no impact on prices falls and downs. However, studies on other addictive but legal substances such as cigar and alcohol indicate that drug consumption is influenced by drug prices. Economists such as Michael Grossman and Frank Chaluka estimate that only 10% decrease in cocaine prices would increase its consumption by 14%. It shows that cocaine consumers are sensitive to changes in its prices. Also, there evidences which prove that consumers' sensitivity to drug prices in long term is more than in short term. Considering the fact that drug legalization can increase drug supply, one should expect drug consumption increases and its relevant risks in future (Grossman, 1998, p. 1). However, Andrew Clark as an economist who has investigated the impacts of drug legalization, believes that drug legalization means to pose special drug taxes or what called "sin tax" which prevents such drugs consumption.

Drug prohibition proponents believe that illegal drugs consumption has many negative side effects and huge expenses (Kuiemko, Ilyana; Steven D. Levitt 2003, p. 2043 - 2066). Such results include violence increase, negative impacts on neighborhoods' environments, health problems and increase in healthcare costs. The opponents say that most of these costs and negative consequences are due to current wrong policies. Also, they argue that violence intertwined with illicit drug trade is due to its illegalization which has caused that in the absence of a legal organization to moderate dispute solution, involved people recourse to violence in order to resolve disputes. In the meantime, drug illegalization has negative impacts on consumers' health. For instance, intravenous consumers use shared syringes and needles due to lack of proper accessibility to syringes and needles which causes the prevalence of such diseases as AIDS and hepatitis among them (Miron, Zwiebel, 1995, 9(4): 175 – 192). Milton Freedman argues that drug prohibition has many negative results such as increases in the number of prisoners, impossibility of treating chronic diseases rightly, increases in the rate of corruption in societies and governments, unequal increases in the number of African –American prisoners, complicated damages among users and destruction of cities/countries. Drug legalization proponents argue that illegal drugs' quality is too low which leads into more physical damages such as unintentional overdose or by using low quality drugs and other physical diseases among users (Miron, Zwiebel, 1995, p. 175 – 192). Steven De Levitt and Iliana Kuiemko refer to increase in the population of prisons as another impact of drugs prohibition. They believe that by imprisoning drug criminals, the space of prisons to imprison other criminals is lost. It not only increases the costs of custody but also, due to gathering with drug criminals, other prisoners who has no records in illicit drug trade may be encouraged to such crimes which means training convicts and prisoners as the result of increases in the number of drug criminals (Kuiemko; Levitt, 2003, p. 2014 – 2066). As an economist in Harvard University, Jeffrey Miron estimates that finishing drug war can per se inject US\$76.8 billion to US economy in 2010. Likewise, he believes that by this way, US Administration can save US\$41.3 in deploying police officers and its income from drug taxes will be US\$46.7b. Since the administration of Richard Nixon when drug war was begun, US federal budgets in drug

war increased from only US\$100 million in 1970 to over US\$15.1 billion in 2010. It is estimate over US\$1 trillion in 40 years. During this period, over 38 million criminals are imprisoned and over US\$121 billion is spent to arrest them and US\$450 billion is spent to keep them in prisons.

Minor drug crimes in Iran: In Iranian anti-drug law especially article 5 and 8, such crimes as drug carry, retain, buy and hide (possession) in any amount are all criminalized. In this vein, in such criminalization and penalization, legislator has made no difference among types of drugs in terms of industrial or traditional, fully or partially harmful, lower or higher amounts, for personal uses or for supply, selling and distribution and so on and by relying upon a mathematical and numerical proportionate and without considering the conditions for punishment mitigation or exemption, has determined punishments only by drug amount as a benchmark. Sometimes, irrational results are gained in determining drug punishments.

Considering previous discussions, we conclude that most defendants and judicial cases are made for minor amounts of drugs especially for personal uses and such high-populated cases impose paramount costs on the administration and judicial system. Therefore, minor drug crimes can be eliminated and decriminalized in amending anti-drug law. Here, we had a comparative glance at the laws of other nations in Europe especially Swiss and UK which indicated that by eliminating some crimes, our country will not be faced with huge problems and harms; rather, this can lead into fruitful and effective results. In this section, we study and contemplate some criminal titles.

As mentioned one challenge in fighting against illicit drugs and, in other words, one cumbersome issue in such campaign in wasting the direct time and energy of judicial system and police is to explore small amounts of drugs and people who buy, carry, keep or hide just for their personal uses and by such procedure, countless cases are entering into courts' trial cycle and due to punishments for low amounts of drugs, sometimes, the rate of cash fines is even ;lower than the value of used papers for such files which wastes time and energy and the punishments and tasks by judicial and police systems are slurred.

It is rational that each drug consumer would prepare drugs for his/her personal consumption in any way and no network is designed or implemented in our country to access drugs without committing mentioned crimes. In practical procedure of our judicial authorities, one can say that due to hardships and catastrophes of minor drugs prosecution, some public prosecutor's offices have synchronized to a rational status by issuing oral commands to their bailiffs or by issuing prosecution suspension awards without the participation of the accused in such offices considering the relevant legislation and criminalization so that legal department (as mentioned before) has synchronized its advising theory to a practical procedure and has not considered buying and keeping small amounts of drugs for personal uses as an independent crime and it is not harmonized to practical procedure of some judicial authorities.

In this line, one can say that legislator can be synchronized to rational procedural of some judicial authorities through decriminalizing buying, carrying, keeping and hiding low and relevant amounts of drugs for personal uses and to prevent entering various cases which imposes paramount damages to the society, governance system, and economy and so on. However, it is normal that to prevent people's abuse, legislator can define and organize mechanisms so that the society is not exposed by other damages and by separating mentioned titles from drug trafficking through a new organizational view, it can enter a new arena of penal policy. Noteworthy, past Judicature Head prohibited deploying and admiring the accused persons with minor amounts of drugs through issuing a circular.

Before Islamic revolution, by classifying drug users, government provided old people with cards to obtain drugs for their personal uses (so-called opium cards) and by accepting the fact that opium has a therapeutic status among people despite of eliminating health system and lack of prevalence and easy access to therapeutic system, by delivering small amounts of drugs to old people, it decriminalized this issue. Although such plan may be faced with some proponents, in line with decriminalization, less harmful plans should be proposed and implemented.

As mentioned before, another issue is to recognize drugs with therapeutic traits such opium in prescribing for some diseases by physicians and pharmacists and to legalize received drugs carrying and keeping. So, one should not refuse social realities. Still, many people in encountering with prosecution in judicial authorities to defend drug abuse and carrying small amounts of opium or opium residue (countless cases are seen by author) say that the physician has prescribed low amount consumption of such drugs due to a certain illness or oldness and if the physician prescribes it in written, judicial authorities would not consider such prescription as a defense and they prosecute and punish such persons. Noteworthy, in countries like Turkey, Switzerland and UK, this is recognized and physicians and pharmacists can prescribe drugs. As mentioned for execution guarantee of such policy by article 1 of Russian Drug Law or article 403(12) of Turkish Criminal Law on Medical Prescription, "someone who prepares drugs by false prescription is imprisoned from one to three years and cash fine from one to five Liras." As a result, one should say that forecasted crimes in the law on amending Iranian anti-drug act, one can decriminalize the possession of small amounts of drugs for personal uses by establishing proper structure. In Germany, the courts are banned from imposing punishments for possessing such drugs as hashish in small amounts for personal uses. In articles 15 – 27 of Syrian Anti-Drug Law (1993). Physicians, dentists and veterinarians can prescribe drugs under certain circumstances and by issues prescriptions, drugstores can provide applicants with such drugs.

## 5. Discussion

By studying penal and legislative policies of European nations capable in drug control and their relatively success, it is perceived that a successful legislative policy should be necessarily decriminalized all types of drugs; rather, one can decriminalize them by changes in legislative policy and the approach on curbing drug phenomenon. Since the risks of some drugs such as hashish are lower and they have medical uses, carrying and keeping lower amounts of drugs for personal uses inevitable for addicts and removing their bans by considering conditions and an efficient control system would damage economic cycle and drug gangs and it can have other benefits described in past discussions in detail (even though they may have harms which should be analyzed and discussed). On the other hand, by considering therapeutic effects of some drugs like opium used as a norm in some regions, one can supply drugs in a controlled manner monitored by pharmacies through legal description like some countries and even, like Swiss, one can decriminalize carrying, keeping and possessing low risk traditional drugs especially opium and hashish in lower weights for adults by considering certain circumstances (if not prescribed by a physician) and by considering such initiative as offence, anti-drug police can be provided with the possibility of issuing tickets.

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