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## Original Article

# A Critique on “Populist” and “Security-Oriented” Legal Policy in Curbing COVID-19 Related Crimes

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## ABSTRACT

The rapid and dire spread of the COVID-19 pandemic has had profound consequences for the various aspects of the human life worldwide and has distorted the coherence and rationality of governments' behavior in the face of the crisis. Similar to the severe restriction of human rights under the pretext of securing political and human security following the terrorist attacks of September 2001, the pandemic of the new disease has been used as an excuse by some governments to ride on the wave of fear pumping into society under public scrutiny; to suppress social movements; to cover up the health system's monitoring of the disease, to gather a wide range of people's private information; to take advantage of the media's focus on the news of this pandemic and the turmoil of the public mind, to refrain from fair trial and restorative justice into the old retributive punishments, not honoring the victim and violating the human rights of the offender and increasing judicial and security powers by relying on “zero tolerance” and “law and order” crime control strategies. This article, using discourse analysis method along with case studies, analyzes two inappropriate strategies- securityism and populism- in the criminal policy of some governments since the emergence of the pandemic in four levels: Factors, effects, consequences and strategies to eliminate.

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## Introduction

**A** look at the risk of pervasive diseases in the last decade shows that although their spread became shorter than before, their effects and consequences on various aspects of human life have increased (1). The scope and dimensions of this issue are growing and many people are speculating about the future of the world after COVID-19. One of the dimensions of the Corona-virus crisis is its impact on crime

types and their rates, as well as on responding to criminality in the framework of criminal policies. Since the emergence of this pandemic, there has been an increase in populism with emerging effects in the criminal policy of some countries; such as: Media distortion in management of criminal population in prisons, misuse of the decline of criminal justice indicators for election slogans and mass and immoral behavior towards groups of victims and criminals.

Explaining the way of applying the concept of authority and determining its relationship with fundamental rights and freedoms enables the analysis of authority in additional meanings (additional authorities; such as legal authority, medical authority, public policy authority, etc) and exposes authoritarianism. Violations of human rights occur in areas such as health policy making. Just as medical authoritarianism pursues the interaction only for the purpose of dishonestly persuading the patient, legal authoritarianism, through legal provisions and by recognizing the coercive authority of the government with the justification of criminal justice, sometimes unfairly supports the limitation of freedom are placed with public health justifications and treatment as a punishment is a reciprocal manifestation of medical justifications for penal authoritarianism. The convergence of authoritarianism in the criminal and medical realms aggravates the subsequent crises of these two.

In some countries, the police forces beat quarantine violators on the streets, violently remove sick people from their homes, pay little attention to disinfecting prisons and simply release prisoners (which raise public fears of victimization and meaningful growth of crime rate); all are examples of confusion in security. The consequences of spreading the Corona-virus, that have been revealed so far, are significant; the death of hundreds of thousands of people, psychological harms to the survivors, the large number of patients, the closure of businesses and educational institutions, the closure of worship places and religious ceremonies, compulsory quarantines, problems to meet the basic needs of people and challenges of dealing with profiteers, hoarders and speculators.

Numerous laws and regulations in many countries indicate that vulnerable populations are entitled to special benefits and government protections, but these rules are more about normal situations and less about emergencies. To this end, the components of the system of government support interventions for vulnerable groups in emergencies have been discussed and identified in several legal studies (2). These components include among other things accurate identification

of vulnerable groups, determining the responsible institutions and responding to citizens in emergencies, training to increase awareness on risks and vulnerabilities, developing insurance coverage, creating and strengthening information systems, involving non-governmental organizations, providing diverse public services and empowering vulnerable groups.

In the current situation, the efficiency of international and criminal law in protecting the lives of human beings as well as promoting the right to health has been criticized (3). Coronavirus truly is a criterion for testing international community in terms of guarantying human security. International law has available inspiration to avoid this in the form of “counterpoint” international law (4). In stark contrast to dominant approaches, critical approaches to international law, notably including those associated with the Third World Approaches to International Law (TWAIL) movement, have sought to depoliticize the legal analysis of the pandemic.

Some questions in the minds of the researchers of criminal sciences may be as follows; what effect does this virus have on the rate and type of crimes; what are its consequences on the criminal justice systems and, on a larger scale, on the criminal policy of the states? What are the responses of the legal systems to legal issues, especially in relation to the transmission of disease and treatment costs, as well as the responsibilities of the treatment team? What are the responsibilities of the government and society to prevent the escalation or even the emergence of this crisis - in areas that seem to have survived so far?

Various criminal sciences disciplines, including criminal law, criminology and criminal policy, have each raised new concerns since the onset of pandemic. In this article we seek to explore the dimensions of the impact of the COVID-19 crisis on criminal policy and describe and analyze the different dimensions of these effects. It can be argued that the Corona crisis has given rise to a criminal policy crisis and if no solution is needed, this crisis may legitimize the pervasive authoritarian model of criminal policy. The result

of such an unfortunate event, which has occurred to some extent, will be the increasing restriction of individual freedom and the increase of the authoritarianism of governments. The way to deal with this crisis is to involve people in criminal policy and to review laws and procedures for controlling and responding to crime.

Of course, this approach is not based on typical-known securityism in criminal policy systems - such as increasing the US police discretion under Patriot Act of 2001, the Homeland Security Act of 2002 and *the Intelligence Reform and Terrorism Prevention Act of 2004*- and is more like a mess and a return to seemingly legal violence. Also, since the emergence of this pandemic, there has been an increase in populism with emerging effects in the criminal policy of some countries; such as: Media distortion in management of criminal population in prisons, misuse of the decline of criminal justice indicators for election slogans and mass and unethical actions towards groups of victims and criminals.

### **1. Crime crisis caused by the pandemic: The need to formulate an appropriate criminal policy**

The spread of the Coronavirus has left a deep sense of insecurity among members of various societies. Corona further linked individual and collective human life and identity to insecurity. The contemporary era, with all the comfort tools that it has provided for human beings in the light of technological progress, has taken away as much and even more, peace from human beings (5).

The COVID-19 pandemic has impacted criminal and illicit economies such as organized crime, street crime, online crime, illegal markets and smuggling, human and wildlife trafficking, slavery, robberies and burglaries. The Global Initiative Against Transnational Organized Crime, for instance, has stated in a policy brief in March 2020 that while understanding the long-term impact at these initial stages of the pandemic is difficult, some things are clear: The pandemic has caused a decrease in some organized-criminal activities, while providing new opportunities in other areas (6).

Criminologists have just begun to explore the impact of the COVID-19 and related social restriction policies on violence. One early study suggested that COVID-19 may have reduced levels of violence (7), but newly emerging research suggests otherwise (8). In this crisis, the opportunities for committing delinquency in some ways have diminished and people have been forced to stay at home; the forced quarantine had restricted criminals' presence in crime scenes and the forced closure of shops and large commercial centers had deprived criminals of opportunities. Of course, it has facilitated the commission of other types of crimes. The presence of police on the streets to monitor the implementation of quarantine had hindered potential offenders, but the reduction in public attendance at public gatherings had increased the theft of shops and cars parked on public thoroughfares.

Despite the methodological differences between the classical criminology approach and critical criminology in explaining the cause of delinquency and the prevention strategy, critical criminology is a type of causal criminology that focuses on the deficits in the institution of government and the role of government in indirectly encouraging potential offenders to commit crime. However, the theories of etymological criminology, which preceded the theories of critical criminology, have a conservative aspect and do not blame the government. In any case, in explaining the cognitive cause of the growth of some crimes and the change in the style of their commission and some other types of crimes in the context of the COVID-19 pandemic, the negligence of governments cannot be ignored; neither individual factors, such as higher levels of "dark" personality traits like greed, psychopathy and sadism.

Weaknesses in adopting non-criminal solutions should be noted among the various weaknesses of legal, judicial and executive strategies in criminal policy to curb crime, especially in terms of anticipating criminal opportunities. More importantly, such a situation may lead to a shift in criminal policy toward authoritarian model.

The crisis of criminal policy amid COVID-19 pandemic is not a crisis caused by the growth and

development of societies, but a crisis caused by a destructive and deadly virus. Violations of human rights, weakening of order and fairness in criminal proceedings, prison management and social control in a crisis situation like a pandemic disrupts the logical order of relations between the four layers of criminal policy (legal, judicial, executive and participatory).

## **2. The chaotic effect of Coronavirus on the management of the criminal population: The need to reform the criminal justice policy**

Another legal manifestation of the COVID-19 pandemic is its impact on the judiciary; in addition to the closure of the judiciary - as well as the closure of other businesses that delayed the criminal and non-criminal prosecution mechanisms for a while and thus, created ample opportunities for offenders, the release of large numbers of prisoners for fear of getting the Corona-virus in prisons and detention centers (The Crown Prosecution Service of United Kingdom has advised out of court disposals for less serious crimes. In the United States, the Sixth Amendment's right to counsel has been reduced because of the pandemic situation. Governments in Iran and Afghanistan have reduced the number of prisoners to limit the spread of the virus. The Supreme Court of India directed all Indian state governments to consider releasing some prisoners, resulting in as many as 34,000 being temporarily released. The United States and Indonesia also released prisoners) (9). A criminal policy response to the Corona-virus pandemic situation would never ignore the perils and disadvantages of this response. In fact, some prisoners seized the opportunity and started riots; in any case, such a response provides more opportunities for potential and actual offenders. It is clear that other criminal responses, including various types of criminal sanctions such as fines cannot be used in such circumstances, because in a situation where the government forces banks to defer the obligation to repay the debts of their customers, how can we speak of the fairness of such legal responses in the context of the Corona-virus pandemic, especially for crimes that have not been financially profitable for criminals? The closure of many business and education centers, as well as medical

and housing centers, also hampered the use of many alternatives to imprisonment.

Many states have considered initial release for low-level offenders. In 2020, the state of New Jersey was planning to release approximately 1000 individuals from its jails to decrease the risk of spread of Coronavirus disease (10). Offenders with probation violations and low-level crimes condemned by the Supreme Court of the United States were those intended to be released. Also, in late March 2020, the county jail in Houston, Texas, holding a population equivalent to "three cruise ships", stopped taking in individuals arrested for certain non-violent crimes (11).

Thus, criminal policy may lead to responses that have been severely banned for decades for human rights reasons. For example, it could be asked that can death penalty be used in such circumstances. Is the continuation of the usual criminal policy, in the context of Coronavirus spread, compatible with the indicators of judicial efficiency and criminal deterrence? It is obvious that correctional/rehabilitative sanctions are not applicable in the current situation, whether in terms of excessive costs or due to quarantine conditions, as well as with regard to mobilizing medical facilities for Corona-virus patients.

Some measures to prevent the spread of the corona virus are completely inappropriate from the view point of legal doctrines indicating a confusion in the preventive criminal policy and show that Securityism (in criminal policy) has been overcome by justifying the need to expand the powers of the government; even Western governments that claim to uphold the highest human rights norms, but is it possible to accept the beating of people who appear in public without a mask? The use of anti-riot water cannon to scatter citizens or forcing them to introduce themselves for hospitalizing as dangerous patients are some examples of police treatment with citizens in various countries under the pretext of implementing legal-health policies to prevent the spread of COVID-19.

The historical study of law in different societies shows that with the emergence of natural and human crises, many opportunities are available to criminals - whether potential or actual - and many

governments usually adopt an authoritarian model of criminal policy that may violate human rights of their citizens. Thus, we could ask that how the Coronavirus should be dealt with - through the tools of legal force and authority - in such a way that it does not legitimize security-oriented and human rights-related actions and measures. Interestingly, it seems that in such circumstances, criminal populism reinforces that authoritarian criminal policy.

In this way, health policy makers agree with the police force that uses violence against people who break quarantine and public health protocols. Violent, physical and disrespectful treatment of people who disobey health protocols in the face of a pandemic, while the government tries to convince people of the need to crack down on quarantine violators, is a manifestation of populism to create an atmosphere of repression and security-oriented criminal policy.

### **3. Releasing prisoners and not arresting suspects is not preference of freedom over security in criminal politics. It is chaos.**

A crisis has emerged in the criminal policy of many of countries in managing the criminal population of prisons and detention centers. A part of this crisis is due to legal loopholes as well as the impossibility of using criminal sanctions - such as imprisonment and its alternatives - in the current situation. Consequently, where the general public asks more security against increasing crime rates, it is possible to turn to the authoritarian model of criminal policy. This model may break the rights of citizens.

Therefore, it is necessary to take advantage of scientific and experimental findings to review the legislative, judicial and executive criminal policy, instead of securityism with the misuse of populism, policy makers should take non-criminal prevention measures without deviation to populism and securityism. Populism is never a manifestation of democracy and respect for the people.

Criminals who abuse lifestyle changes during the Corona-virus pandemic to commit a crime may be ruthless, but this cannot justify the escalation of disciplinary and judicial violence against these criminals. Those trying to take advantage of the

public worry and anxiety may be caused by the Corona-virus crisis or in some way, may add to the fear and anxiety of the people and make the governmental policies and measures ineffective. The increase of violations of the rights of defendants in situations of public crisis always leads to human rights violations by justifying the "exceptional situation" and undermines the stability and rationality of criminal policy.

It is important to pay attention to some issues when the criminal policy orientation of countries inclines towards security orientation and authoritarianism. Today, following the widespread violation of security and peace of citizens' mind following the spread of crime, the goals of criminal policy in some countries have shifted from criminal to crime-oriented and security is the main concern of criminal policy. Security-oriented criminal policy has shifted to a kind of hostile criminal law based on the assumption that "criminals are enemies, not citizens" (12).

It is clear that the will of the general public is to deal decisively (not necessarily severely) with crimes committed by abusing lifestyle changes in the context of the Corona-virus pandemic, but populist criminal policy, which is especially evident in the field of criminal policy, is usually strict, popular, theatrical, emotional, lacking theoretical and scientific basis, it seeks to resort to severe criminal measures with criminal phenomena and to confront in the shortest time possible (13). It seems that the groundwork has been laid for the adoption of an authoritarian (security-oriented) criminal policy model in most of the countries affected by the pandemic of COVID-19, even in countries with liberal and democratic criminal policies (14).

Even prevention policies have been severely undermined in such circumstances, because of the large presence of police forces in the streets to carry out quarantine regulations; they have been deprived of other important missions. This is why in some countries, such as the United States, the personal desire to buy firearms has increased. This shows that under the pretext of securityism, not only the freedom of citizens is violated by the security forces themselves (and of course, also by

criminals, as usual), but also urban security is reduced. This is the opposite result. Numerous studies (15) have revealed that COVID-19 has fundamentally disrupted the U.S. corrections system. The pandemic has revealed and exacerbated systemic problems in prisons and jails, which were already viewed as amplifiers of infectious disease and are now centers of outbreaks. While The US Department of Justice and the Federal Bureau of Prisons had to rapidly respond, like many agencies and organizations, to this extraordinary pandemic, the policy guidance issued to respond to the crisis often created confusion for those tasked with implementation.

Encouraging or forcing home quarantine has reduced the chain of pandemic of Coronavirus, but it has also increased domestic violence (16) and crimes resulting from reduced social presence. Populist criminal policy focuses on only one aspect and conceals the aforementioned dimensions, in order to strengthen the government's authority, repression and aggression against human freedoms by justifying the public agreement to intensify control over social and individual life.

Put simply, dealing with evolving regulations, ever-changing departmental policies, enforcing unpopular shutdowns and the fear of contracting COVID-19 likely diminish officers' ability to deal with the numerous other stresses that characterize their profession (17).

## Conclusion

The emergence of COVID-19 and subsequent social restrictions have unfolded new perspectives for criminologists to explore. The wider and more active participation of civil society and non-governmental civil institutions in taking action and response to crimes and deviations and violations caused by the COVID-19 pandemic situation, can be more effective in achieving the goal of liberal/participatory criminal policy, because the purpose of this model of criminal policy is to guarantee the right of society to security by intelligently combining the prevention and social-penal responses to offenders, which is achieved through the participation of the people in controlling social activities, while continuing to

monitor the public arena in order to prevent the commission of crimes.

Although it may reduce the crime rate in short term, any haste in legislating criminal laws and provisions may lead to intensify punishments and giving more powers to judges and police officers in this respect that it in turn may result to a tough penal policy. It seems to be contrary to the rationality of criminal policy. Humanity societies have experienced such things before and in the face of other compensations, harms and social problems. Putting pressure on people by justifying the need for security (the need to prefer security over freedom) not only damages freedom but also would not lead to maintain security. This is the only way to maintain power by abusing exceptional circumstances.

There are some police training programs designed to combat ethical violations and promote officer wellbeing. There is evidence (18) that police training has the potential to promote resilience and to reduce stress. These strategies should be promoted and developed in all police systems, especially in authoritarian law systems such as Iran.

The experience of Iran's criminal policy in dealing with crimes related to narcotics and psychotropic drugs with very severe punishments before the amendment of the Anti-Narcotics Law in 2017 shows that these responses (severe punishments) were not effective-not deterrent and nor rehabilitative. Executions and long-term imprisonment have not prevented the growth of these crimes and have created heavy costs for the criminal justice system and the social system and this means the defeat of punitive, populist and security-oriented criminal policy.

The basics of social control of crime, which is influenced by the prevailing political ideologies, has a significant impact on the strategy of public health policy and providing legal support for adopted health and medical policies and determining the scope of individual freedoms and the territory of government interventions. Medical authoritarianism seeks to provide the support of criminal legal authoritarianism for itself; A phenomenon that causes the expansion of the domain of criminal law and the legalization of the

government and the indiscriminate use of coercive means with the claim of social health control.

Medical authoritarianism is an intellectual-behavioral system that deviates from the main mission of medicine and is the deteriorated flow of the biomedical model of medical philosophy. The convergence of medical authoritarianism and criminal securitization, especially in the moments of the necessity of the forced implementation of public health protocols, aggravates the adverse consequences of each of the two types of authoritarianism and the solution of malignant health policy issues becomes a challenge of abuse. The mutuality of criminal law and health law pushes each other apart.

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The author declares that there is no conflict of interest regarding the conduct of this research.

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