Violationization in the Criminal Policy of Iran

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Abstract

In the realm of legislation, violationization and criminalization are two important issues which have not been distinguished well in the criminal policy of Iran, and especially the criteria for violationization have not been devised. Since inclusion of a behavior in crime or violate domain leads to practical consequences, this act should be based on appropriate standards and criteria. Violationization is performed in two ways: sometimes certain behaviors are considered as violation because they are unfavorable and are not yet regarded as crime; on other occasions, some behaviors which have been considered as crime by law are excluded from the crime domain and are regarded as violation since they are not deemed to be important. This latter case is called decriminalization. This lack of separation has led to some unlawful violationizations, out of which we might refer to the Administrative Violations Law, enacted in 1993, as well as The Bill of Dejudicialization and Removal of Some Criminal Categories from Law. In the Dejudicialization Bill, some violationizations are performed in certain important domains like environment.

Keywords: violation, violationization, crime, criminalization.
Introduction

The question “what is the crime and its nature?” might seem a simple one at the first glance, however, its complex dimensions can be understood with a deeper reflection, because a criminal phenomenon is always examined through different perspectives. Sometimes, the legal meaning of crime is intended. In this meaning, crime considers the behaviors that are mentioned in the law framework and leads to punitive reaction. At other occasions, crime is considered in its sociological meaning where it includes all violations of social values and norms. In still other times, crime is looked upon by its psychological meaning, where the individual commits an emotional behavior due to his/her emotions. Therefore, the problem of defining the word crime is not easily solvable, because there are some behaviors along with the concept of crime which have similarities and differences with the criminal phenomenon. These behaviors are called violations.

There might be no difference between crime and violation in the public culture, and any violation is considered a crime. However, it becomes clear after a deeper reflection that these two issues are different from each other. In the Iranian criminal laws before the Islamic Republic of Iran, offence was divided into three categories of crime, delinquency, and delict, the punishment for each category was different, and an offence of any type was generally considered as one of the abovementioned categories.

After the Islamic Revolution and due to the vast changes that were made in the criminal laws, this division was altered and offence – in the light of its punishment type – was divided to ordained punishments, retaliation, blood-money, and deterrent punishments; in this division, no role was assigned to violations.

There are lots of questions regarding the concept of violation and its relationship with crime, such as 1) what is the meaning and nature of violation?; 2) do violation and crime have a similar nature or not?; 3) can the legislator put a certain behavior in the realm of violations or crimes without considering a certain criteria or standard? In other words, is the main criterion of considering an activity or behavior as a crime or an violation the opinion of the legislator or there are certain criteria or standards external to the legislator that the he/she might consider?; and 4) if violationization is more useful for the society or criminalization, and what are the consequences of violationization and criminalization? These questions and similar ones need vast and comprehensive examinations by researchers. Recently, a bill entitled “The Bill of Dejudicialization and Removal of Some Criminal Categories from Law” has been presented to the Congress of the Islamic Republic of Iran in which, most of the criminal behaviors are decriminalized and are foreseen as violations. Regardless of basic objections against this bill*, some of the behaviors that are excluded from criminalization realm and are foreseen as violation are related to very important values. It seems that such changes have been offered without consideration of any criteria and are problematic. This article aims at examining the concepts of crime and violation and their characteristics as well as specifying criteria for violationization and criminalization.

1. Violation and crime

a) The meaning of crime

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*E.g. the title of this bill is “dejudicialization”. However, what is practiced throughout its body and explanatory introduction is decriminalization. So it is better to change the name of this bill and call it the bill of “decriminalization”.

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Crime is defined as a behavior which is not approved or appreciated by society or law, and its committer is worth punishing; it has been also defined as view and mistake (Moshiri, 1997, p. 293).

Terminologically viewed, crime has been defined and examined through different perspectives. From the sociological perspective, crime is used to mean aberration. In this definition, crime is an individual or group behavior which is not congruent with models and norms of the society (Sheikhavandi, 1994, p. 37). In psychological viewpoint, crime has been defined by A. Kinberg, the Swedish psychologist, as “a type of social incongruity which can be considered to some extent the individual’s main problem in reacting to his environmental pressures to keeps himself congruent with his environment” (Kinberg, 1900, p.190).

In the standpoint of Islam, crime is defined as sin, wrongful deed, vice, delinquency, and crime, and in some people’s view, it means “keeping away somebody from divine blessing” (Isfahani, undated, p.5). From ethics viewpoint, too, the ethics scholars believe that ethical principles are rooted in the internal voice of humans. Needless of government interventions, these principles are the criteria and standards of discerning good and evil, justice and injustice (Karbasi, 2002, p. 69). Legally viewed, crime is any action or non-feasance which is punishable by law†. However, the nature of crime and its dimensions are not clear in this definition, because the definition of crime is made clear by punishment while the nature and meaning of the punishment itself is not completely clear. This legal meaning of crime has faced some criticisms, the synopsis of which is that if crime is just a deed punishable by law, then it would be possible to enact any law and call anything we want as the crime, and then include it in the law. In other words, any illegal behavior is a crime. From this viewpoint, all violations including drivingviolations are considered crime because they are against law (Abd Al-Fattah, 2002, p. 142). Therefore, the legal definition of crime is not a complete one, because logically we should define a phenomenon in the light of its respective features, while in the legal definition, crime has been defined through law and punishment (Gassin, 2000, p. 62).

b) The meaning of violation

Takhallof (the term used in Iran for violation) is in the Taffaol rhythm, is derived from the word Khalaf, and has been defined as incongruity, inappropriate, disobedience; committing a deed which is against the law, morale, or social customs; crime and sin; antonym of agreement (Moshiri, 1997, p. 379).

As we have noticed, violation in meaning is akin to crime, and stands for disobedience of law. Terminologically, violations are set of behaviors which violate values and norms that are less important than the respective values and norms of crimes. Generally speaking, the term violation is attributed to behaviors that lead to violation of norms and regulations of an office or regulations related to a carrier. Some violations are foreseen in the law as crime, such as the legal cases related to the administrative violations‡.

In one division, violations are divided into two main types; administrative and disciplinary. Administrative violations are ascribed to a set of deeds and behaviors by a clerk –be him/her official, contract, or associate employee – to violate, misuse, or abandon the regulations and to behave against the administrative respects while performing his/her duties. These are 39 violations which are mentioned in the 8th article of the Administrative Violations Law enacted in 1993. The second type includes disciplinary violations; disciplinary violations – which are indeed professional violations – are behaviors

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†See: the 2nd article of the Islamic criminal law enacted in 1991 and the 2nd article of the Islamic criminal law enacted in 2013
‡As an example, see the 8th article of the Administrative Violations Law.
that are committed by the staff to violate, misuse, or abandon rules and regulations which are related to a job².

It seems that beside the two types of violations mentioned above, there is a third type of violations which might not put into the administrative or disciplinary types. Examples of this third type include driving violations as well as other cases mentioned in The Bill of Dejudicialization and Removal of Some Criminal Categories from Law.

c) The relationship between violation and crime

Some of the Islamic jurisconsultsbelieve in the essential similarity of crime and administrative faults or the very violations. Discussing the Islamic criminal law, Abd Al-QaderAudeh writes, While the present jurisconsults differentiate the criminal offence from punitive crime – the same as administrative fault – the jurisprudents don’t believe in such differentiation. The reason is rooted on the one hand in the nature of the divine punishments, and on the other hand, in the realization of the Islamic justice, because offence in the divine law is divided into ordained punishments,retaliation,and deterrent punishments. (Audeh, 2011, p. 86).

In one division, crimes and violations are categorized as aberrations; aberration from norms and values. So, the common point between crime and violation is that both of them trespass the limits delineated by rules and regulations; therefore, both of them will face some reactions which are foreseen in the rules and regulations. But the main differences between crimes and violations lie in the nature of such behaviors and also in the sanctions that are applied for each of them. In other words, as it was noted earlier, if we consider crimes and violations as violations of the legal norms and values, then the kind and importance of the values or norms which are violated by the crimes and violations are different. Crimes violate those values and norms that are important in the society and their violation is followed by public distaste. Indeed, with violation of these norms and values, the public considers it incumbent upon themselves to react against the committer of such a behavior. However, violations violate lower-ranking norms which are basically related to a certain office or job – and in some cases to non-official and non-professional affairs – and are not so important in the eyes of the public, although it is necessary to consider sanctions for them in the law because the system of an office or certain job collapses if such behaviors are practiced widely. In general, due to the fact that violations violate values and norms that are less important than those violated by crimes, it is natural that the reactions and sanctions considered for these behaviors are also less severe and rigorous. Of course, there are some cases in the present regulations where a behavior is considered both a crime and anviolation³. It seems that the main criterion and indicator for differentiating between crime and violation is that crimes should be immoral and antisocial in a way that their antisocial features are clear and evident, while violations are lower both in immorality and anti-sociality, and the reference for this judgment is the convention.

2. The bases of violationization

a) The bases to violationalize some aberrations

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¹As an example, see the 26th article of the Association of the Justice Department Official Experts Law, enacted in 2002.

² As an example, see the 8th article of the Administrative Violations Law, enacted 1993.
Aberration is defined as skewness; the abnormal mode of a person; decadence; discredit; the mode of a person who behaves against social, moral, and biological criteria and demeans himself. (Moshiri, 1997, p. 93).

Aberrations are rated based on their severity and importance. The highest level of aberration is the very crime for which certain punishments are foreseen in the law. Some of the aberrations haven’t been initially included in the realm of criminalization, and haven’t been considered as a penal crime due to their unimportance. Most of the violations are among the initial aberrations which are not tagged as crime. On the other hand, the public and the ruling system cannot be indifferent to such behaviors; for example, absence of a lawyer in the trial court or absence of an official expert in a competent authorities at the specified time are behaviors against the criteria related to the carriers of lawyers or experts. On the one hand, inclusion of such behaviors in the penal crimes domain and treating them in the judicial courts against the public interests, and the severity and importance of such aberrations is not at a level to make the majority of the society citizen urge a reaction against the foresaid person. On the other hand, what these people have done is violation of the respective regulations, and showing indifference toward them in the long run will be harmful for the society.

So, why should we consider these aberrations as violations? Well, because they are unfavorable. In other words, the fact that these behaviors are not considered as crimes does not necessarily mean that they are favorable deeds, because such behaviors are still considered as unfavorable and the government is regarded as competent to oppose them (Mehra, 1998, p. 303). As it is seen, the fact that some behaviors are unfavorable and aberrational convinces the government to react against them, although these reactions are less severe than those used against the crimes. Moreover, it can be said that most of these violations lay the ground for crimes, so it is necessary to react against such behaviors. As an example in the driving violations domain, although infringing behaviors are not so important to raise penal reactions, being indifferent to them sets the ground for assault and battery of many people. The cost of driving accidents is significant and considerable, and directly or indirectly affects many people in the society. Many driving accidents are due to the drivers’ violations (Saffarzadeh & Bagheri, 2012, p. 60).

So, the fact that these behaviors are unfavorable and abnormal and that they possibly lay the ground for the subsequent crimes justifies the reactions against them.

b) The bases to violationalize some crimes

The main reason for violationization of criminal behaviors might be the decriminalization and dejudicialization, as well as the need of the society and the criminal justice system to these two categories; in other words, decriminalization denotatively means removal of the criminal tag and title from a deed or behavior, and is basically offered in the penal law to achieve criminal deflation, that is, to decrease the criminal categories or the crime rate. There are lots of administrative, health, economic, and tax-related regulations whose violation leads to penal sanctions. This fact is a case of criminalization itself, since it regards enacting new extreme crimes. Almost all criminologists believe that committers of such crimes should not be considered criminal and should not be treated as an offender. This criminal inflation leads to anarchy. In such a situation, no one exactly knows what is allowed and what is forbidden by the law (Najafi Abrand Abadi, 1998, p. 76). So, violationization of crimes can be beneficial for the criminal policy and help avoid one-sidedness and focusing on repressive measures (Najafi Abrand Abadi, 1991, p. 67).

In other words, to decrease the load of criminal policy, we should limit the crime range and don’t consider some deeds as crime. An important question that might be raised is that which crimes should be
removed from the forbidden behaviors realm, and that if these behaviors should be allowed or not after they are decriminalized?

Some believe that the answer to this question is closely related to the customs and culture of every society. Based on this belief, theoreticians have considered the decriminalization not necessarily as allowing or proving the intended behavior, but as delegation of its treating to other legal systems which assist the criminal system. Besides, if decriminalization of a behavior requires allowing it, then a careful attention should be paid to the socio-cultural context of a country and its public opinion (Raiejian, 2004, p. 96).

As it is seen, decriminalization of a phenomenon and violationization of it should not be done without a deep understanding of the needed criteria and a careful planning, because the goal of decriminalization is to deflate the criminal load and the load on the judicial system. Of course, the inclination to achieve this goal should not lead to ignorance of the primary goal of supporting the values and norms of the society. As the jurisconsults and criminologists have noted, violationization should be practiced in the light of the cultural, social, economic, and biological conditions as well as the public opinion, or more precisely, the kind and importance of the value and the norm that is violated by the intended behavior should be taken into account. For example, it will be unacceptable for the customs of the society to decriminalize the white-collar crimes and consider them as violations.

The contexts in which there is presently more interest in decriminalization include the following: economic crimes, driving crime, and some behaviors related to the family morale and sexual relationships (Pradel, 2002, p. 127). Of course, decriminalization of the sexual crimes is not presently accepted in the Iranian society, since it has a religious system.

Another reason that makes legislators violationalize some crimes is dejudicialization and reduction of the number of the cases in the legal courts. As it has been mentioned in the explanatory introduction of the Dejudicialization Bill, through all the individual rules and regulations that have been enacted till now, an extensive range of responsibilities and duties have been foreseen for the judicial system, while the complexities of treating most of these affairs does not equal the complexities of judicial cases, and the nature of most of such affairs is not judicial. Therefore, provision of non-judicial mechanisms to treat them is both more cost-effective and easier††.

It seems that the lower importance of the crime in the light of the value and the norm that it violates as well as the public opinion and the socio-cultural context are the fundamental bases of violationization of some crimes, because on the one hand, decriminalization and dejudicialization of less-important crimes seems to be necessary, and on the other hand, allowing such behaviors – which are indeed an unfavorable deed and are considered a kind of aberration – is not congruent with the society spirit. So, the most suitable method of dealing with such behaviors is violationization of them. However, decriminalization should be done in the light of the aforementioned criteria.

3. Criticizing the present violationizations in the criminal system of Iran

As it was mentioned in the previous parts, when the legislator wants to put a behavior in the realm of violations, he/she should perform this deed based on certain criteria. In some domains and because of the

††See The Bill of Dejudicialization and Removal of Some Criminal Categories from Law.
type of the value that is violated by such behaviors, violationization should not be practiced; for example, in the white-collar crimes which are considered the public as important crimes, decriminalization and violationization is not favorable, but in cases like undeliberate crimes, violationization seems to be useful. In some cases in the present regulations of Iran, violationization does not follow certain standard and criterion and so, could not have the intended corrective effect. With a glance at the 8th article of the Administrative Violations Law enacted on 09/17/1993 we might observe the behaviors that are foreseen as administrative violations. In this article, 39 behaviors are foreseen as administrative violations. Out of these 39 violations, about 20 ones are not only specified as administrative violations, but are also described as crime. Among these violations, there are even some important crimes such as embezzlement, bribery, forging, and some anti-security crimes. The question that might be raised here is that whether it is acceptable to consider these criminal behaviors as administrative violations?

Some justifications assert that as the clerk has committed a crime through his/her criminal behavior and should be tried and punished by the judicial system, and on other hand, as he/she has acted against the order of an organization, the respective organization should react against this person’s deed – and even if this person is exonerated by the legal court, the intra-organizational committees can condemn this person to disciplinary punishments in their respective commissions. It seems that adoption of such a procedure in offices can lead to violation of employees’ rights; on the one hand, it seems logical that judicial treatment is performed more precise than that practiced in official treatments, since the former treatments have rules and regulations that protect the rights of the culprits, the principles of proof vindications and suchlike affairs are practiced in such treatments, and their chance of mistake is lower. For example, if the clerk of an office who has been accused of embezzlement, is exonerated in the legal court, logically he/she should also be exonerated from administrative violation, because the common principle is that criminal authorities are superior to other authorities, such as administrative ones, and therefore, condemnation of such a person in administrative authorities is unjust. Thus, it is more appropriate that legislators adjust the Administrative Violations Law and remove the criminal behaviors from violations section, and just include those behaviors which intrinsically lie out of crime domain and are within violation domain, so as to avoid the aforementioned problems.

Another point which should be dealt with here is a bill entitled as The Bill of Dejudicialization and Removal of Some Criminal Categories from Law, passed in the Council of Ministers on 11/02/2008 and presented to the Parliament on 12/06/2008. What has been suggested in this bill is to decriminalize in a vast array of crimes. This array includes domains such as environment; air pollution; natural resources; hunting and fishing; water; medicine, health, health care, and veterinary; labor and social affairs; transportation; engineering; mining and construction; and real estate and civil registration.

As it can be seen, some important domains have been included in the decriminalization, or indeed in the violationization process. For example, in the natural resources domain, any case of destroying, eradicating, igniting, and uprooting of trees and national, state and public meadows and pastures are removed from the realm of the criminal behaviors and are considered as violations. However, it seems that this is not correct and logical and contradicts the aforementioned criteria of violationization. Today, environment, natural resources, and climate are among the important issues that receive a special attention by the public. In some countries, the crimes related to the environment are considered among the white-collar crimes that are included in the realm of absolute crimes. In trying these crimes, the psychological modes not considered important, and such offences are sometimes severely punished.

As it was noted earlier, in the explanatory introduction of this bill, the goals of its development are mentioned as criminal deflation and decriminalization of the less important crimes. However, it seems
that major destruction of environment, immense hunting and fishing, and water and air pollution, which are directly related to the human life, are fundamental issues and it is not proper to remove them from the criminal law protection.

Another issue that needs to be discussed regards the driving violations. These violations and the sanctions for their punishments are foreseen as a bylaw. This is in contrast with the principle of crime and punishment legality, because introduction of criminal categories and specification of punishment for them is among the exclusive rights of the legislator and is purely legislative, and its violation is against the 36th article of the Iranian Constitution. The next objection to this bylaw is that according to the criminal law and the principles of Islamic jurisprudence, a crime and its punishment should always be congruent and compatible. This congruity and compatibility considers the infamy and intensity of crime and its punishment, the effect of the imposed punishment in prevention of the crime, and the fact that the punishment should be applied to the criminal himself/herself and should not cover and affect those who have not had any role in the crime occurrence. Commitment of a vehicle, either as a sanction for the execution of criminal decree or as a sanction for paying the delayed fines, violates this principle. The crimes in the driving domain are a kind of violation(delict) and should receive due punishments. The common due delict punishment for driving lawbreakers in other countries is fining. Moreover, commitment of the vehicle is a punishment which is applied for a car owner who has had no role.‡‡

**Conclusion**

With examination of the different aspects of issue at hand, it seems that in the present rules of Iran, violationization has not been performed properly. Some behaviors which are inherently criminal, have violated important values of the society, and need penal reaction and judicial treatment are foreseen as violations, and on the other hand, some behaviors which are not so important and can be considered as violations are improperly foreseen as crime. Since differentiation between crime and violation has practical consequences, it seems necessary to consider this issue more carefully. Some of the consequences of this differentiation include the following:

- Examination of crime is done in judicial authorities, while examination of violation is basically done in administrative or disciplinary authorities, or in other words, in non-judicial authorities.

- With foreseeing the criminal behavior, if the committer is sentenced in the judicial authority, then this person will be tagged as criminal and a penal record will be attached to him/her.

- Contrary to the administrative examinations which are done quickly and usually inexpertly, in judicial examinations, the respective authorities carefully perform the examination, and it can be claimed that the culprits’ rights are observed well. In general, it can be said that in judicial examinations, the principles of just trial are better observed in judicial examinations than non-judicial ones.

‡‡ See the expert advice of the Parliament Research Center regarding the Bill of Examination of Violations Related to Transportation Affairs and Vehicle Transits and Collection of the Respective Fines, issued on 07/07/2008.
In some cases, if a behavior that violates an important value of the society is foreseen as anviolation, this will make its committers to misuse this view and consider it as unimportant and so, repeat their behavior over and over and disobey the rules.

In general, it can be said that regarding any case for which the legislator wants to apply violationization, he/she should do this based on certain criteria and standards, including the type and importance of the violated value and norm, the culture and customs of the society, the range of consequences and damages of value or norm violation, the anti-sociality degree of the behavior, the psychological mode of the committer. For example, with regard to the importance of the environment issue, violationization of behaviors damaging it is not beneficial for the society.

References


