Unregulated Decarceration and Its Consequences (Focusing on the Law on the Reduction of Discretionary Prison Sentences, Enacted in 2020)

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Abstract

The latest legislative initiative in the realm of decarceration policy is the enactment of the Law on the Reduction of Discretionary Prison Sentences in 2020. The primary objective of this legislation is to adopt a decarceration approach and maximize minimalism concerning prison sentences. This study employs a descriptive-analytical method to examine the foreseeable consequences of the decarceration measures implemented under this law. It appears that, due to the lack of a systematically defined alternative sentencing framework, failure to adhere to the principle of proportionality between crime and punishment, and the absence of necessary infrastructural preparation following the early release of offenders, this approach lacks essential regulatory standards and contradicts the principles of criminal justice. The present research, based on thorough analysis and description, concludes that the effects of formulating such an unregulated and hasty criminal policy include emboldening individuals to commit crimes, the resurgence of private justice, the creation of opportunities for judicial corruption, an increase in recidivism among dangerous and habitual offenders, and evasion of punishment enforcement. Therefore, the law's objective of decarceration at any cost does not align with prudent legislative practices and diminishes the deterrent effect of criminal sanctions. Consequently, this study offers specific recommendations to the legislature, suggesting that the goal of reducing prison sentences should be pursued within the framework of recognized principles and standards of criminal law.

Keywords: *decarceration, lack of regulation, private justice, non-deterrence of punishments, monetary penalties, Law on the Reduction of Discretionary Prison Sentences.*

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1. Introduction

Undoubtedly, imprisonment, as one of the oldest and most prevalent forms of punishment, has faced significant opposition in recent decades. However, due to the lack of a suitable alternative, it remains the primary and most frequently imposed punishment in most countries, including Iran. Proponents of incarceration argue that its objectives include rehabilitation, reconstruction, reformation, and deterrence of offenders. However, statistical evidence indicates that imprisonment has not been successful in crime prevention. Furthermore, it has proven largely ineffective in rehabilitating and reforming offenders and has sometimes even produced adverse outcomes, as repeat offenses are frequently committed by individuals with prior incarceration records. In other words, prisons have become training grounds for novice criminals to become more professional offenders. The failure of imprisonment to achieve punitive objectives has led to the emergence of a widespread discourse on decarceration within the criminal justice system, championed by its opponents.

Beyond the aforementioned reasons, several other key factors have contributed to the growing interest of scholars and policymakers in decarceration policies. These factors include the failure of imprisonment to prevent crime at the general level, the criminogenic nature of prison environments, conflicts with the principle of individualization of punishment, the economic burden of maintaining prisoners, overcrowding and lack of adequate facilities, and the associated health and psychological issues.

The term "decarceration" was first introduced by Rothman and later elaborated upon by Scull in a book bearing the same title. Scull defined decarceration as "a shorthand term for the governmental policy of closing asylums, prisons, and reformatories, whereby the insane, criminals, and deviants are either released or denied admission to the squalid institutions in which they were traditionally confined. Instead, they are set free to find ways to adapt and integrate into society." Decarceration can be understood as an imprecise yet powerful countermeasure against the extreme inclination toward social control and institutionalization, advocating for the avoidance of incarceration and similar institutions.

The necessity of decarceration in Iran's criminal justice system has prompted legislative authorities to take significant steps in modifying relevant laws over the years. The most extensive changes occurred in the Islamic Penal Code of 2013, where the legislator introduced leniency measures such as suspended sentences, a semi-freedom system, electronic monitoring, and alternative punishments to incarceration. However, the failure to achieve the intended objectives of decarceration, such as reducing the prison population and lowering crime rates, necessitated further revisions of criminal laws. In 2020, without sufficient research and statistical analysis, the Iranian legislature hastily passed the Law on the Reduction of Discretionary Prison Sentences. The rushed nature of this legislation resulted in the enactment of several unregulated provisions in pursuit of decarceration policies, which may ultimately lead to another legislative failure.

The unsuccessful implementation of alternative punishments and leniency measures in Iran's criminal justice system demonstrates that the mere policy of substituting incarceration with alternative sanctions, as outlined in the 2013 Islamic Penal Code, has not been particularly effective. In other words, alternative punishments are only impactful when they are designated as the primary sanction for specific crimes rather than being optional substitutes or leniency measures. The discretionary nature of these alternatives, coupled with judges' reluctance to apply them due to various considerations and their preference for imposing the principal punishment (imprisonment), has led to their limited success. In some cases, this discretionary power has even opened avenues for corruption. Therefore, for decarceration policies to be effective, criminal laws must establish alternative punishments as the principal sanctions rather than optional substitutes (Najafi Abrandabadi, 2009).

This study employs a descriptive-analytical approach to address the primary research question: What adverse consequences and damages may result from decarceration as implemented under the Law on the Reduction of Discretionary Prison Sentences? Additionally, the research seeks to identify possible solutions to mitigate these issues. The research hypothesis suggests that the 2020 Law on the Reduction of Discretionary Prison Sentences, due to its unregulated approach to decarceration, lack of adherence to legal principles, and disregard for crime prevention, does not represent a successful legislative policy. Consequently, the law may ultimately undermine public order, security, and peace. The objective of this research is to examine the consequences of unregulated decarceration under the 2020 law and propose recommendations to address its shortcomings.

The significance of this study stems from two factors. First, the necessity of decarceration in Iran's criminal justice system has been extensively examined in various scholarly articles. Second, it aims to establish a practical framework for decarceration policies, an area that has not been adequately addressed thus far.

The structure of this study is as follows: Initially, the reasons behind the unregulated nature of decarceration under the 2020 law are examined. Subsequently, the adverse consequences of unregulated decarceration are analyzed. Finally, recommendations for implementing a more structured and regulated approach to decarceration policies are presented.

2. Reasons for the Unregulated Nature of Decarceration Under the 2020 Law on the Reduction of Discretionary Prison Sentences

Implementing decarceration policies requires thorough research, statistical analysis, and the establishment of necessary infrastructure. It must be emphasized that punishment serves a legitimate purpose within the criminal justice system. Therefore, in pursuing decarceration, the fundamental objectives of punishment must not be overlooked. A review of decarceration measures under the 2020 law reveals a degree of haste and a failure to adhere to essential principles governing the criminal justice system. This lack of regulatory oversight has resulted in the imposition of alternative punishments that are not systematically structured. This section examines the primary reasons for the unregulated nature of decarceration under the 2020 law, with reference to specific provisions.

2.1. Failure to Adhere to the Principle of Proportionality Between Crime and Punishment

A proportionate punishment is one that explicitly reflects the degree of societal disapproval toward criminal behavior and conveys the severity of the offense as perceived by the public. However, proportionality between crime and punishment is not a rigid mathematical concept. Rather, the absence of absolute proportionality should not justify abandoning proportionality altogether. Instead, efforts should be made to approximate an ideal level of proportionality while recognizing its inherent limitations, as no system of punishment can be entirely flawless (Von Hirsch, 1992, 1993).

It is an established fact that most members of society classify crimes according to similar degrees of severity. This implies that there exists a foundational set of shared values that can serve as a benchmark for determining proportionate punishments. Even in diverse societies, such shared values exist and should be used as a starting point for developing proportional sentencing frameworks. The human inclination toward justice inherently includes a concern for proportionality, as proportionality is a fundamental aspect of fairness, and the pursuit of fairness is ingrained in human nature. While absolute proportionality may not be achievable in an imperfect world, striving for relative proportionality remains essential. The question of why a specific crime warrants exactly three months and one day of imprisonment rather than two months and twenty-nine days is a valid one. However, a reasonable degree of proportionality can be identified by those who approach the matter with careful consideration and empathy.

Beccaria argued that while mathematical precision cannot be applied to the infinite complexities of human actions, a prudent legislator must establish fundamental divisions and ensure that the most severe crimes do not receive the most lenient punishments. By upholding the principle of proportionality, not only can retributive justice be achieved, but it can also yield several utilitarian benefits for society:

1. Ensuring proportionality prevents moral confusion, legal uncertainty, and the erosion of public confidence in the law.
2. It limits judicial and legislative arbitrariness.
3. It strengthens public trust in the fairness of punishments, fostering greater legal compliance.
4. Belief in fair punishments encourages greater cooperation between the public and law enforcement, leading to higher crime reporting rates and enhanced social security (Beccaria, 2014).

In France, the "National Human Rights Commission" serves as an advisory body that reviews legislative proposals before they are submitted to Parliament. In the realm of criminal penalties, this commission emphasizes respect for the principles of proportionality, necessity of punishment, and the dignity of detainees.

The failure to adhere to the principle of proportionality can be examined from two perspectives. The first pertains to excessively severe or harsh punishments relative to the offense, which has traditionally been a primary concern in criminal justice. The second, which has received less attention, involves excessively lenient or inadequate punishments that fail to reflect the gravity of the offense. The necessity of decarceration and the movement toward reduced punishments amplify the importance of this latter aspect. The principal criticisms of the 2020 Law on the Reduction of Discretionary Prison Sentences stem from its failure to ensure proportionality in this regard, as will be discussed in the following sections.

2.1.1. Conversion of the Punishment for the Crime of Destruction from Imprisonment to Monetary Penalty

Following imprisonment, monetary penalties are among the most frequently imposed punishments. However, the application of such penalties must take into account critical factors, including the level of risk posed by the committed crime and the deterrent effect of the punishment on the offender. In this regard, monetary penalties are generally more suitable for short-term imprisonment cases, as these typically involve crimes with a lower degree of risk. Additionally, monetary penalties must be determined in a manner that ensures their deterrent effect on the offender. However, the Law on the Reduction of Discretionary Prison Sentences does not seem to have adhered to these principles in converting the punishment for the crime of destruction (where the incurred damage does not exceed 100 million rials) to a monetary fine of up to twice the amount of the damage. The phrase "up to twice" itself presents an issue, as it grants the judge the discretion to impose a fine equal to or even less than the actual damage incurred (Yazdian Jafari, 2008).

One of the primary justifications for the use of monetary penalties is in cases where the offender's objective is financial gain, as such penalties eliminate the economic incentive for committing the crime and thereby increase the risk of offending. However, in the case of intentional destruction, as addressed in Article 677 of the Islamic Penal Code, such a financial motive is not typically the direct goal of the offender. Rather, the motives behind acts of destruction are often non-financial, and offenders are sometimes even willing to compensate for the damage they cause. In cases of intentional destruction, there is a disruption of public order, even if the crime involves a specific victim. This public aspect of the offense cannot be disregarded, and allowing offenders to secure their freedom through monetary penalties undermines justice (Izadi Nasab, 1967).

For instance, consider a wealthy individual who, after an altercation over poor driving, steps out of his luxury vehicle and deliberately damages a taxi driver's car. If he is merely required to pay a fine and is subsequently released, the punishment does nothing to compensate the victim (since the fine is paid to the government rather than to the taxi driver), and the victim must pursue compensation through complex judicial procedures. Furthermore, given the offender's wealth, the fine may not serve as an effective deterrent and could even be perceived as a trivial inconvenience. Consequently, the replacement of imprisonment with monetary penalties in cases of destruction, as prescribed in the Law on the Reduction of Discretionary Prison Sentences, does not appear to be effective from a penalogical perspective and does not serve as an appropriate alternative punishment.

2.1.2. Conversion of Reduced Prison Sentences (Less than 91 Days) to Alternative Punishments

Another instance of disproportionate punishment is the excessive reduction of prison sentences, which ultimately undermines all the objectives of punishment. One of the provisions related to this issue is the amendment to Article 37 of the Islamic Penal Code, which mandates that reduced prison sentences of less than 91 days must be replaced with alternative punishments. Since alternative punishments are already a form of leniency, the legislator, in effect, provides offenders with two levels of sentence reduction, thereby significantly diminishing the punitive function of the law (Kashani, 2004).

For example, if a judge reduces the punishment for a Grade 6 offense, which carries a prison sentence of six months to two years, by two degrees under Article 37, the sentence would be reduced to two months. At this stage, the judge would be obligated to impose an alternative punishment instead of imprisonment.

Additionally, under the amendment to Article 104, the minimum and maximum prison sentences for discretionary offenses classified as Grade 4 through Grade 8 have been reduced by half for prosecutable offenses. For instance, the offense of assaulting a pregnant woman, leading to a miscarriage (Article 622 of the Islamic Penal Code), is now classified as a prosecutable offense under the revised Article 104. This crime originally carried a discretionary prison sentence of one to three years (Grade 5), in addition to financial compensation or retribution (as applicable). Under the new provision, the prison term is reduced to six to eighteen months (Grade 6). The judge may then further reduce the sentence by two levels under Article 37, bringing it down to two months, at which point, under the amendment to Article 37, the judge would be required to impose an alternative punishment.

The rationale behind the amendment to Article 37 appears to be twofold: the legislature's urgency in reducing the prison population and its attempt to mitigate the negative effects of short-term incarceration. However, the concept of short-term imprisonment is not clearly defined in Iran's criminal justice system, nor has it been officially categorized as a specific type of

punishment. The classification of short-term sentences has not been systematically associated with particular offenses. As legal doctrine suggests, Iran's criminal sentencing framework lacks a logical and coherent structure. Nevertheless, available indicators suggest that short-term imprisonment refers to sentences of less than 91 days.

"Short-term prison sentences create the same social, familial, and economic disruptions as long-term incarcerations, but their limited duration prevents the correction of these disturbances. As a result, the danger of such punishments lies in the fact that they may lead to the further corruption of convicts rather than their rehabilitation. Some argue that these punishments are a cure worse than the disease."

Even if one accepts this perspective and supports the replacement of short-term imprisonment, the issue lies in the extent of sentence reductions. There must always be a proportional relationship between the legal punishment prescribed for an offense and the actual sentence imposed in order to achieve the intended penal objectives.

2.1.3. Reduction of Sentences for Intentional Assault and Kidnapping

The punishment for intentional assault, as prescribed in Article 614 of the Islamic Penal Code, has been downgraded from Grade 5 to Grade 6. Similarly, the punishment for kidnapping under Article 621 has been reduced from Grade 3 to Grade 4 (in cases involving aggravating circumstances) and to Grade 5 (when aggravating circumstances are absent) (Baric, 2000).

Both of these offenses are classified as violent crimes, and their impact extends beyond individual victims to the broader security and welfare of society. The legal penalties for these crimes reflect the legislator's commitment to protecting victims, and in most developed countries—as well as in international human rights organizations—such crimes are treated with strict severity. Consequently, a firm punitive response to these offenses is a natural and essential requirement for maintaining social order and security. The reduction of sentences for these crimes, coupled with the excessive leniency incorporated into other legal provisions, has disrupted the proportional balance between the severity of harm inflicted upon public order and the prescribed punishments, necessitating serious legislative reconsideration.

Additionally, the differentiation between intentional assault under Article 614 and its corresponding note is questionable. If the legislator deemed it necessary to reduce the punishment for the primary offense under Article 614, then logically, the offense outlined in the note—being a lesser offense—should have also been subject to sentence reduction. However, this inconsistency has not been addressed in the legislative amendments.

2.1.4. Expansion of Electronic Monitoring to More Severe Crimes

Electronic monitoring, as an alternative sanction to imprisonment, refers to "the supervision and surveillance of individuals through electronic devices outside the prison environment." The first instance of electronic monitoring being proposed as a tool for tracking offenders occurred in 1983 when a judge in the state of New Mexico, USA, considered its potential use. Gradually, this method expanded to other countries, including Iran, where it was incorporated into the Islamic Penal Code of 2013. Under Article 62 of the Islamic Penal Code, courts were permitted to impose electronic monitoring as a substitute for incarceration in Grade 5 to 8 discretionary offenses, subject to certain conditions. However, under the 2020 Law on the Reduction of Discretionary Prison Sentences, the court's discretion to apply electronic monitoring was extended to Grade 2 to 4 discretionary offenses after offenders had served one-quarter of their prison sentence (Shahin Moghadam, 2020).

The expansion of electronic monitoring to Grade 2 to 4 discretionary offenses, without imposing specific restrictions on the types of crimes covered, does not appear to be a well-researched or carefully structured decision from a penalogical perspective. The Islamic Penal Code of 2013 originally permitted electronic monitoring for less severe offenses (Grade 5 to 8), based on the rationale that allowing offenders in these categories to remain outside of prison would not pose a significant public safety risk and could provide them with an opportunity for rehabilitation within society. If the goal of expanding electronic monitoring is to reduce prison overcrowding, then at the very least, caution should have been exercised regarding certain categories of offenses, such as violent and security-related crimes, rather than applying this measure broadly to all Grade 2 to 4 offenses (Ardabili, 2003, 2021).

Moreover, an assessment of the judiciary's performance in establishing the necessary infrastructure for electronic monitoring indicates that it has not been particularly successful in this regard. For instance, the executive bylaw on electronic monitoring

was only issued five years after the adoption of the 2013 Islamic Penal Code. Therefore, the unstructured and premature expansion of electronic monitoring is likely to face significant challenges during implementation, leading to inefficiency in execution.

2.2. Lack of Infrastructure Preparation Following the Early Release of Offenders

Punishment serves as a fundamental tool in human societies for responding to offenders, aiming to penalize them and prevent various forms of criminal behavior. One of the utilitarian functions of punishment is incapacitation, which plays a significant role in preventing recidivism by restricting offenders' ability to reoffend. This function is based on the premise that as long as offenders are subjected to incapacitative measures, they remain incapable of committing further crimes. Consequently, the criminal justice system expects to observe a reduction in crime rates as a result of these measures (Mohammad Nasl, 2005).

However, a pure decarceration policy that relies solely on alternative measures without considering national and local conditions is insufficient. The implementation of alternative sanctions is only effective when a responsible institutional framework, adequate facilities, and an appropriate environment are established. Advocating for alternatives to imprisonment as part of a decarceration strategy requires not only a shift in criminal policy but also the adoption of new legislative methods. While decarceration policies may be beneficial and desirable, their successful implementation in any society requires the presence of appropriate social conditions and public awareness regarding the function and legitimacy of alternative sanctions. Governments cannot successfully introduce and institutionalize such punishments without first undertaking necessary cultural adaptation, public engagement, and adjustments to align these measures with each society's geographical, social, cultural, economic, and political realities.

The ultimate goal of alternative punishments is not merely to reduce the prison population and increase release rates. Other critical objectives include:

- Preventing unnecessary criminal labeling of occasional and unintentional offenders
- Encouraging offenders' sense of responsibility
- Enhancing civil society participation
- Ensuring restitution and compensation for victims

One of the most crucial and indispensable components of an effective alternative sentencing system is a robust supervision and monitoring mechanism. Allowing convicted individuals to freely reintegrate into society without an efficient oversight framework increases the risk of reoffending, victimization, and abuse of discretionary powers—both in favor of and against the public interest. Therefore, judges must have confidence in both the convicted individual and the institutions responsible for supervising alternative sanctions.

However, a functional monitoring system requires:

- A well-trained and specialized workforce
- Advanced electronic monitoring tools
- A comprehensive database and modern record-keeping system
- Legislative regulations defining the duties of social workers, probation officers, and supervising institutions
- Clear guidelines on implementation and oversight procedures

Developing such a structured supervision system necessitates substantial financial resources and long-term investment. Unfortunately, due to insufficient funding, Iran has yet to allocate adequate resources for establishing these essential infrastructures. Consequently, one of the main reasons why judges hesitate to impose alternative punishments is their lack of trust in the effectiveness and proper execution of such sanctions. Judges fear that alternative sanctions may become merely symbolic and ineffective, which explains why they often limit their application to minor offenses rather than serious crimes.

The effectiveness of alternative punishments, like any other penal measure, depends on cultural factors and the constructive participation of implementing authorities. For instance, in one developing country, it was reported that a social worker responsible for overseeing community service sentences assigned a convicted individual to clean their private residence instead of a public park. Such incidents highlight the urgent need for properly trained and ethically responsible personnel who will be entrusted with overseeing the implementation of alternative sanctions (Ashouri, 2007, 2015).

Under the 2020 Law on the Reduction of Discretionary Prison Sentences, the broad and indiscriminate reduction or substitution of prison sentences has resulted in the reintegration of a diverse range of offenders into society, including those convicted of economic, political, social, and cultural crimes. Many of these individuals require rehabilitation and reintegration programs facilitated by responsible institutions, yet the necessary infrastructure for such programs does not currently exist and is unlikely to be established in the near future.

Even from a legislative standpoint, it would have been preferable for the legislator to accompany sentence reductions and substitutions with security and rehabilitative measures tailored to different offenses. This would have prevented the perception that the law's primary objective is merely to reduce prison overcrowding. Instead, the current approach suggests a lack of scientific rigor in drafting the law, resulting in two major legislative failures:

1. The reduction of punishments and an increase in the number of offenses classified as prosecutable offenses (i.e., offenses for which legal action is contingent upon the victim's complaint)
2. The failure to incorporate necessary security and rehabilitative measures into the legal framework

Furthermore, no efforts have been made to create appropriate conditions for the reintegration of released offenders. For instance, under this law, an individual convicted of fraud can secure their release simply by obtaining the victim's consent. Such provisions fail to ensure that the offender undergoes any rehabilitative measures, leaving them free to reoffend without legal repercussions.

To achieve effective decarceration, supporting infrastructures must be developed, including:

- Post-release supervision and monitoring programs
- Personalized rehabilitation plans based on offenders' criminal profiles
- Community-based reintegration services

Rather than simply allowing offenders to be released based on victim forgiveness, the criminal justice system should implement structured rehabilitation programs that ensure offenders are adequately monitored and reintegrated into society in a responsible manner.

3. Consequences of Unregulated Decarceration in the Law on the Reduction of Discretionary Prison Sentences

An examination of the Law on the Reduction of Discretionary Prison Sentences and its decarceration measures reveals that the legislator has chosen the quickest method to reduce the prison population—namely, the direct reduction of prison sentences through mitigation, substitution, suspension, and other leniency mechanisms. However, no consideration has been given to crime prevention measures, which would have aimed at reducing the inflow of offenders into the prison system. Instead, the law has adopted a short-term and temporary solution, disregarding fundamental criminal law principles such as the principle of proportionality between crime and punishment and the objectives of punishment. This approach can therefore be classified as unregulated decarceration (Niazpour, 2008).

At first glance, the implementation of this law may result in the release of numerous prisoners and potentially reduce costs. However, due to the lack of scientific rigor in its methods, the long-term consequences could be detrimental across multiple domains, making the situation even worse. Some of these foreseeable consequences are discussed below.

3.1. Decline in the Quality of Proceedings in Criminal Court Division 2

One of the most harmful consequences of the 2020 Law on the Reduction of Discretionary Prison Sentences is the decline in the quality of judicial proceedings in Criminal Court Division 2. This is due to the enactment of regulations that, on one hand, increase the volume of cases that must be directly heard in Criminal Court Division 2, and on the other hand, fail to allocate additional judicial personnel, which adversely affects the quality of case proceedings (Gholami, 2006).

One such provision is the conversion of the punishment for destruction of property (valued at less than 100 million rials) from imprisonment to a monetary fine. If the value of the destroyed property does not exceed 30 million rials, the crime is classified as Grade 7, meaning that under Article 340 of the Criminal Procedure Code, such cases must be directly investigated and heard in Criminal Court Division 2 without prior investigation by the prosecutor's office (Asghari, 2014).

Another provision is the amendment to Article 104, which reduces the minimum and maximum discretionary prison sentences for Grade 4 to Grade 8 offenses by half if they are considered prosecutable offenses. Consequently, an examination of the law reveals that offenses under Articles 633, 648, 690, 692, and 665 of the Islamic Penal Code have been downgraded from Grade 6 to Grade 7, requiring them to be heard directly in Criminal Court Division 2.

From a statistical perspective, an examination of the number of cases processed by the judiciary and the number of judges employed indicates that each judge handles approximately 150 to 200 cases per month—equivalent to six to eight cases per day. Although no official standard exists, comparisons with developed countries suggest that handling around three cases per day is a reasonable workload for a judge to ensure precision and high-quality decision-making (Asadi & Popak Dabestani, 2017).

For example, data published by the Council of Europe indicates that in France (2021), there were 7,743 judges, and the total number of judicial cases (including new and pending cases) was approximately 5,135,000. This means that, on average, each judge handled 55 cases per month, or 2.5 cases per day.

The situation in Germany is even more favorable. In 2021, the total number of judicial cases was 4,903,494, and there were 20,809 judges. On average, each judge handled only 19 cases per month, which is equivalent to less than one case per day.

Even in Spain, which is ranked lower in terms of judicial efficiency, the figures remain reasonable. In 2020, Spain had 5,217 judges processing 3,893,618 cases, averaging 2.8 cases per day per judge (Heidari, 2015; Jafari Langroudi, 2000).

Ensuring high-quality and precise judicial proceedings is critical for several reasons. First, thorough investigations allow judges and litigants to fully understand the facts, leading to well-founded and comprehensive rulings. This enhances public trust in the judiciary and may even provide psychological relief to litigants. Second, high-quality initial rulings reduce the likelihood of appeals, as a well-reasoned first-instance judgment discourages objections. Even in cases where an appeal is lodged, a well-founded ruling is more likely to be upheld quickly, thereby preventing unnecessary delays in legal proceedings.

Therefore, legislators must always consider the potential impact of increased case volume on judicial efficiency. When enacting laws that increase the number of cases entering the judicial system or a specific court division, appropriate measures must be taken to ensure sufficient human resources are available. For instance, the responsible institution should be mandated to allocate additional personnel, thereby preventing work overload and ensuring that judicial proceedings remain effective and of high quality.

3.2. Increased Boldness and Confidence in Committing Crimes

One of the utilitarian objectives of punishment is deterrence, which seeks to prevent crime through the threat of legal sanctions. Deterrence operates at two levels:

- General deterrence, which posits that individuals refrain from committing crimes if they fear the consequences of violating the law. The theory holds that enhancing the perceived or actual severity of legal sanctions reduces criminal behavior.
- Specific deterrence, which aims to prevent a convicted individual from reoffending by ensuring that their past punishment discourages future criminal behavior. This perspective argues that criminal sanctions must be sufficiently stringent to permanently deter known offenders from reoffending.

If leniency is shown toward minor offenses but severe crimes are not punished harshly, public perception will shift, leading to the belief that crime carries no real consequences. This perception inevitably increases recidivism and emboldens potential offenders.

Under the Law on the Reduction of Discretionary Prison Sentences, many prison sentences have been excessively mitigated, indiscriminately converted, or broadly reduced. This approach has compromised the legitimacy of criminal penalties, weakened the enforcement of sanctions, and diminished their deterrent effect. As a result, both potential offenders and repeat offenders feel emboldened to commit crimes with less fear of consequences.

This issue is particularly pronounced among habitual offenders, who do not commit crimes based on personal motives but rather evaluate their criminal activities through a cost-benefit analysis. Such individuals carefully assess the penalties associated with their actions, and if the punishment is perceived as lenient, they calculate that the benefits of crime outweigh the risks.

Therefore, the Law on the Reduction of Discretionary Prison Sentences has weakened both general and specific deterrence and failed to adopt a suitable legislative approach in this regard.

Among the crimes whose punishments have been significantly weakened under this law are:

- Kidnapping
- Fraud
- Intentional bodily harm
- Forgery
- Theft
- Pickpocketing
- Fraudulent transfer of property
- Breach of trust
- Offenses equivalent to fraud

The weakening of punishments for these crimes may encourage offenders, increase crime rates, and even disrupt public order.

This discussion bears some resemblance to the concept of criminal audacity (tajri') in criminal law. However, the notion of "boldness in committing crimes" differs slightly from criminal audacity. Criminal audacity refers to a disregard for legal prohibitions, while boldness in committing crimes refers to the deliberate and knowing commission of offenses due to perceived leniency in punishment.

Some scholars define criminal audacity as "the fearless defiance of legal prohibitions," or "the deliberate commission of a crime based on an incorrect belief that it is permissible." In Islamic criminal jurisprudence, tajri' is often likened to an "impossible crime"—one in which the offender has criminal intent but the offense itself is not legally realizable (Safari, 2017).

In criminology, criminal audacity is classified as a "dangerous state of mind", and some scholars argue that those who exhibit this trait should still bear criminal responsibility. Although there is a debate among Islamic jurists regarding whether criminally audacious individuals should be held liable, the prevailing view in Iran’s criminal justice system is that such individuals do not bear criminal responsibility (Nourbaha, 2006).

Nevertheless, the concept of boldness in committing crimes, as discussed in this section, refers specifically to the deliberate and knowing commission of criminal acts—whether they ultimately result in a completed offense or an unsuccessful attempt.

3.3. The Resurgence of Private Justice

In the historical literature of criminal law, self-help, private justice, and retaliation refer to an era in human civilization when organized society, government, and the modern concepts of crime and punishment either did not exist or were extremely limited. Some of the defining characteristics of this period included collective responsibility for crimes, impersonal or collective punishments, injustices in sentencing, and the lack of proportionality between crimes and punishments—both in terms of severity and type (Kalantari, 2004).

The direct consequence of collective responsibility was the absence of fixed standards or rules for punishing offenders. The law of the jungle prevailed, and there was no rational connection between the committed crime and the prescribed punishment. In societies where the state was either absent or ineffective in codifying and enforcing criminal laws based on principles of justice, individuals resorted to private justice, determining punishments themselves and enforcing them autonomously—a form of private criminal justice.

The prohibition of private criminal justice was officially recognized at the beginning of Iran’s constitutional era and was explicitly codified after the Islamic Revolution in Articles 36 and 159 of the Iranian Constitution. This principle is also emphasized in Article 10 of the Universal Declaration of Human Rights (1948) and Article 14 of the International Covenant on Civil and Political Rights (1966). Consequently, Iran’s criminal justice system is bound by both constitutional and international legal obligations to prohibit private criminal justice (Sadeghi, 2020).

Private retaliation may be tolerable in primitive societies that refuse to submit to central authority, but it is entirely incompatible with a society governed under a central state. Allowing private revenge is tantamount to denying the authority of the state, undermining its legitimacy and governance.

One of the core objectives of criminal legislation is to establish public order and security. If criminal laws fail to serve this purpose effectively, they may themselves become a source of disorder and crime. When punishments for numerous crimes are arbitrarily reduced, their deterrent effect is weakened, leading to diminished public confidence in the judiciary. In such circumstances, citizens may feel compelled to take justice into their own hands, resulting in increased lawlessness, an overload of judicial cases, prolonged legal proceedings, and even the emergence of secondary crimes committed by victims and complainants seeking justice on their own (Sadeghi, 2020).

In contrast to justifications for penal abolitionism and decarceration policies, an opposing perspective argues that such policies conflict with the public's right to security and victims' rights, weakening the authority of the criminal justice system and diminishing the deterrent effect of penalties. As a result, they may contradict both national and individual interests. Proponents of penal abolitionism counter this argument by claiming that it does not entail the absolute rejection of punishment but rather seeks a minimalist approach that balances rights and interests. However, the extent to which victims' rights and public security are actually considered in the implementation of decarceration policies remains a crucial issue in evaluating their effectiveness.

Some manifestations of private justice have already emerged due to weaknesses in the legal system's ability to protect public and victims' rights. One example is the rise of debt collectors (locally known as "Shar-Khars"), who are hired by creditors to recover debts instead of navigating the lengthy and complex judicial process. In many cases, this informal practice has arisen because of deficiencies in financial laws, particularly those related to check-based transactions and compensation for financial damages.

Similarly, the Law on the Reduction of Discretionary Prison Sentences may facilitate the emergence of illegal organizations dedicated to enforcing financial claims and compensating victims of economic crimes—particularly in cases of fraud. This, in turn, may fuel the rise of secondary crimes, as informal debt collection practices often involve coercion, threats, and even violence.

3.4. Increase in Recidivism Among Dangerous Offenders

One of the most serious risks associated with the unregulated decarceration policy in the 2020 Law on the Reduction of Discretionary Prison Sentences is the increase in recidivism among dangerous and habitual offenders. This is largely due to excessive and indiscriminate reductions in prison sentences for certain crimes.

Currently, Iran's criminal laws do not provide a precise legal definition for "dangerous offenders". However, France is one of the countries that has developed innovative legal mechanisms for supervising high-risk offenders, particularly within closed environments.

A notable example is the 2008 Law on Preventive Detention (Rétention de sûreté), which was enacted to manage criminal risk. This law allows judges to order preventive detention for certain convicted individuals who have already served their prison sentences but are still deemed a high risk to society based on psychological, social, and biological indicators of potential recidivism.

Preventive detention can be ordered before the end of a prison sentence for crimes of severe gravity, including:

- Murder
- Torture and aggravated assault
- Sexual violence against victims under 18 years old
- Kidnapping and unlawful detention of individuals

In Iran's criminal justice system, the Law on Preventive and Rehabilitative Measures (1960) previously provided a definition of dangerous offenders. Under Article 1, a dangerous offender was defined as:

"An individual whose past record, psychological and moral characteristics, and manner of committing a crime indicate a high likelihood of committing future offenses, regardless of whether they are legally responsible for their actions or not."

According to this article, four factors were considered in classifying a dangerous offender:

1. Criminal history
2. Psychological and moral traits
3. Manner of committing the crime
4. Type of crime committed (Najafi Abrandabadi & Hashem Beiki, 2016).

However, no precise criteria were established for determining who qualifies as a dangerous offender. For instance, the law did not specify the number of prior offenses, the types of crimes, or the behavioral traits required to classify an individual as dangerous to society.

Some scholars argue that excluding certain offenders from leniency measures (such as the suspension of sentences) could serve as an indicator of their dangerousness. However, since Iran's legal system lacks explicit criteria for classifying dangerous offenders, alternative qualitative indicators must be considered—such as:

- The severity of violence in crimes like intentional bodily harm
- The level of fear and distress inflicted upon victims and their families, as seen in crimes such as kidnapping

Certain crimes, both in their nature and execution, pose a severe threat to public safety and can seriously disrupt public order. Therefore, monitoring such offenders requires heightened vigilance.

Despite these concerns, the 2020 Law on the Reduction of Discretionary Prison Sentences reduced the penalty for intentional bodily harm from Grade 5 to Grade 6 and lowered the classification of kidnapping from Grade 3 to Grades 4 and 5. These reductions have accelerated the early release of dangerous offenders, leading to several adverse consequences:

- A reduced perception of the severity of these crimes among offenders
- An increased likelihood of repeat offenses
- A decline in the deterrent effect of punishments
- A direct threat to public safety and social stability (Nourbaha, 2006).

Ultimately, loosening penalties for violent crimes increases the risk of repeat offenses, thereby undermining the fundamental purpose of criminal law: ensuring security and public order.

3.5. Evasion of Punishment for Relatively Serious Financial Crimes

Another significant flaw of the unregulated decarceration policy in the 2020 Law on the Reduction of Discretionary Prison Sentences is that certain offenders involved in relatively serious financial crimes can evade punishment. This is due to the expansion of prosecutable offenses (offenses requiring a victim's complaint to proceed) to include relatively serious crimes, as well as the automatic reduction of prison sentences for these crimes compared to non-prosecutable offenses (Tavassoli Zadeh, 2013).

Under this law, 21 additional offenses have been classified as prosecutable offenses, including major financial crimes such as fraud, breach of trust, fraudulent transfer of property, and even some crimes against public security, such as forgery.

According to Note 1 of Article 100 of the Islamic Penal Code, "prosecutable offenses are those in which the initiation, continuation, prosecution, and execution of punishment depend on the victim's complaint and their decision not to withdraw it." This means that from the moment of prosecution to the execution of the sentence, everything depends on whether the victim insists on pursuing the case or withdraws their complaint for any reason (Mahdavi Pour, 2016).

Classifying offenses as prosecutable has two major consequences:

First, the statute of limitations is significantly shortened. Under Article 106 of the Islamic Penal Code, the statute of limitations for filing a complaint in discretionary prosecutable offenses is only one year from the date the victim becomes aware of the crime. In contrast, the statute of limitations for prosecuting non-prosecutable discretionary offenses varies between three to fifteen years, depending on the crime's classification. The rationale behind longer statutes of limitations is that individuals contemplating committing crimes must understand that even if prosecution takes a long time, justice will eventually be served and they will not be able to escape punishment. This deterrent effect is an essential component of criminal policy (Marvasti, 1966).

Furthermore, modern financial crimes are often committed within everyday transactions, not through violence or coercion but through deception, fraud, and manipulation of intelligence and strategic planning. These offenses are less visible than conventional crimes, and many victims may remain unaware of the crime committed against them.

Consequently, classifying serious financial crimes as prosecutable offenses—regardless of legal thresholds—severely weakens justice. Even if a monetary threshold is established, it may still be burdensome for some victims, making this criterion an unreliable standard. Additionally, limiting the statute of limitations to only one year from the victim's awareness of the crime disproportionately benefits offenders, as many financial criminals intentionally delay or manipulate victims into postponing legal action through false promises or incentives.

Second, it allows offenders to easily evade punishment. Since most financial crimes are committed by highly intelligent individuals, often referred to as "white-collar criminals," the prosecutability of these offenses enables offenders to escape punishment simply by securing the victim's consent—even after a conviction has been issued. More importantly, this legal loophole eliminates any fear of prosecution among victims who either fail to file a complaint or are unable to prove the crime.

This issue is particularly concerning when considering large-scale financial crimes involving numerous victims and small individual losses. In such cases, each victim's financial loss may be minor, but the cumulative sum of all the offenses committed can be enormous. Since the harm to each individual victim is relatively small, there is little incentive for victims to initiate legal action, making such crimes a safe haven for financial criminals.

3.6. Creation of a Corruption Channel for Judges

One of the least detectable sources of corruption within the judiciary stems from judicial discretion in granting sentence reductions and leniency measures. The discretionary nature of sentence mitigation and other legal leniency measures presents two major risks:

First, a judge may refuse to grant leniency even when legal conditions for a reduced sentence are met.

Second, a judge may grant excessive sentence reductions without justification, thereby undermining the principle of proportionality in sentencing (Aghaei Nia, 2004).

One scholar warns against the excessive use of judicial discretion in reducing sentences, stating: "Judges must adhere to a structured framework for sentence mitigation rather than allowing their emotions to override their reasoning. They should not first grant a sentence reduction based on sentiment and then search for a legal justification afterward. When the legislator establishes a sentence—such as a three-year prison term for theft—the intent is for professional thieves to actually serve such a sentence, not for the law to be treated as mere decoration." (Damghani, 1960)

Given these concerns, some legal scholars argue that absolute judicial discretion in applying or withholding leniency measures is unreasonable and may sacrifice justice for judicial biases. In their view, sentence reduction should be a conditional right, meaning that if statutory conditions are met and no legal obstacles exist, the court should be obligated to apply reductions fairly and equitably. Judicial discretion should be guided by legal principles, including social and moral considerations as well as the broader circumstances of each case.

Some legal experts assert that sentence reductions have never been an effective tool for rehabilitating offenders. They argue that excessive leniency—often motivated by judicial compassion—allows even professional criminals to benefit from sentence reductions, thereby undermining the enforcement of repeat offender laws.

The 2020 Law on the Reduction of Discretionary Prison Sentences contains two major flaws regarding judicial leniency:

1. It introduces excessive and unregulated leniency measures.
2. Most of these leniency measures are left to the discretion of judges.

This creates a broad avenue for corruption within the judiciary, as judges can lawfully reduce or convert sentences based on their personal discretion—potentially influenced by bribery. Corrupt judges may accept bribes in exchange for issuing lighter sentences or converting prison terms into alternative punishments, all while acting within the legal framework but without considering the proportionality of the final sentence.

The potential for widespread corruption in this regard is especially concerning given the limited mechanisms available to detect and prevent judicial misconduct in such cases.

4. Conclusion

It appears that simple imprisonment, as the most common form of punishment in most countries, has largely lost its effectiveness as a criminal sanction and deterrent. In other words, considering the objectives of punishment (deterrence, retribution, rehabilitation, incapacitation, and restorative justice), the high degree of criminal socialization among novice offenders in prison and the severe economic, psychological, and social impact of incarceration on offenders' families suggest that Iranian legislators have failed to implement a successful legislative and executive criminal policy in this area. As a result, decarceration has been proposed as a solution to address these shortcomings.

The necessity of decarceration stems not only from the failure of imprisonment to achieve its punitive objectives but also from the overpopulation of prisons and the associated issues, including the high costs of inmate maintenance and the negative consequences of housing offenders of varying crimes together.

In the 2020 Law on the Reduction of Discretionary Prison Sentences, the legislator pursued decarceration policies through various mechanisms, including sentence conversion, mitigation, suspension, and the expansion of leniency measures such as semi-freedom programs and electronic monitoring. However, a detailed examination of these policies reveals that their implementation lacks a structured legal framework due to several fundamental flaws, including:

- Failure to observe the principle of proportionality between crime and punishment (e.g., converting the penalty for intentional destruction of property from imprisonment to a monetary fine, converting mitigated sentences of less than 91 days into alternative punishments, reducing penalties for violent and dangerous crimes such as intentional bodily harm and kidnapping, and expanding the scope of electronic monitoring to cover more serious offenses).
- Lack of infrastructure preparation following the premature release of offenders from prison.

These unregulated approaches to decarceration undermine its success and render it ineffective as a criminal policy.

The absence of structured guidelines and the failure to adhere to fundamental criminal law principles in implementing decarceration policies—such as in the 2020 Law on the Reduction of Discretionary Prison Sentences—lead to serious criminological consequences that ultimately threaten public order, security, and societal well-being. Some of these consequences include:

- The decline in the quality of proceedings in Criminal Court Division 2 due to an increase in case volume and insufficient judicial personnel.
- Increased boldness among offenders to commit crimes due to weakened punishments and excessive leniency measures.
- The resurgence of private justice due to victims' growing distrust in the judicial system.
- An increase in recidivism among dangerous and habitual offenders due to excessive and unregulated reductions in prison sentences.
- Evasion of punishment for relatively serious financial crimes as a result of their reclassification as prosecutable offenses.
- The creation of corruption channels for judges due to excessive leniency measures and the discretionary nature of sentencing reductions.

Ultimately, the legislator must revisit the 2020 Law on the Reduction of Discretionary Prison Sentences and introduce fundamental reforms based on legal principles to address existing deficiencies. Decarceration should be pursued with the primary goal of crime prevention, rather than merely reducing the prison population at any cost.

1. Given the lack of adequate deterrence in the monetary penalty prescribed for intentional destruction of property, the legislator should amend Article 677 of the Islamic Penal Code to include imprisonment as an option alongside monetary fines. The judge should have the discretion to choose the most deterrent punishment based on the offender's circumstances.
2. The repeal of the amendment to Article 37 of the 2020 Law on the Reduction of Discretionary Prison Sentences is necessary, as it introduces multiple layers of leniency, effectively nullifying any disciplinary or deterrent effect of the punishment.

3. Given that the objective of strict penalties for intentional bodily harm and kidnapping is not only to address their violent nature but also to mitigate the fear and insecurity they create in society, the legislator should classify these offenses as serious crimes and assign them higher degrees within the crime classification system.
4. Since electronic monitoring effectively grants conditional freedom to offenders, certain crimes, particularly violent and security-related offenses, should be excluded from eligibility for electronic monitoring—regardless of their classification degree.
5. Considering the legislator's decarceration approach, offenders who benefit from various leniency measures should be subject to post-release supervision for a specified period to assess the impact of these measures and ensure public safety.
6. Certain relatively serious financial crimes—such as fraud, breach of trust, and fraudulent transfer of property—should be excluded from the category of prosecutable offenses. The shortened statute of limitations and the automatic halving of prison sentences for prosecutable offenses severely undermine their deterrent effect. Failure to amend these provisions could lead to an increase in financial crimes, disruptions in the economic system, diminished trust in the judiciary, and the rise of illegal debt collection networks seeking to recover victims' losses.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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