



FUNDAMENTALS OF CRIMINALIZATION AND FREEDOM IN THE WEST AND ISLAM, AND LIMITATIONS ON FREEDOM IN BOTH SYSTEMS

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Abstract

Criminalization is one of the government's responsibilities in contemporary society. However, some philosophers view this obligation as justification for the government to restrict freedom through criminalization. In this study, an attempt was made to explain two distinct perspectives on freedom and criminalization, as well as their relationship. The primary objective of this study was to enable society to differentiate between freedom and criminalization in the West and Islam, and it was necessary to analyze both systems in the field of study to provide a thorough and effective analysis for society. Therefore, the following research question has been posed: what are the scope and limits of freedom concerning criminalization under Islamic and Western criminal law? The findings indicated that the limits of freedom in any society are defined by the government in accordance with its governing ideology, and of course, the same government criminalizes it. The relationship between the concepts of freedom and criminalization, the public and the private, is crucial. In Islam, both freedom and criminalization originate from the religion of Islam, and there are, however, restrictions on freedom as well as regulations in place to secure freedom. In the event of a violation of any of them, a variety of criminalization, such as retribution or prescribed punishment (haad), can be formed; thus, the relationship between freedom and criminalization becomes multifaceted. In Western societies, liberalism is often understood through a utilitarian lens, as exemplified by Mill's philosophy. According to this perspective, criminalization ought not to impede individual freedom to the greatest extent possible. In other words, the limitation of freedom should be minimized. In the meantime, by analyzing a few examples, it is possible to conclude that freedom in its Western sense had few implementation guarantees, as discussed in the article. The research method was qualitative and descriptive-analytical.

Keywords: Freedom, Liberalism, Islam, West, Criminalization

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Introduction

One of the most significant discussions in the fields of anthropology, political science, and, of course, the law has been the one regarding freedom. The truth is that this idea can be found in the writings of thinkers and philosophers from centuries before to the 20th century when it underwent a new form following the liberation of many nations from colonialism. Regarding the societal foundation for criminalization, it should be noted that not all activities against social norms are viewed as crimes. It should be noted that in addressing this matter, the level of social harm caused by these actions must be such that it seriously impairs public peace and order. Red light running or a civil servant's inappropriate behavior with clients, for instance, are not so horrible that a lawmaker would resort to criminal penalties to stop them. As a result, the fundamentals of criminalization and freedom in the West and Islam, as well as the restrictions on freedom in both systems, have been taken into account in the present study.

1. The Fundamentals of Criminalization Concerning Islamic Freedom

Islam views crime, or sin, in its broadest sense, which is defined as disobedience to the commands and laws enacted by the power of God. According to Islamic Shari'ah, God alone has the power to enact laws, and it is He who decides what is good for believers in the world and what is harmful. Islamist adherents are motivated by religious convictions when defining crime and see it as a breach of both God's and people's rights¹. The respectable values of Islam are life, property, reason, honor, and the right to practice one's religion, and any transgression of these values is punishable by law. As a result, the idea of sin is frequently entirely congruent with criminalization². It is especially obvious in the instance of Hudud because blasphemy includes things like lying to

God. This problem is discussed in Surah Al-Imran, verses 10 and 11. There are several terms for sin mentioned in the Holy Qur'an, including *Zanab*, *Aam*, *Masiyat*, and *Khatie*. Slander and injustice in testifying, the subjects of verses 105 and 106 of Surah Ma'idah and verse 120 of Surah Nisa, are two of the sins that are punishable in this world and the hereafter. Sin is sometimes not seen as a crime because it only has an afterlife component and no earthly component. For instance, neglecting commitments like prayer is a sin, yet it does not automatically result in execution on this earth under the categories of punishment and crime. Even though it has an impact and repercussions, it is not punished. The conclusion that freedom belongs to those who have respect may be drawn from the entirety of Islamic traditions and scriptures since it is illegal in the Islamic school of thought to diverge from the rules and parameters of the holy Sharia³.

The principle of "preventing harm to others" or "principle of harm," in Islamic law and jurisprudence, is one of the factors that serve as the most significant criteria in determining the validity of criminalization. The fact that the harm is significant and the adoption of other preventative measures is impractical or ineffective is the most crucial criterion for criminalization⁴. Other principles, such as legal sexism, legal moralism, violation of people's rights, and public interest, among others, serve as complementing principles. One, two, or even more of these principles may be invoked to justify criminalization at different times⁵. In general, it can be claimed that any disobedience to God's commands, which is penalized in the world through laws, constitutes a crime under Islamic law⁶. The offenses that have been revealed in the Holy Quran and have specific penalties that cannot be altered or amended fall under a general category.

Islamic crimes fall into one of three categories: 1) Crimes with penalties outlined in the Qur'an or Sunnah (Hudud). 2) Crimes against people, including murder and deliberate injury, are treated

¹ Aghaei, M. (2006), Penitentiary Schools, first edition, Publications of Enteshar Joint Stock Company, Winter, p. 93

² Bin Sawad A, Andrews K. General Theory of Marketing Ethics and Unethical Behavior in the Pharmaceutical Industry Field. *Int J Pharm Res Allied Sci.* 2021;10(3):50-63.

³ Gorji, A. (1976), Comparative Law Institute Publication, Scientific Report, Executive Conference on Islamic Criminal Law, No. 2, p. 68.

⁴ Shahmars AK, Valiev S. Criminal Liability of Bribery Crime in Criminal Laws of Iran, Russia, And the Republic of Azerbaijan. *J Organ Behav Res.* 2022;7(1):86-95.

⁵ Razmjoo, A. (2013), Basics of Criminalization in Islamic Jurisprudence and Subject Law, Master's Thesis, Islamic Azad University, Central Tehran Branch. p. 13.

⁶ Ahmadi Abhari, M. A. (1998), Islam and Social Defense, Qom, Publishing Center of Islamic Propaganda Office of Qom Seminary, first edition, p. 418.

as matters that must be resolved between the perpetrator and the victim, and the available remedies include punishment and monetary compensation (Dieh). 3) Crimes that are described in the Qur'an or the Sunnah but do not need a punishment (Tazeer). Islamic penal laws are not always implemented in the same way⁷; for instance, Sharia interpretations and hudud punishments might differ significantly in nations like Saudi Arabia and Indonesia. Hudud violations are covered by state laws in Pakistan.

The philosophy of law includes criminalization, which is a fundamental topic in criminal law. The act of criminalizing voluntary human activities and imposing behavioral restrictions goes against the fundamental principle of freedom and liberty of action. It is hereby declared that the inherent love for freedom possessed by individuals shall hinder them from complying with any directive unless it is founded on substantial and virtuous principles. It is hereby mandated that to gain a comprehensive comprehension of freedom and its correlation with criminalization, the fundamental concepts regarding the essentials of criminalization shall be expounded upon as follows:

2. The Fundamental Theories Regarding Criminalization

The discussions regarding criminalization involve various principles, such as the principle of harm, the wrongfulness principle, the sovereignty principle, and others. During debates, it is important to consider the different properties that principles may possess to properly analyze and evaluate them. It is hereby declared that there are three fundamental principles concerning criminalization, and all legal prohibitions shall be based on one of these principles.

2.1 The Principle of Patriarchy

According to the law, patriarchy is derived from the Latin word *pater*, which means father and involves acting like him or treating others as children. According to the new philosophy and

law, patriarchy is defined as the act of making decisions for others without their consent, similar to how a father makes decisions for his children⁸. Whenever a guardian or father observes an action or omission that may harm their children, they have the authority to intervene and prevent it due to their guardianship or parental responsibility, even if it requires the use of force. In the realm of criminalization, the principle of criminal patriarchy is invoked concerning laws that impose limitations, including but not limited to the prohibition of drug use, suicide, gambling, and certain technical offenses such as crimes involving satellite equipment. In the realm of punishment, certain objectives of punishment are established from a conservative perspective. The utilitarian outlook regards correctional goals and programs as such, regardless of the offender's agreement or refusal to reform, and may result in undue intrusion into the personal lives of individuals. Liberal pessimism is hereby recognized as a valid perspective. It is hereby declared that any form of patriarchy within the realm of criminal activity shall be strictly prohibited. No exceptions shall be made for any traces of patriarchy, regardless of any philosophical beliefs held by individuals or groups⁹.

According to modern philosophy and law, patriarchy is defined as the act of making decisions for another person without their consent, similar to how parents make decisions for their children. This practice is controversial because it is intended to be beneficial but is also coercive. It is hereby mandated that paternalists shall prioritize the well-being of individuals, including their lives, health, and safety, even if it means restricting their freedom. According to the law, paternalists are authorized to make decisions on behalf of the people they represent, as they believe their decisions are more informed. Assuming one's wisdom or the stupidity of others is considered arrogant and can be dismissed. In certain circumstances, it shall not be deemed as such. Paternalism may be exercised towards young children or incompetent adults who act irrationally, based on reasonably sound knowledge. In certain situations, individuals may be required to assume the position of patriarch

⁷ Haged A. Alotaibi | Francis D. Boateng (Reviewing editor) (2021) The challenges of execution of Islamic criminal law in developing Muslim Countries: An analysis based on Islamic principles and existing legal system, *Cogent Social Sciences*, 7:1.

⁸ Tickner, Ann J. (2001). "Patriarchy". *Routledge Encyclopedia of International Political Economy: Entries P-Z*. Taylor & Francis. pp. 1197–1198.

⁹ Yazdian Jafari, J. and Khairmand E. (2014) Criminal patriarchy, its concept, types, legitimacy and examples in criminal law, *Journal of Islamic Law*, Vol. 12, N. 45

despite their reluctance, particularly when they are responsible for the care and representation of a family member who is either comatose or has a severe intellectual disability. In all areas where individuals hold authority over others, such as child-rearing, education, therapy, and medicine, the inclination towards paternalism is present. Criminal law is highly divisive. When the government takes action to safeguard its citizens from its actions, it is pursuing their welfare. The enforcement of criminal law is carried out through coercion, even if it is against the will of the individual.

2.2. The Principle of Harm

The principle of harm dictates that society should prohibit and punish only those behaviors that cause tangible and outward harm to other individuals. The basis of criminalization is rooted in the thoughts of the 18th-century philosopher, John Stuart Mill. He reviewed the basis of this approach and criticized the legal structure and the circle of forbidden things. As per this perspective, the government is authorized to regulate the liberties of its citizens solely in cases where the conduct of individuals causes harm to others. According to the law, individuals are only allowed to act in ways that do not cause harm to others, as per the principle of harm. It is hereby declared that the only legitimate reason for exerting power over any individual in a civilized society against their will is to prevent harm to others, as stated by John Stuart Mill in his work *On Liberty*¹⁰. According to the Declaration of the Rights of Man and Citizen of France in 1789, liberty is defined as the ability to engage in any activity that does not cause harm to others. The exercise of an individual's natural rights is unrestricted, except when it infringes upon the rights of others in society. The determination of these limits can only be established by law.

It is hereby established as a fundamental principle of libertarian politics that no individual shall be forcibly prevented from engaging in any action, provided that such action does not infringe upon the free actions of others¹¹.

As per the principle of harm, the government is

authorized to enforce compliance upon an individual only if it can prevent harm to others by doing so. The interpretation of "harm" is a fundamental aspect of this principle. According to the principle of harm, any negative effect on an individual shall be considered as harm, and thus, the principle may not be sufficient to safeguard individual liberty. A more nuanced concept of harm shall be required¹². It shall be stated that the principle of harm is often invoked when arguing for limiting the government's power over individuals in society. As per the principle commonly attributed to John Stuart Mill, the state is authorized to intervene against an individual only if the intervention averts harm. The principle of harm dictates that the state is not permitted to intervene in cases such as in vitro fertilization (IVF), surrogacy, the expression of sexuality or religious beliefs, and the publication of controversial books, as argued by philosophers¹³. It is not within the legitimate power of the government to intervene against actions or activities that are deemed harmless by some. This principle is derived from utilitarianism. According to the law, Utilitarianism is a consequential theory in philosophy that determines good and bad solely based on the consequences of actions. Utilitarianism dictates that actions should prioritize the greater good of the public, rather than solely benefiting the individual, unlike other consequentialist theories like moral egoism. According to Mill's utilitarianism doctrine, actions must result in the maximum benefit for the largest possible group. It is hereby established that Mill is recognized for his contribution to the development of utilitarianism, in collaboration with his predecessor, the British philosopher Jeremy Bentham. It is hereby established by law that both versions of utilitarianism, despite minor variations in calculation and interpretation, are founded on the principle of utilitarianism. It is hereby established that actions must be carried out in a manner that maximizes happiness for the largest possible number of individuals, in accordance with the principle of utility. According to the utilitarian philosophy of Bentham and Mill, good is defined as pleasure and happiness, while evil is defined as pain and discomfort. According to Bentham's law, human behavior is regulated by two opposing forces:

¹⁰ Hamowy, Ronald, ed. (2008). *The Encyclopaedia of Libertarianism*. Thousand Oaks, California: SAGE Publications. p. xxi.

¹¹ *Ibid.*

¹² Holtug, N., (2001) On the Value of Coming into Existence, *The Journal of Ethics* 5(4), pp. 361-384.

¹³ Bell, Melinda Constantine. (2020). John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm, *Utilitas*, 33: 1–18.

pleasure and pain. Utilitarianism mandates that the pleasures generated must be balanced against the pains generated for the maximum number of individuals. The principle of harm established by Mill shall be deemed as a model that upholds the principle of utility and individual freedom. According to Mill's principle of harm, individuals and society must strive to maximize pleasure without causing harm to others or undermining the public interest. It is prohibited for the state to impose excessive criminalization to strive to maximize pleasure without causing harm to others or undermining the public interest. It is prohibited for the state to impose excessive criminalization. The principle of harm is found in the United States Constitution and the United States Criminal Code. The law prohibits murder as it is an example of the principle of harm in use. According to Mill's principle of harm, it is imperative to refrain from actions that cause harm. The operation of vehicles by individuals is permitted; however, causing the death of others through the use of vehicles is strictly forbidden. Actions that cause harm to others are prohibited. It is lawful to allow individuals to be attracted to or have emotions for others. It is hereby declared unlawful for said individuals to engage in stalking, assault, or inappropriate interaction with others that may cause harm. According to US criminal law and various statutes, it is determined whether an injury has occurred and to what extent.

2.3 Legal Moralism

Legal moralism is a theory and philosophy of law that states that laws can mandate or forbid conduct based on the collective judgment of society about morality. The aforementioned principle is frequently proposed as a substitute for legal liberalism, which asserts that laws may solely be utilized to the degree that they foster liberty. The Wolfenden Report, published by the British Parliament in 1957, recommended the decriminalization of homosexuality, sparking a significant debate between moralism and liberalism¹⁴. This principle is in accordance with the principles of legal liberalism. Legal liberalism and legal paternalism are two opposing concepts in the field of law. For

example, the act of theft is considered illegal under the principles of legal liberalism. According to the perspective of liberal legal thinkers, the concept of theft is not related to any moral or personal values that consider it fundamentally immoral. However, it is mandated by the Constitution to ensure the protection of an individual's rights, specifically the right to property. The liberal thinker shall not outlaw drug use, even in the event of an epidemic of overdose, as it would infringe upon an individual's right to choose to use drugs. According to legal liberalism, the government is not obligated to pursue public health interests. The government shall have no other role than to safeguard the freedom of individuals. Legal liberalism shall hold that legal moralism is excessively interventionist, while legal moralism may contend that legal liberalism lacks sufficient interventionism.

Legal moralism is an approach according to which the only criteria for criminalization is not harming others or harming oneself. According to the law, any behavior that goes against the superior standards of society and their interests is considered a crime due to its reprehensible nature, in addition to the previous two forms¹⁵. The standards can be explained through various perspectives, including moral and religious principles, which hold significant importance. It is hereby declared that the phrase "moral propositions" shall not be misconstrued as an indication that all moral theories advocate for legal moralism. It is further stated that various moral theories provide distinct responses to this matter. The theory of virtue, originating from Aristotle's philosophy, is a distinct perspective that upholds the concept of legal moralism. Individuals must confront extremes to the fullest extent possible, as dictated by religion and morality. It is hereby declared that various religious and moral motivations and goals exist to prohibit certain sexual behaviors that are relevant to this discussion. Such prohibitions are deemed necessary to uphold virtues such as chastity in society, which must safeguard some institutions such as the family.

Emile Durkheim's opinions on criminalization and freedom shall be discussed within this scope. It is hereby decreed that in response to "anomie¹⁶", laws and policies shall be

¹⁴ Committee on Homosexual Offences and Prostitution, 1957. Report of the Committee on Homosexual Offences and Prostitution. London: Her Majesty's Stationery Office

¹⁵ Kekes, J. (2000). "The Enforcement of Morality". *American Philosophical Quarterly* 37 (1), 23–35

¹⁶ According to sociology, anomie is a social condition characterized by the elimination or loss of any moral

implemented to enforce binding foundations that improve social cohesion and the identity of individuals, in accordance with Durkheimian utilitarianism.

Due to the fact that Durkheimian utilitarianism presupposes the implementation of a particular moral system (based on moral foundations and a specific vision of human nature) in public policies and legal regulations, it may be considered a theory that justifies the implementation of ethics by law. It is hereby mandated that an important point shall be mentioned before any further action or discussion. Durkheim's objective is to advance the well-being of the entire society. It is hereby declared that policies shall not be justified solely based on individual norms. The entire system that strives for the well-being of humans is endorsed. It is hereby decreed that a specific component of the system shall not require justification based on all moral principles, whether individual or binding. These principles may be based on care or damage, or they may be based on sanctity or humiliation. These different moral foundations should only be reflected and balanced in the system as a whole, creating a balance¹⁷. For example, consider the Republic of Pulavia, a hypothetical nation with a criminal code based on Durkheimian utilitarianism. The principle of harm justifies most criminal offenses, including murder and theft. This principle is based on Mill's approach and serves as the basis for care/harm. In Pulavian criminal law, some offenses are grounded on moral principles other than those related to harm or injury. For instance, the prohibition of consensual adultery between adults is based on the principles of sanctity and humiliation, while the prohibition of desecration of the national flag is based on the principles of authority and subversion. Similarly, conspiring with national enemies is an offense that is based on the principles of loyalty and betrayal. The harmonious legal system of Pulavia is attributed to its ability to balance moral foundations in accordance with the homo-duplex¹⁸ nature of human beings,

standard, value, or direction for individuals. It is thought that anomie most often results from a clash of worldviews and weakens social ties between the person and society.

¹⁷ Durkheim, E. (2005). The dualism of human nature and its social conditions. *Durkheimian studies*, 11(1), 35-45.

¹⁸ Emile Durkheim, a macrosociologist of the 19th century, espoused the concept of "Homo duplex,"

ultimately contributing to the overall welfare of Pulavian citizens.

The law shall enforce the morality that is challenged by relativism. It is hereby established that legal moralism shall be categorized into two types: positive moralism and critical moralism, as distinguished by Thayson¹⁹. According to Hart²⁰'s distinction, there are two types of ethics: descriptive and positive ethics, which refer to the moral principles that society adopts, and normative and critical ethics, which refer to the correct moral principles that are used to critique positive ethics. It is hereby established that the distinction between the aforementioned concepts shall be illustrated by the following example: In the past, driving under the influence of alcohol was considered morally acceptable in the People's Republic of Poland. Most people regard this conduct as permissible. According to critical ethics, it is unlawful. The positive ethics of Poland has transformed, and currently, there are no contradictions between actions deemed morally wrong by critical ethics and those deemed morally wrong by positive ethics.

If one believes that legal moralism pertains to positive morality, it could result in moral relativism. In any given scenario, the law is obligated to uphold the prevailing moral code of a particular society, regardless of whether it contradicts the positive morality of another society or the viewpoint of critical morality. It is possible to argue that certain societies had the legal right to enforce their moral system, which included practices such as slavery, racial segregation, and discrimination against women. Notwithstanding any basic intuition, slavery, racial discrimination, or discrimination against women are morally wrong and shall never be enforced by law. According to Islamic law, there are certain limitations on freedom.

3. Limitations on Freedom in Islam

According to Morteza Motahari, the concept of freedom is defined by the absence of obstacles. He views the opposite of freedom, which includes

which posits that human beings are biologically driven by instincts, desires, and appetites, while simultaneously being guided by societal morality and other cultural elements.

¹⁹ Thayson, J. D. (2015). Defining legal moralism. *Sats*, 16(2), 179-201.

²⁰ Hart, H. L. A. (1963). *Law, Liberty, and Morality*. Stanford University Press. p 13.

urgency, reluctance, and deterrence, in a negative light:

Freedom means “no entity shall obstruct or impede the path of freedom or create hindrances in its course. It is hereby declared that an organism shall possess security and growth factors, however, any impediments that hinder its growth shall be prohibited.”²¹

According to Motahari's perspective, freedom is an essential component and a requirement for life and progress and it is the third factor in the growth and evolution of organisms, in addition to the factors of education and security. “In other words, freedom is a component of human spirituality and one of the greatest and highest human ideals. Spirituality refers to aspects of a person that transcend his animal nature. For a guy, freedom is a value that is greater than material things. Those who have scented humanity are willing to survive in the worst conditions—with naked bodies and empty stomachs—but not in the captivity of another person. They would rather live in freedom.”²² Islam imposes certain limitations on individual freedom, one of which pertains to the concept of piety. This notion of piety in Islam is often viewed as being in contrast to the unbridled form of freedom that is prevalent in Western societies. Within the Islamic faith, the concept of piety is present. Piety refers to the act of self-preservation and establishing boundaries to transcend animalistic tendencies. Some may argue that this religious doctrine serves to restrict individuals and hinder human progress. Nonetheless, individuals such as Morteza Motahari maintain that freedom that extends beyond piety lacks the fundamental essence of freedom. They contend that piety does not impose limitations, but rather provides immunity. Limitation refers to the state of being deprived of blessings and happiness, whereas immunity is what protects an individual from danger, rather than limitation. “According to Imam Ali, piety grants a person spiritual freedom, that is, he is released from the bondage and slavery of whims and caprices, and the rope of greed, envy, lust, and rage is lifted from his neck.”²³

According to certain scholars, Islam's attitude toward freedom in recent centuries has been

antithetical to the nature of freedom in its liberal form, and they see it as a sort of constraint. Since the “increasing multicultural structure of Western liberal democracies has created the issue of Muslim minorities in the West, hatred, and hostility towards Islam and Muslims have grown in the West, and Westerners are attempting to achieve the three guiding principles of freedom, equality, and dignity, which are the foundation of Islam, under the foundation of liberal democracy, human rights, and multiculturalism²⁴”. Today, Muslims in the West are struggling for freedom, equality, and dignity to ensure ethnic and cultural survival, as well as full and equal participation in society. As a result, it is true to state that the survival of liberal democracy, human rights, and multiculturalism founded on Western civilization is contingent on the abolition of Western Islamophobia. In truth, freedom in Islam has limitations and requirements that differ from freedom in the West. The necessity to preserve religious limitations is very essential in Islam, and freedom generally falls within these limits. The importance of religious boundaries is so significant that a Muslim is never permitted to deny one of the religion's basics or to degrade religious holy items. Apostasy is one of the topics that are not only considered a crime in Islam, but some jurists believe that the punishment for apostasy is recognized in all religions.

4. Limitations on Freedom in Western Countries

Although it may initially appear that the Western definition of freedom is devoid of constraints, this is not the case. Nobody has the right to injure someone else, and nobody should ever feel afraid. These are some of the few uncontested moral principles that are upheld by all ethical frameworks and serve as the cornerstone of every society's criminal code. A fundamental rationale for the existence of a government or legal authority has long been thought to be the maintenance of peace and order. Even those thinkers who advocate for the limits of government have openly endorsed this notion. For instance, Mill contended that the only justification for governmental meddling in people's personal lives is to stop one person from hurting another. According to Thomas Hobbes and Montesquieu,

²¹ Motahari, Morteza (1999) *Spiritual Speeches*, Qom, Sadra Publishing House, p. 13.

²² Motahari, Morteza (2019) *Human social evolution*, Qom, Sadra Publishing House, p. 15.

²³ Nahjol-balagha, Sermon 189.

²⁴ Yusuf Nebhan Aydin (2019) *Western Liberal Democracy: The Struggle of Muslims for Freedom, Equality and Dignity*, *Journal of Muslim Minority Affairs*, 39:1, 75-92,

political freedom and peace are the two ultimate political values for which a sane person would enter into a social contract that grants the state the authority to safeguard each person's security against outside threats. It is described as a state of mind brought on by not worrying about one's safety. He suggested the separation of state authorities to create such harmony and stop the abuse of authority that would jeopardize citizen security. Personal security, or the absence of fear, is a virtue that the government is obliged to uphold and defend, according to everyone's view, from Confucius and Lao Tzu to Muhammad or Gandhi, and also from the Ten Commandments to Hammurabi's Law.

The quest for personal freedom is at the heart of liberalism, but naturally, there is a significant caveat to it. It requires some level of responsibility to express our freedom. You have a duty to make sure your behavior doesn't hurt or impede the freedom of others. Therefore, you should refrain from acting in a way that harms other members of that society. Therefore, it is acceptable to hold illiberal beliefs as long as they do not result in actions that are in opposition to liberalism. As long as you don't infringe in any manner on the freedom of others, you are free to publish and share whatever you want on social media in a liberal society.

Liberal ideology revolves around the value of individual freedom. At its core, liberalism is an intellectual movement that wants to grant rights to everyone. Again, there is a warning that needs to be taken into account. Above all, only sensible, conscientious people should be granted individual rights. Children do not have full rights as a result. Following this, it is impossible to maintain that the unborn fetus has a claim to life. So rather than being pro-life, the liberal attitude is pro-choice. Liberals work to improve the lives of the weak, no matter how they were born. Affirmative action and anti-discrimination legislation may be used to achieve this. It's vital to remember that there are two different definitions of freedom. Positive liberty, according to Isaiah Berlin (1969), is the desire "on the part of the individual to be his own master," whereas negative liberty is "the area in which man can act without hindrance from others." The distinction between the

"freedom of the ancients" and the "freedom of the moderns" made by Benjamin Constant in the early 19th century served as a foundation for some of Berlin's typology. Modern liberty refers to freedom from the state and the idea of private rights, whereas ancient liberty implied active engagement in political affairs. While emphasizing certain theoretical underpinnings and alluding to certain moral and value considerations, penal systems based on liberal theory instead lead to criminalization and punishment through a set of precise criteria and restrictions. In such a system, punishment gains legitimacy and justification in the context of ideals like autonomy, tolerance, and freedom, which are the cornerstones of all liberal theories. The determination and imposition of punishment, which is based on the ideas of limiting freedom and supporting a type of minimal punishment and criminalization, is the focal point of liberal thought²⁵. The principle of harm, the most well-known and significant principle restricting freedom, is typically used to justify this restriction and minimization.

However, it appears that liberal principles have not always been implemented consistently when it comes to granting freedom from the state and criminalization. Since the late 1980s, several social movements have arisen in opposition to neoliberal "globalization," with demonstrations taking place in Genoa (2001), Paris (1989), Madrid (1992), Seattle (1999), Washington (2000, 2002), and Seattle (2001). In March 2003, there were anti-war protests opposing US plans to invade Iraq. Many nations experienced political and economic unrest as a result of the 2008 global recession, to which neoliberal governments implemented austerity measures. These actions sparked considerable public resentment, which in turn fueled anti-austerity movements across Europe, such as Spain's Indignados and Greece's Syriza. Young people were heavily involved in these efforts. Additionally, there have been large student-led protests against neoliberal university "reforms" all around the world, and governments in Canada and Spain have reacted swiftly to take action against these initiatives²⁶. They achieved this, among other things, by making political opponents among young people criminals. The government used both new and old legislation, as well as conventional and frequently severe

²⁵ Rostami, Hadi. (2011). Criminalization and punishment in the light of the principles limiting freedom in liberal theory. *Research Journal of Criminal Law*, 5(1), 55-81

²⁶ Grasso, M. and J. Bessant (2018) *Governing Youth Politics in the Age of Surveillance*. London: Routledge

enforcement techniques, in its efforts. New intrusive monitoring methods were applied to these cases.

On the one hand, Canada and Spain are both liberal-democratic nations that appear committed to upholding the fundamentals of the rule of law, including the defense of rights like the freedom of assembly and speech. The term "mature liberal-democracy" refers to a Western democracy that has been around for a while and adheres to liberal-democratic ideals. Additionally, it is dedicated to free elections, the rule of law, the division of powers among the various institutions of government, as well as free and fair trade²⁷. Additionally, the Human Rights and Freedoms Charter of Canada, which was established forty years ago, asserts that it safeguards freedoms such as "thought, opinion, and thought, freedom of expression, freedom of peaceful assembly, and freedom of association." As Alexander explained, subsections 2(b) and 2(c) of the Charter, which protect the rights to free speech and peaceful assembly, are now necessary for a free and democratic society like Canada to function²⁸.

When authoritarian or one-party regimes criminalize dissent, it may come as a little surprise, but there are significant reasons to be shocked when liberal democratic governments take action to stifle legitimate criticism. In other words, if liberal democracies are proud of their dedication to democratic rights like the right to free and fair elections and civil liberties like the freedom of association, then why, in the words of Bari Buzan, "Why don't you welcome social movements and various oppositions as a natural part of the rich context of citizen participation in decision-making?"²⁹

It appears that Western liberal democracies offer examples of where the concept of freedom is opposed to prosecution. Despite pledges to promote adolescent political engagement, massive social action—much of it organized and driven by teenagers—has frequently been criminalized in free nations. For instance, the governments of Spain and Canada have both

taken several actions to stifle the expression of social movements. Legislation, enforcement, monitoring, and a public relations effort aimed at demonizing the opposition were all used in this criminalization process. In Toronto, Canada in 2010, tens of thousands of citizens demonstrated peacefully against the G20 summit. The summit's top police official in Toronto gave the order to "take back the streets." More than 1,000 individuals were imprisoned and arrested, including locals, journalists, human rights monitors, and peaceful protestors³⁰. Quebec college students started a significant protest movement in the spring of 2012 against the Liberal government's intentions to increase university tuition, which included a national strike. As a result, it appears that when the liberalism and utilitarianism-based criminal law theory is put into practice, there is no getting away from the patriarchal nature of the state in the area of criminalization, and in some ways, in this context, freedom is easily constrained.

Finally, it may be claimed that freedom in the sense of the West is fundamentally linked to criminalization and ideas like justice and criminal justice. In fact, from a liberal perspective, especially from a utilitarian one like Stuart Mill's, it should be prohibited for the government or sovereign to restrict freedom under the guise of criminalization in a variety of ways. Even though under Islam, the Islamic government has been granted this permission, freedom has its bounds, and if they are crossed, the Islamic government has the power to punish and even put someone to death. This definition of criminalization refers to the process by which the legislature forbids an action or omission and imposes a criminal penalty. In a society, criminal law is a representation of the government's authority, which must be in accordance with freedom, power, and the law. To stop the misuse of freedom, the government needs to have power. Chaos develops when law and power are absent. Power without law and freedom is barbarism, whereas law and power without freedom equal tyranny. Criminal laws and related institutions are frequently the most formal means by which any

²⁷ Mayboroda VA, Mayboroda ET, Spirin PP. Specifics of implementing the rule-making competence by public authorities of the Sirius federal territory. *J Adv Pharm Educ Res.* 2021;11(3):167-73.

²⁸ Alexander, B. (2018). "Exploring a More Independent Freedom of Peaceful Assembly in Canada". *Western Journal of Legal Studies* 8(1):4.

²⁹ Brabazon, H. (2006). *Protecting Whose Security? Anti-terrorism legislation and the criminalization of dissent*, YCIS Working Paper 43. Toronto: York University. p 3.

³⁰ Chicoine, L. (2018). "'Proxy Repression'? The Causes Behind the Change of Protest Control Repertoire by The Université Du Québec À Montréal During The 2015 Student". Pp. 62-76 in *Governing Youth Politics in the Age of Surveillance*, edited by M. Grasso and J. Bessant. London: Routledge.

government can safeguard people's lives and property and establish degrees of social order, homogeneity, and desired security. To preserve social order, the government is permitted to outlaw specific practices.

5. Conclusion

Islam holds that nature and human principles serve as the foundation for the criminal laws found in the Quran. When formulating its laws and guidelines, this heavenly book has always taken the moderate route and avoided going to either extreme. The reasoning and criminal laws behind Qur'anic criminalization are in harmony with what has been discovered by humans. The essential principles and interests of the individual and society are taken into account by the criminalization system in the Quran, which is founded on respect for human dignity. The grounds that restrict freedom and justify criminalization include the protection of human dignity, moral values, the negation of harm, the maintenance of fundamental interests, the establishment of social order, the application of criminal justice, and the principle of crime prevention. Some behaviors display characteristics that fit these requirements. The other tenets of Islam include the legality of crime and punishment, safeguarding of public interests, preventing the devastation of the individual and society, the individuality of criminal responsibility, moderation in criminalization, proportionality between crime and punishment, attention to the deterrent effects of punishment, and attempting to prevent crime. They serve as the foundation for traditional criminal law. By examining Quranic verses and jurisprudential texts, it has been discovered that these principles have been taken into account in Islamic criminal laws, which suggests that the criminalization of the Quran is compatible with reason and roughly aligns with human rights. Even though they disagree on matters of freedom and how they relate to criminalization. Freedom in criminalization in the Western sense is crucial, and this idea cannot be constrained even in the process of criminalization, at least according to the legal philosophy of the West and authors like John Stuart Mill. John Stuart Mill's book on liberty and utilitarianism in general is the source of many pro-liberty arguments. Government is necessary because the objective is to increase happiness (utility and satisfaction), and no one understands better than I what will make me happy. My freedom won't be restricted unless

and until I cause harm to someone else. The principle of harm, which is more difficult to implement in many specific situations, is an idea that has been around for a while. It is also phrased in terms of the greatest individual freedom correlating to the same amount of freedom for all.

However, freedom as it is understood in the West does not necessarily imply the boundless potential for achievement. The political activity that liberal-democratic governments claim to be devoted to supporting and encouraging is often regulated, restricted, and suppressed by liberal-democratic governments using criminal law as well as other policing and regulatory methods. This is particularly true when social movements and political activism reveal significant and unsettling issues regarding how the government or ruling class operates. The present study concluded that liberal democracies naturally experience these tensions, and while these administrations assert that they support and safeguard liberties like the right to protest, their commitment is only temporary. Security always takes precedence over civil liberties when people exercising them pose a threat to the state. Thus, there is always an irreconcilable conflict between two competing objectives (security and freedom).

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