

The crisis of the modern penal systems and the excessive provision of the prison sentence—The negative implications and the solution

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CITATION

Abdelaziz DKA. (2024). The crisis of the modern penal systems and the excessive provision of the prison sentence—The negative implications and the solution. *Journal of Infrastructure, Policy and Development*. 8(15): 9618. <https://doi.org/10.24294/jipd9618>

ARTICLE INFO

Received: 14 October 2024
Accepted: 26 November 2024
Available online: 16 December 2024

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Abstract: This paper aims to show the crisis of contemporary criminal systems, however legislative excess of stipulating the penalty of imprisonment, as a penalty depriving freedom, while sometimes stipulating the penalty of imprisonment is mandatory, rather combining it with other penalties, and more than that, depriving the judge of his discretionary power in determining the punishment, this threatens the theory of individualized punishment in a fatal way, so as a result, prisons are overcrowded with inmates, which places a heavy burden on the state from an economic perspective that exhausts and drains its budget, while there is also a social cost of the prison sentence, paid by the prisoner's family and close circle, moreover the greatest cost is the failure of the penal system to perform its role towards the prisoner by reforming and rehabilitating, therefore, this paper focuses on presenting the causes of the problem and its negative repercussions, trying to find some solutions, by presenting alternatives to the prison sentence, while expanding the view to include some criminal systems, such as the Islamic criminal system and its decision on the penalty of exile.

Keywords: legislative inflation; imprisonment; alternative sanctions; exile

1. Introduction

Since ancient times, scientists have been interested in the phenomenon of crime, provided multiple explanations about it, to understand the aspects of this phenomenon, to find solutions that lead to reducing it, crime poses a threat to the entity and security of society, Consequently, legislators took responsibility for criminalizing all behavior that violates society secure, Overtime, this criminalization reached an extreme level, another significant area of interest is the concept of punishment and how legislation throughout the ages has dealt with it (El Shaarawy, 2019). The purpose of punishment often reflects on the punishment itself, its means, and the philosophy of the social system towards it (Frase, 2005). Initially, punishment was viewed as a tool of revenge that society inflicted on the offender. However, this perception evolved into seeing punishment as a tool for correcting and reforming offenders (Pifferi, 2012), one of the most important punishments aimed at offender reform is the prison sentence, Based on this idea, legislators began to excessively stipulate prison sentence, sometimes combining it with other punishments, relying on considering prison an irreplaceable deterrent, a tool for criminal reform, and a mean of protecting society, However, this overindulgence in stipulating prison sentences undermined the judge's discretionary power in determining appropriate punishments, The crisis in the penal system has many causes, the first and most important is legislative inflation, while some behaviors that were uncriminalized became criminalized, Legislators also relied heavily on short-term freedom-depriving punishments, expanding their scope significantly, often,

the penal text does not include penalties other than imprisonment, leaving judges with no alternatives to consider.

Despite the importance of the prison sentence in achieving some of the desired deterrence goals, many doubts are currently being raised about prisons performing their corrective and preventive function, prisons are overcrowded, and there is a high rate of recidivism among those released (Al-Youssef, 2006), therefore studies discuss the negative effects of the prison sentence (Aharoni et al., 2018), imprisonment primarily affects the prisoner, as the punishment fails to achieve the required reform, other negative effects include the economic cost placed on the state. Additionally, there is a significant social cost paid by the convict's family and close circle, In the face of this crisis, different points of views about the prison sentence have emerged, with some supporting it and others opposing it, it became necessary to find solutions, from multiple perspectives, starting with finding a way to rationalize punishment, by reducing excessive criminalization first, then, emphasizing the judge's discretionary power in choosing the appropriate punishment, in order that, this current crisis, it was appropriate to explore alternatives to prison sentence, particularly short-term imprisonment, including the Islamic criminal system and its provision for the penalty of exile, may offer possible alternatives.

Thus, the role of this paper is to present the problem of the penal system, including its causes, and its serious repercussions, his family, the state budget, and the reform and rehabilitation plans for inmates, The paper also propose solutions or alternatives to address this crisis.

2. The crisis of the penal system and its causes

Today, the criminal justice sector is witnessing in all countries of the world, regardless of the criminal legal system it follows, a stifling crisis whose causes are numerous and whose dimensions vary, but what is agreed upon is that this justice must be quickly aided and provided with some legal solutions, perhaps the most important reasons for this crisis are the phenomenon of punitive legislative inflation, the excessive determination of the punishment of short-term imprisonment, at the same time the insufficient provision for punitive measures other than imprisonment, this paper addresses these reasons as follow.

2.1. Punitive legislative inflation

Modern penal systems have known a legal phenomenon called legislative inflation, during the past decades in many democratic countries such as the United States, the United Kingdom, and France, there has been an ever-increasing tendency to devise legal norms and laws, as a tool for exerting social control, guaranteeing consensus in the society, planning and prognosticating consequences, and even applying certain pressures to instigated the essential action by the legislator, Furthermore, these efforts, unfortunately, quite frequently are evaluated by the citizens themselves as being redundant, therefore, increase unexpected conflicts or even produce indifference toward the authority of the state (Sulmane, 2011).

It was natural for legislative inflation in general to be accompanied by another inflation of criminal law, which is punitive inflation, due to the emergence of new

patterns of crime, in the field of economic crimes, customs smuggling, tax evasion, electronic piracy crimes, the illegal use of credit cards, stock market crimes and electronic commerce, in addition to other forms such as organized crimes, human trafficking, money laundering, in addition to traffic, health, environmental crimes, commercial and industrial fraud, the spread of this type of crime has burdened the criminal justice apparatus in two ways: the first way is the existence of legislative deficiencies in some countries such as Brazil (Fonseca, 2024), which has led to difficulty in confronting this type of crime, the second is the need for criminal justice apparatuses, including the judicial police, public prosecution, and judiciary, to receive training and technical expertise to investigate and rule on this type of crimes, which has a negative impact on judging on other cases, pending before these apparatus leads to the slowness of their resolution, therefor criminal legislator was forced to use the criminalization as a tool to confront these new crimes at the present time, even though the beginnings of this crisis appeared with the emergence of the industrial revolution, and thus the scope of the criminal penalty expanded as a result of the expansion of the scope of crimes, for which a penalty of deprivation of liberty is applied, as the state remains the sole monopoly of the criminalization and punishment proceed by its legislative authority, in application of the principle of criminal legitimacy, which makes the written legal rule the only source of criminalization and punishment (Doyle, 1967), and no doubt that the problem of the large number of cases pending before the criminal judiciary remains a serious problem affecting the judicial system and criminal justice, which has led the legislator sometimes to intervene to resolve some cases through restorative or consensual justice (McEvoy and Hudson, 2002), it is well known that contemporary, scientifically advanced world has produced many social, economic and political variables accompanied by changing patterns of crime, countries began trying in various ways to develop their capabilities to achieve justice, the sixth united nations conference on combating crime and the treatment of offenders, held in Caracas in 1980, expressed this meaning in its saying” That policies to combat crime must be coordinated with social, economic, political and cultural development strategies”, the conference recommended resorting to social and cultural means similar to other means aimed at combating crime (Caracas Conference, 1980), in addition to the state’s intervention in criminalizing minor crimes in the modern era, and the accompanying expansion in the use of criminal punishment, which led to the expansion of criminalization to include acts that do not rise to constitute a danger or threat to the security and stability of society.

2.2. Short-term imprisonment penalties

Theoretically, custodial sentences are typically perceived as one of the harshest punishments available in the sentencing arsenal of the modern state (Bagaric, 2020), it follows that in terms of specific deterrence much is expected from custodial sentences, though the typically high observed recidivism rates following imprisonment readily caution against unrealistic expectations in this respect (Nagin et al., 2009).

Short-term deprivation of liberty penalties raises punitive problems, due to their short duration, which does not allow achieving the modern purposes of punishment in

rehabilitation, in addition to causing the damages usually associated with deprivation of liberty, the first problem raised, is defining what is meant by it, criminal legislation did not address its definition, as though this is what caused opinions to differ about what is meant by this term, there is a side of jurisprudence that believes short-term imprisonment does not exceed a year as the minimum sufficient to achieve general deterrence, discipline and reform, which is what the French legislator considered as the minimum to reduce the penalty in felonies, when there are different mitigating circumstances, there is another aspect of jurisprudence that believes short imprisonment is determined by the sufficient period of time that temporary imprisonment takes to achieve reform and rehabilitation, which requires the convict not to return to crime (Al-Chazly, 2006), Criminal statistics in many countries such as United States Of America indicate that the judiciary is extravagant in issuing imprisonment short-term, which attracted the attention of researchers in penology, and opposition to this excessive application of short-term freedom-depriving punishments emerged (Raaijmakers et al., 2017), there are many international conferences were even held to discuss this topic, such as the Second United Nations Conference on Combating Crime and the Treatment of Criminals in 1960, the Fifth Conference held in Geneva in 1975, which dealt with the alternatives to imprisonment in general, the Sixth Conference, which was held in Caracas 1980, and also the seventh conference held in Milan 1985, the interest of international conferences in the punishment of short-term imprisonment is due to the disadvantages caused by short-term imprisonment, which are not justified by the benefits expected from it (Bülow, 2014).

2.3. The limitation of the criminal text in determining a punishment measures other than imprisonment

Reform trends in the modern era were able to find a place in criminal policy, to change the traditional concept of punishment, from being a mean of revenge to being a mean of reforming (Fish, 2008), rehabilitating and integrating the convicted into society again, this idea did not crystallize among criminal law legislators, until the view on the purpose of punishment have been changed, punishment which is that the offender receives a fair punishment appropriate to his crime, and also that punishment has long-term goals of reform (Frase, 2005), but this does not mean that the idea of the intended pain of punishment and the required deterrence have disappeared, but rather resorting to corrective punitive measures other than the prison sentence has become something imposed by modern penal policy (JE, 1978), most criminal legislation only stipulates limited alternatives to the prison sentence, it often stipulates just the prison sentence, and may add another penalty to imprisonment, such as a fine, the judge often finds himself forced to impose a prison sentence, and his discretion in punishment goes unheeded, thus, it is clear that the ruling of imprisonment, which is a penalty of freedom's deprivation, is often due to the judge finding that the criminal text that he rules does not enable him to impose a sentence other than imprisonment, this over-determination of the prison sentence completely contradicts what the Social Defence Movement called for, as its supporters ruled out the punishment of deprivation of liberty, called for it to be replaced by preventive measures, alternatives to punishment, or precautionary measures aimed at defending society from the

occurrence of a new crime in the future, by removing criminal factors without prejudice to the dignity and humanity of the offender (Bingham, 1973).

3. The negative repercussions of excessive imprisonment

There are negative effects that have clearly appeared due to the excessive text of the prison sentence, the penal systems in most countries are suffering from these effects, therefore opinions have begun to raise the question that worries penal systems around the world, which is the extent of the effectiveness of applying prison sentences and what is the effect resulting from this punishment (Bülow, 2014)? the matter also developed into a question about the feasibility of short-term custodial sentences and whether this punishment achieves the desired purposes of deterrence and reform? what about the rate of recidivism for those who carry out a short-term prison sentence (Freiburger and Iannacchione, 2011)? so the truth is that excessive imprisonment, especially short-term imprisonment, has many negative effects in more than one direction: the reformist direction of punishment, that is achieving the purposes of punishment, what is related to the economic aspect, the state budget, and what is related to the impact of the punishment on the convict and his family socially, this is as follows.

3.1. The feasibility of imprisonment in deterrence and reform

The phenomenon of prison overcrowding is one of the serious problems facing those responsible for reform and rehabilitation of convicts (Harris, 1985) which negatively affects the implementation of rehabilitation programs for convicts, the phenomenon of prison overcrowding is due to the increase in the number of those sentenced to short-term imprisonment, in addition to the increase the number of defendants in pretrial detention, While India has a lower incarceration rate compared to the U.S., its prisons are severely overcrowded, with many detainees held in pretrial detention. Around 70% of inmates in India are undertrials, contributing to overcrowding (Institute for Criminal Policy Research, 2017), so that instead of prison officials devoting themselves to implementing reform and rehabilitation programs, their attention is focused on another problem, which is overcrowding, solving the problems that result from, moreover it is difficult to provide specialists and observers to implement programs and rehabilitate convicts, which includes employing convicts to ensure their learning a type of craft that generates income for them, that employment, absorbs their energy that may turn into crimes in the prison itself (Amuda et al., 2019), due to the large number of prisoners, convicts are placed in an unorganized manner that ensures high-risk criminals do not mix with criminals in coincidental crimes, which makes the criminal by chance the nucleus of a professional criminal, who learns the principles of crime from fellow prisoners who are habitual criminals, in order that white-collar criminals are among the categories that must be considered, if their prison sentence is useful for correctional standpoint, does the punishment serve its purpose? is prison a deterrent for them? is imprisonment the best way for society to respond to their criminal actions? much research has delved into this type of criminal, and some of it has concluded that despite the pain that imprisonment causes these criminals as a punishment for their crimes, in prison white-collar criminals are exposed to integration

with other criminals, which paves the way for more crimes, because of the cooperation, friendship and exchange of interests that arise between criminals (Benson, 2007), often times, the presence of this category of criminals, such as swindlers, fraudsters, and convicted in financial crimes, constitutes a source of provocation for other violent criminals, which increases the assault crimes that occur against them (Wolf et al., 2007), moreover it is important to consider the perpetrators of brutal crimes, such as armed robbery and other violent crimes, has long-term imprisonment yielded positive results? especially since many criminal laws make the punishment for these crimes long-term imprisonment, and despite that, this reform method did not achieve the desired result in reforming the criminal or at least preventing recidivism (Channak and Amuda, 2024), the phenomenon of recidivism is one of the problems facing penal systems worldwide, and is considered an indicator of the decline of various penal methods in confronting the criminal phenomenon, represented by deterrence, prevention and rehabilitation of convicts, so that one of the most important goals of the successful rehabilitation of convicts is to ensure that the convict does not return to committing crimes again (Van Den Haag, 1989), even if it was taken into consideration the decline in the effectiveness of the prison sentence in reform, it looks like is going in a vicious circle, the failure of the sentence to achieve its reformative purpose increases the rates of recidivism, and if the rate of recidivism increase, then the number of prisoners increases, while it returns once again to the problem of prison overcrowding with its inmates, the failure of correctional institutions to provide rehabilitation programs for prisoners has resurfaced (Harris, 1985), however, there are some opinions that deny the existence of a relationship between the phenomenon of recidivism and punitive treatment, believe that recidivism is linked to the person convicted, the degree of his involvement in crime, and the degree of his readiness to return to crime (panocela, 1995).

3.2. The economic cost of a prison sentence

The economic cost of imprisonment is a heavy financial burden on the state, as it is responsible for protecting society from the evils of criminals and implementing the law in the first place, considering the duties of the state all over the world, it is in providing the cost of building and operating prisons, with the increase in the number of prisoners, whether convicted or detained pending investigation, many countries have to expanded the establishment of prisons and increase it to accommodate the increasing number of prisoners, and this is a natural result of the criminal policy followed, which paves the way for this overcrowding in prisons, as a result the state builds new prisons, which are often quickly filled with new inmates (Guetzkow, 2015). However, the issue does not end with the construction of prisons, operating the prison from employing qualified officers, guards, social workers, doctors, and others who responsible for implementing reform programs, equipping the prisons and covering the usual living expenses, Additionally, prisons face a crisis with escalating costs, including tight security and modern monitoring devices in anticipation of planned escapes by prison inmates (Trumbull and Witte, 1981).

Another serious challenge facing the penal institutions is the healthcare, whether it is part of the rehabilitation programmer to reform the convict, or it is physical,

psychological, chronic physical illnesses treatment that the convict suffers from, or illnesses that occurred in prison, This presents a major challenge for the state, especially amid the economic pressure that most regimes worldwide face (Jinn, 2012), Many countries have had to address the health care issue, particularly diseases outbreaks, such as Covid-19 pandemic, this disease imposed many medical procedures, including isolation, treatment, vaccinations, and so on, which was posing severe challenges to correctional institutions cause of the origin overcrowding of prisons, which cast a dark shadow due to the increase in the number of infected patients, as well as those who died in large proportions (Dünkel et al., 2024).

Many interested parties, including the World Health Organization, the National Institutes of Health in the United States of America, and the Bureau of Justice Statistics, have taken the issue seriously, issuing numerous reports on the dire conditions in prisons during the Covid-19 pandemic (WHO, 2024), studies have also been highlighted the severe conditions of prisons during the pandemic in various countries and regions worldwide (Rapisarda and Byrne, 2020). Finally, a significant portion of the economic costs for constructing and operating prisons covered by taxpayers, This raises an important question: Is this what taxpayers, who fund the prison system, intended for their money to be used for? Given the high recidism rate, and the failure or inability of correctional institutions to rehabilitate offenders, is this the best use of tax money (Henrichson and Delaney, 2012)?

3.3. The social cost of a prison sentence

Many studies have addressed the negative effects of prison sentences on the prisoner and his family (Schneller, 1975), the convicted is already stigmatized, his family suffers from social humiliation, he loses social respect, the most prominent social effects of imprisonment on the prisoner are the difficulty of merging into society after releasing, the loss of the financial source of living, also the deprivation of civil rights, there are also dire social effects of the prison sentence that are reflected on the family, degeneration and collapse are the result, studies and statistics have shown that the prisoner's family suffers from the disintegration family's bond, which effects on the children and prompts them to engage with bad companions, then crime could be a safe haven (Paschal, 2003), the chaos that imprisonment creates for the partner of the prisoner, especially the wife, can have a disastrous effect, particularly if the sentence is long, the person outside the prison walls may seek affection through another partner, or divorce may seem like the safest option for some, practicing prostitution may also be one of the ways to obtain money, that has been reduced due to the imprisonment of the family breadwinner, which is what the females of some families of prisoners turn to, in order to address the financial strain caused by imprisonment (Rosen, 2002), more often the convict and his family suffer from many psychological illnesses such as depression, anxiety, frustration, humiliation, and psychological and social maladjustment, in addition to the negative effects of prisoners corrupting each other and learning some new criminal arts, also, due to the loss or decrease of the family's source of income, medical services are expensive, which makes them besieged by physical and psychological illnesses, unemployment is also widespread among

prisoner family members, due to the stigma that befalls family members about the imprisonment of one of its members (Marion and Sims, 2003).

4. Methods to reduce the negative repercussions of short-term imprisonment and suggested alternatives

Punishment is crucial element in the penal system, intended to deter anyone who dares to violate the law, imprisonment is consider a serious punishment, However evidence from applied practices and statistics shows that prison sentence, in reducing the aggravation of crime, particularly short-term ones, have not proven effective in reducing crime rates or in reforming offenders while reintegrating them into society, therefore it was to imperative to reconsider the feasibility of the prison sentence, discuss the idea of deprivation of freedom as a punishment, as a basic mechanism for combating crime and the extent of the success of this mechanism or not, especially as a mean to confront the phenomenon of recidivism, therefore, a careful look at the concepts and rules on which the penal system is based, changing some of it, and moving away from the narrow traditional framework of punishment, to a modern system that achieves real deterrence, not just the vengeful aspect, that penal systems emphasize with the prison sentence, which is no longer effective in all cases, in addition to openness to modern methods and alternatives in punishment.

4.1. Activating the policy of reducing criminalization

The policy of reducing criminalization aims to exclude criminal punishment and shift the focus away from it as the sole means of addressing social deviation, through removing the act from the realm of criminalization and restoring it to a permissible status according to legislator, or more precisely removing it from the scope of criminal law, whether by including it within the scope of other law (civil, administrative or commercial) or leaving it within the framework of absolute permissibility, for reasons related to considerations of appropriateness dictated by criminal policy (Miller, 1973).

It is logical that decriminalizing certain behaviors, considering it legally legitimate, does not necessarily lead to its social acceptance, but, at least it achieves the goal of reducing criminalization and, by extension, reducing punishment, also, reducing criminalization is relative to time: what is considered a crime at one point, may be regarded as legitimate at another, the legislator in the same country, due to a certain development, may decide to decriminalize a certain behavior and consider it legitimate, such as abortion, adultery (Murray, 2016), prostitution in some criminal systems (Joh, 2024), also, the idea of reducing criminalization may find its scope of application in traffic crimes as long as they do not result in serious injuries or deaths (Kazez, 2016), as well as crimes of begging and vagrancy, these last crimes in which society bears some social responsibility about it, therefore, it is better for it to find economic and social solutions for them, instead of burdening the state and society with the load of those who commit these crimes, which is what many countries have done, such as France's Law No. 11/7/1975 decriminalizing adultery and Law No. 16/1/1975, which tolerated the crime of abortion, that occurs in the first ten weeks if it was with certain procedures, also the crimes of check and competition were assigned to the Competition Council, in England, the criminalization of homosexual and suicide was

lifted, and in Germany, starting from 1/1/1975, all violations were abolished from the Penal Code and it only included felonies and misdemeanors.

4.2. Activating the policy of reducing punishment

This policy means that the act remains criminal and subject to the provisions of the penal code, but without applying the criminal penalty. Instead, the act is subject to administrative or regulatory penalties (Pradel, 1995), it is a policy that finds its basis in relying on the ideas of the positivist school, which advocated replacing punishments with precautionary measures. This approach helps facilitate criminal procedures, as it reduces the many criminal cases that crowd the courts, thus give the opportunity to those in charge of the justice system, to focus on the most important cases, with the high-risk criminal perpetrators (Stefani et al., 1995). The crisis has been exacerbated by the emergence of new types of crime, which given their modernity and complexity, have become a burden on criminal justice, the abundance of criminal texts has led to the emergence of the phenomenon of penal inflation, a careful review of many penal texts shows that it punishes acts that do not reveal any criminal danger on the perpetrator, such as traffic crimes, crimes of unlicensed construction and demolition, every rule related to the administrative organizing laws, and in general all crimes called “artificial crimes”, therefore, one of the most important solutions to address the negative sequences of excessive reliance on prison sentences is to consider alternative penalties.

4.3. Activating alternatives of custodial penalties

Within the framework of international standards applicable to non-custodial measures, such as the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, 1990), Non-custodial measures for female offenders (Bangkok Rules, 2010) is a major recommendation of international and regional bodies, such as a Council of Europe document (CPT, 2015) and local legislative jurisprudence in many systems regarding reducing rates of excessive use of pre-trial detention and prison overcrowding, also call for the development of a policy to increase the use of non-custodial measures and alternatives to imprisonment (Kahan, 1996), as the European Committee for the Prevention of Torture has stated, “A strategy should be developed to reduce the prison population in a sustainable manner, that is to ensure the imprisonment remains in practice the measure of last resort at all stages of the criminal justice system, from pre-trial to enforcement of sentence (CPT, 2015).” for alternatives to detention to be effective, there must be a variety of measures available at the pre-trial and conviction stages, including release on reasonable bail, automatic release of the majority of defendants on bail, imposition of fines, electronically monitored house arrest, community service which is considered as an effective method to punishment of minors, supervision of conditional release as well as commutation or replacement of sentence and adoption of a system for releasing on bail or pardoning the detainee (JE, 1978; Lambie, 2014), some criminal legislation should be considered, such as Islamic criminal legislation, which imposes the penalty of exiling the perpetrators in some crimes, which is the convict leaves the country, region, in where he committed his crime and is alienated as punishment, in fact, this

system is consistent with the idea of removing the criminal from the environment that facilitated his crime, which is a reform aspect at the same time, so this idea could be adopted while setting standards for exiling that are consistent with the criminal system to be applied (AL-Olawi, 2018), also the eligibility criteria for all such alternative measures should be reviewed, with a view of expanding its scope of application, as more it is particularly important that due consideration be given to the adoption of alternatives to custodial measures, when it comes to groups such as women, which are included in the Tokyo Rules for Non-Custodial Measures for Women, and other categories such as the elderly, persons with disabilities should be considered (Muhammadan, 2011), the truth is that the situation of pregnant female prisoners behind bars must be taken seriously, as the physical and psychological damage that befalls, does not only effects on her, but also the fetus in her womb, it is certain that it affects him after birth, facing prison life, which is not suitable for raising a child, while some criminal systems allow the mother to keep the new-born during the breastfeeding period, in the first years of the child's life (Howland and Shafler, 2021), however, alternatives to detention should not only be specified in legislation, but should also be implemented in practice, to ensure the support of the public prosecution, the judiciary and the public in general, it is very helpful for the system of alternatives to detention to be effectively managed and provided with adequate resources, in order to ensure the implementation of alternatives to the prison punishment.

4.4. Activating the individualization of punishment system

The mechanism of the individualization of punishment system, has a great importance in reducing the phenomenon of custodial sentences, providing a broader opportunity for prisoners to benefit from rehabilitation and reintegration programs, the ideas within penal systems have increasingly emphasized the importance of taking into account the personality of the offender and the circumstances leading to the crime, which led to the emergence of the principle of individualization of punishment, as it is inconceivable that the same punishment would achieve its purposes for criminals with different personalities, also whose varying degrees of responsibilities, Accordingly, this principle has contributed making criminal punishment a mean to assist the offender improving his behavior, for integration into society (Aharouni et al., 2018), the e of individualization of punishment has also played an important role in humanizing punishment, aligning it with human rights principles, with its emergence, punishment acquired new functions, as the offender was no longer viewed solely as a sinner to be punished, but rather as someone who needs treatment, focusing on the offender's personality to determine the appropriate punishment, which led to a review of the penal system, also the addition of new concepts that serve justice, the most important of which is individualization of punishment, and one of the forms of this individualization is granting the judge discretionary authority to select the appropriate punishment between the minimum or maximum penalty range, as well as, it allows for the possibility of alternative penalties, such as a fine, instead of imprisonment, in cases where it is deemed more appropriate, This approach helps reduce the crisis of prison overcrowding and its inability to perform reformative function, especially if the

criminal is not of a criminal nature, which make the public interest to isolate him by imposing a prison sentence (Han, 2011).

5. Conclusion

Most criminal systems suffer from the problem of excessive stipulation of imprisonment, and the serious consequences that follow, on more than one level, whether economic, social or reformatory, therefore contemporary criminal legislation takes a new direction in searching for modern alternatives to punishment, that achieve the desired goal of the penal system, which is reform, without sacrificing the elements of public and specific deterrence, it is also helpful to look at the source of the problem, which is the excessive consideration of many human behaviors as crimes in criminal law, thus the necessity of imposing a penalty for those crimes, most of the penalties for these behaviors are imprisonment, which gives those responsible for legislating the law and society feel psychologically comfortable, by isolating the criminal, getting rid of him by imprisoning, while this criminal often comes out to the same society, has become more ferocious and reform has not work, getting zero benefit from it, also, considering prison as an appropriate means of punishment for most criminals, really is a false historical belief with serious consequences, that inflates this crisis, therefore, it was required to consider the principle of individualizing of the punishment and make it enforceable in a practical way.

This paper has some recommendations, namely the necessity of combining efforts to establish and amend an effective penal system, which requires serious work and diligence in studying the social reality, also combined efforts of institutions to establish a theoretical and field vision, that aims to find positive and effective formulas to eliminate the criminal phenomenon or at least limit its negative repercussions, by activating a system of alternatives to non-custodial penalties, this is to avoid the negative economic effects of imprisoning a criminal and the burden it poses on the state, as well as the negative social effects on the criminal and his family, also to avoid the failure of the correctional institutions to reform the convicted in many cases, preventing him from recidivism to crime again, it is also helpful to create a system in which laws other than the criminal law, participate to control the behaviors of society that do not pose a threat to the society, thus reducing the volume of criminal behaviors and thus reducing the text on penalties, including imprisonment, it is important to consider the possibility of benefiting from alternative penalties as a source of income for the state by focusing on fines and confiscation penalties, especially with regard to crimes of corruption and seizing public money, this is to avoid the negative economic effects of imprisoning a criminal and the burden it poses on the state.

Acknowledgments: Author of this Article would like to thank the Governance and Policy Design Research Lab (GPDRL) of Prince Sultan University (PSU) for their financial and academic support to conduct this research and publish it in a reputable Journal.

Conflict of interest: The author declares no conflict of interest.

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