

Limitations and Consequences of Addiction Criminalization and Its Prevention

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ABSTRACT

Substance abuse is a primordial dilemma for mankind and human societies, and all societies face its direct/indirect effects to varying degrees. The extent and manner of implementing legal rules and regulations in dealing with social challenges and problems in any society depend on its governing political and cultural ideas, while each of these norms grows from its related political and cultural thought. Therefore, knowing each of these criteria requires knowing the context of its creation. Regarding the necessity to effectively deal with the phenomenon of substance abuse, and given deficits in principles such as "moralism" and "harming others", the principle of "legal patriarchy" seems more appropriate in making effective interventions in the social problems rooted in substance abuse. In the Islamic Republic of Iran's criminal justice system, according to Article 71 of the Constitution, this intervention must be performed "within limits prescribed by the Constitution." This principle shows that the authority of the Islamic Consultative Assembly in setting criminal regulations and criminalization is not unlimited but is subject to the restrictions provided in the Constitution. Additionally, according to the fourth principle of the Constitution, criminalization by the Islamic Consultative Assembly must be within limits prescribed by the Islamic principles (Nikzad, Abbas, 2004, 29). Thus, the present study uses survey methods and library studies to examine the principles of addiction criminalization in the criminal justice system of Iran.

Keywords: Addiction, Crime, Criminalization, Decriminalization, Delinquent, Criminal Responsibility

Introduction

With no significant confirmed usage benefit, substance abuse directly harms the consumer seriously and brings about indirect destructive consequences to not only his/her entourage but also the community. The rise in criminal titles and "criminal inflation" is a scourge of any criminal justice system. Although the legislature often addresses the positive side of criminalizing certain deviations and behaviors with legal and non-criminal nature, the adverse effects of this procedure, if adopted broadly, recklessly, and continuously, will challenge the criminal justice system and faces it with serious obstacles. Even if this procedure does not lead to concern for the rise

of crime rates and the drowning of judicial officers and other institutions in charge of crime control, and ultimately criminal obstruction, it is logical to feel worried about the lack of public adherence to the enacted law - due to its incompatibility with the community needs - and the weakening, ineffectiveness, and diminishing awe of the criminal law. A surefire way to prevent these consequences is to apply efficient scientific strategies for criminalizing certain behaviors. With the enactment of Article 16 of the Anti-Narcotics Law in 1997, addiction has been explicitly criminalized and introduced as a crime. However, the enactment of another law and its amendments in 2010 caused the legislator to correctly remove addiction from the list of criminal titles and

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introduce the addict as a social victim rather than a criminal. As the number of deadly psychotropic drugs increase day after day, the government naturally takes the role of a father, who, as evidenced by the history of narcotics criminal laws (for example, in Iran), is constantly trying to improve his performance in order to find a more effective way to prevent, treat and rehabilitate his adult child (Karbashi, Ali, Delavari, Omid, 2019).

This study examines the phenomenon of addiction from a criminological perspective, trying to discover the current ambiguities in the criminalization or decriminalization of addiction. Due to the lack of comprehensive research history in this regard, the present research seems important and of scientific significance.

Foundation of Criminalization

The starting point for the formation of criminal law is criminalization. Without criminalization, criminal law is meaningless. Criminalization is also an expression of prohibitions with criminal sanctions. It is clear that expressing prohibitions is closely linked to the anthropological view; since the relationship between anthropology and criminalization is the same as the one between "is" and "should." In anthropology, human existence is recognized as a fact, and in accordance with it, prescriptions and prohibitions are expressed, and do's and don'ts are identified and defined. Although philosophers do not accept a logical (deductive) relationship between "is" and "should," the existence of a relationship between "is" and "should" cannot be denied. The cognitions that the mind has acquired as a result of gaining experience (or without experience) cause the man to find a relationship between the two ("is" and "should"); as Montesquieu states, the law in its general sense is the system of ratios and relations (Montesquieu, Charles; 1971, 83), in which relations are shaped by the nature of things, which include the natural realities of the outside world as well as moral rules, principles, and norms that govern human relations. Thus, similarly, Plato has made no distinction between the world of science and the world of ethics or between facts and values. In his view, the concept and nature of "should" is not separate from "is" (Trigg, Roger; 2003, 48). As a result, our perception of human nature, as a human ontological interpretation, influences our perception of individuals' relationships in social life, as well as of desirable and useful social institutions (Javadi, Mohsen; 1996, 29).

Legislative Policy in Criminalization

Criminal law in a society is the symbol of the government's power and must coexist with freedom and law, and all the three (power, freedom, and law) should go hand in hand, since "the government must have power to protect freedom from being abused. Freedom and law without power mean chaos. Law and power minus freedom equal tyranny, and power without freedom and

law is a barbarism trait". The government's power must be secured through the criminal law so that unjust governmental interferences and chaos are prevented. In any society, there always are those who disrupt social order and security by violating the social life rules. Such people's behaviors hinder the progress of society and threaten the life, property, in addition to mental and physical security of its inhabitants. Therefore, these offenders' behaviors must be controlled by the society. Usually, using the criminal law and its affiliated institutions is the most formal means to protect people's lives and properties while creating a desirable level of desired social discipline, homogeneity, security, and chastity. To maintain social order, the government can use criminalization and convert certain acts into crimes by prohibiting them.

On the other hand, since the Constitution is at the top of the laws' pyramid in Iran and must be followed by other laws, formulating criminal laws without following the Constitution's rules and principles is impossible because the Constitution is the highest legal document of a country and acts as a guide for drafting other laws. It defines and determines the basic principles of politics, structures, hierarchies, positions, and limitations of a government's political power while specifying and guaranteeing the rights of its inhabitants. The government's mission to guarantee individuals' freedoms, and social/political rights is the basis for creating legal and judicial security. Success in fulfilling this mission strengthens the friendship between the community and the government, manifested in social order and security (Najafi Tavana, Ali, and Mostafazadeh, Fahim, 2013, 150). Since the Islamic Revolution in Iran, the legislative criminal policy has focused only on abstract interpretations of the concept of crime and punishment. Therefore, it has not only caused criminal inflation in the criminal justice system but also led to public dissatisfaction and distrust of the perpetrators of criminal policies by violating individual rights and freedoms (Najafi Tavana, Ali, 2013, 251) because the ordinary legislator's disregard for logical principles brings about negative consequences including criminal inflation, rising of criminal records, public distrust toward the law, overcrowding of the courts, increased costs of criminal justice, extreme increase in law violations rate, unjustified violations of individuals' rights and freedoms, and the gap between the community and the government (Qazi, Abolfazl, 2004, 103 and 115).

Limitations of Addiction Criminalization Arising from the Islamic Shari'a

The Principle of Permission

"Permission means that the lawgiver gives freedom to the obligee to have authority in doing what he wills, and consequently the obligee has the choice to perform a task or give (it) up" (Sadr, Mohammad Baqer, 1410 AH, 64). The principle of permission is opposite to the originality

of prohibition and refers to the prioritized verdict of the intellect to allow possession of objects, disregarding the existence of the Shari'a and the lawgiver's verdict on them. According to the principle of permission (Asala al-Abaha) 'everything is permissible before a law is enacted on it' (Validi Mohammad Saleh, 1995, 54). In fact, individual's freedom and permissibility in behavior are emphasized, and duties have been set accordingly. Therefore, any duty needs a superfluous reason, and until there is no proof for duty, the emphasis is on permission and innocence. According to the principle of permission, forbidden acts are determined by the lawgiver. If the prohibition of action, the punishment for doing or neglecting it, or the precedent of its punishment are not announced by the lawgiver, the action cannot be considered a crime. In these cases, the emphasis is on "permission," and no action is forbidden, and nothing is obligatory unless sources of Shari'a provide a reason for its prohibition or incumbency, and if no real reason is offered, that action should be considered impunable and permissible. On that account, criminalizing impunable and permissible actions by the legislator is not only against the principle of permission but also punishing a permissible behavior is forbidden since, according to Islamic principles, the necessity of the principle of permission is to observe the prohibition of imprisonment or taking property without consent and other similar measures that are determined and announced as punishment (Elham, Gholam Hossein, 2011, 3).

The Principle of Non-guardianship

Whether guardianship can be regarded as a principle or not can only be decided after the "guardianship concept" is explained. It is clear that in this discussion, guardianship does not mean love or victory; rather, it refers to the "right of tutorage" that is associated with dominating and interfering with others' affairs. It is emphasized that no one has authority over others unless a definite reason is provided (Masjid Sarayi, Hamid and Mo'meni, Abedin, 2009). The most common basis for this principle, as in similar cases, is continuity. Hence, the principle of non-guardianship is not independent, but it is included in the principle of continuity. Guardianship is a "falsified" case, and since the falsification of guardianship towards individuals is preceded by non-existence, therefore, regarding the principle of continuity, non-guardianship is accepted unless the guardianship is proven for a specific person (Tabrizi, Sheikh Javad, 2009, 19).

Limitations Caused by the Constitution

The Constitution of Iran admits individual's rights and freedoms in the third chapter, entitled "The Rights of People", where it has enacted principles that make the Islamic Consultative Assembly prove the necessity of limiting and excluding those principles if it wants to limit them by criminalization.

1. The Principle of Individual Immunity (Article 22 of the Constitution): This principle emphasizes individuals' security of life, property, rights, housing, and employment. Since criminalization requires imposing punishment and attacking the individual's life, liberty, property, and rights, restricting this principle through criminalization require proving the necessity of restriction by the Islamic Consultative Assembly. Therefore, criminalizing in the context of individual rights and freedoms by the ordinary legislator, without proving the necessity of imposing restrictions, is contrary to the principle of individual immunity, and the guardian council must object to it.
2. The Principle of Inquisition Prohibition (Article 23 of the Constitution): Contrary to the principle of individual immunity, which is excludable, the Constitutional legislature has enacted the principle of inquisition prohibition, and the Islamic Consultative Assembly can never disturb it through criminalization.
3. The Principle of Inspection Prohibition (Article 25 of the Constitution): The prohibition of inspection and eavesdropping, as well as the prohibition of any spying activity, is accepted as a principle, and such affairs are allowed only by the legislator's permission. If the legislator restricts this principle through criminalization, he must prove the necessity of the restriction; otherwise, the Council's decision will be contrary to this principle.
4. The principle of freedom of parties, populations, and associations, and freedom to participate in them (Article 26 of the Constitution).
5. The Principle of Forming unions and marches (Article 27 of the Constitution).
6. The Principle of Job Freedom (Article 28 of the Constitution).
7. The Principle of Arrest Prohibition (Article 32 of the Constitution).
8. The Principle of Exile Prohibition (Article 33 of the Constitution).

Human and Legal Criteria

A) Preserving Public Interest

Public interest is a fundamental concept in politics, law, and ethics. The general principle in the Islamic criminal justice system is that carrying out ta'zir (punishment) is allowed only for sin, an act forbidden inherently and clearly; however, if the public interest demands it, Islam allows the execution of ta'zir in cases where the essence of the action is not forbidden. Therefore, what leads to the prohibition of acts and, consequently, to the punishment of their perpetrators, is harming the public interest or order. Therefore, harming an individual is applied and

bearable only for fending public harm and is justified by the proposition that heavier harm should be fended by lighter harm. This type of criminalization is justifiable merely because of social necessities, since preserving public interests and order requires flexible propositions that are compatible with all circumstances, and nothing is more flexible and adaptable to the needs of society than the above criteria. In fact, in the Islamic criminal justice system, criminalization differs from prohibitionism since "criminalization is a governmental issue that, to supply the public interest and order in addition to repelling important individual and social corruption, can encompass a limited realm of behaviors for a reasonable necessity (Hosseini, Mohammad, 2010, 652).

B) Norms of the Constitution

Attending the previously mentioned principles of Shari'a and the Constitution, it is concluded that emphasis is placed on the principles of permission, non-guardianship, innocence, personal immunity, prohibition of inquisition, prohibition of sensitization, and prohibition of arrest, and excluding any of these principles needs logical reasons. In other words, if the ordinary legislature intends to restrict any of these principles through criminalization, he is required to prove its reason and necessity. Because, according to these principles, legislation is an exception, and criminal legislation is an exception on exception.

The Constitutional legislature of Iran, after mentioning the people's rights in the fourth chapter of the Constitution, in Article 40 finally states: "no one can use his right for harming others or violating public interests". The ordinary legislator can also restrict individual's rights and freedoms based on the following two cases:

- Avoiding harm to others
- Preventing violation of public interests.

Therefore, by proving each of these circumstances, the Islamic Consultative Assembly can limit certain actions through criminalization (Najafi Tavana, Ali, and Mostafazadeh, Fahim, 2013, 162)

Consequences of Criminalizing Addiction

Addiction is a social harm either caused by other social harms or resulting in other social harms. In other words, addiction may be caused by depression, failure, and unemployment, and simultaneously may lead to divorce, family aggressiveness, and children's escape from home. Therefore, it is necessary to consider all aspects of this phenomenon, looking at it from various angles.

A) Ineffectiveness of Criminalizing Addiction

According to the history of criminalizing addiction and punishing addicts in Iran, it seems that these strategies have never been successful neither for preventing addiction nor for addicts' behavior modification or treating them. Available statistical figures, despite the criminalization of addiction and repressing and punishing addicts, show that the number of addicts is annually increasing (Statistical Report of 1998, and 19 years after

the victory of the Islamic Revolution, Administrative Office of Statistics and Computer of the Iran Drug Control Headquarters, Spring 1999). Therefore, it must be acknowledged that imposed punishments do not affect addiction prevention or the addicts' behavior modification, rehabilitation, or treatment. It is very unlikely that a person who intends (and tends) to abuse drugs inhibits it just for the fear of punishment. Also, these punishments seem to be ineffective for preventing substance abuse for those sentenced for addiction. Nearly 7500 billion rials have been spent annually for fighting against drugs, whereas if this was invested in reducing substance demand and abuse tendency and providing general education about addiction harms, better results might have been achieved (Javanfar, Abbas, 2003, 29).

B) Negative Consequences of Criminalizing Addiction

Criminalization of substance abuse has several consequences, including the following:

1. Addict imprisonment: The imprisonment of an addict brings about serious negative consequences since it severely damages economic, psychological, emotional, cultural, and social aspects of his/her family, and by weakening the family foundation, exposes it to collapse. According to the Iran Drug Control Headquarters' report, if each addict has on average five first-degree relatives, only in Iran there are nearly 6 million wanderers resulting from this borderless war. The consequences of this displacement are more bitterly pronounced in families whose breadwinners are in prison due to addiction. The absence of the family breadwinner faces other members with various psychological, social, and economic problems, while these difficulties may even spread to friends, acquaintances, relatives, and all institutions that are somehow related to the substance abuse phenomenon. In addition, the imprisonment of the family breadwinner sometimes leads to the breakdown of the family and turns even the children into criminals (Alishiri, Behjat, 1999).
2. The deep gap between the community and addicts is due to the community's negative perception of addiction and addicts. This gap blocks the hope to receive social assistance for rehabilitation. While the addict is gradually excluded from the society, his/her problems increase, and he/she drowns in suffering. Therefore, the opportunity for committing other crimes may be provided. As a result, it is necessary to decriminalize addiction and see an addict as a patient whose mental and physical disorders should be treated. What's more, etiology of addiction, resolving its causes, and finding effective preventive methods should be focused on (Javanfar, Abbas, 2003, 30).

Consequences of Addiction Decriminalization

Decriminalization of addiction has both positive and negative consequences.

A) Positive Consequences of Addiction Decriminalization

Some positive consequences of addiction decriminalization are:

1. Reduction of criminal inflation rate

Most of the present legal cases in Iran are related to illegal substances and addiction, resulting in criminal inflation, legal case increment, and obstruction in criminal institutions. Also, due to over-participation of the involved institutions, the efficiency of judicial and police officials has diminished.

2. Fewer criminal prisoners

Decriminalization of addiction helps to reduce the number of addicted prisoners. Therefore, the governmental costs of keeping these addicts are reduced, and the rehabilitation of other prisoners will be more desirable.

3. Improved possibility for rehabilitating addicts and returning them to the community

By decriminalizing addiction, a positive perspective may be shaped for treating and rehabilitating addicts.

4. Reinforced focus on addiction prevention

Besides decriminalizing addiction, it is necessary to closely attend to the treatment of addicts and using effective prevention strategies. The reasons for addiction relapse could be sought in the absence of social/familial support, economic and emotional crises, and exclusion from the community (Khomarnia, Mohammad, Peyvand, Mostafa, 2018).

B) Negative Consequences of Addiction Decriminalization

Substance use, for purposes other than treating illness and relieving pain, has devastating negative effects on the health of the addict and society. Fighting drugs, as a threatening problem of human societies worldwide, requires a strong will both nationally and internationally. Unquestionably, to combat this inauspicious social phenomenon and reduce its adverse effects on human societies, governments always need to formulate regulations that include prevention and treatment policies with both long and short-term goals. Substance addiction brings about psychological and physical damages that cause norm-breaking and anti-social behaviors in various ways. Unfortunately, for a great majority of people substance abuse is equal to crime and equate addiction with criminality. Although, there is no doubt that norm-breaking behaviors and engaging in criminal activities are more prevalent among addicts than other citizens, it should always be noted that not every addict is necessarily a criminal. Rather, there are numerous substance abusers who are considered mentally disordered addicts as a result of their strong dependence on drugs, which specifies the necessity of legislator plus the community's viewpoint alteration towards this group. This provides an opportunity to treat these patients through effective therapeutic methods in a legal context. For the exact analysis of substance addiction as an undeniable social phenomenon in human societies, it is necessary to

consider its various economic, political, cultural, social, moral, and legal dimensions. Consequently, in all the processes of fighting against addiction, including addiction prevention, treatment, and rehabilitation, the influential factors should be considered. Studies on substance abuse in Iran have pointed to the annual damage of several billion rials resulting from this serious social problem which also endangers the quality of life and threatens the fundamental values of society, including spirituality and the concept of family. Moreover, addiction leads to many social anomalies, including the spread of destructive criminal behaviors. Therefore, in the current era, there is no doubt in the accuracy of the statement that drugs are of the biggest problems of human societies around the world (Amjadian, Hossein, Hindiyan, Ali, 2017).

Predisposing Factors for Addiction

Addiction, as a disorder, threatens social health and well-being. On the other hand, since the energetic young generation is more at risk, close investigation of this generation and recognizing the roots of their tendency toward addiction is an indispensable part of any anti-addiction program. Among affecting/affected individual and family risk factors leading into addiction, family breakdown, poverty or excessive wealth, mood and mental disorders, failures, personality instability, high levels of affectivity, and curiosity can be of the most effective ones. Inequitable distribution of recreational resources and facilities plus neighborhoods' contamination are among socio-cultural factors involved in addiction also. According to the "Broken Windows" theory, neglecting contaminated environments allows the growth of tendency to substance abuse.

Moreover, employment, as a contributory factor in stable personality and intellectual maturity, has a positive material and spiritual function both for the individual and community. Unemployment is reported as a critical reason for the spread of addiction. Given the relationship between addiction and unemployment, without reducing unemployment, there will be no success in reducing the rate of addiction; particularly, in educated unemployed people "dual motivation" for addiction makes sense due to their unmet expectations. On the one hand, this motivation harms the community and, on the other hand, it is positively perceived by stimulators since it helps them fill their life gaps. A new threat for our youths' identity is the false emerging mystics trying to achieve their nefarious goal of turning them into absurd aimless individuals by making them "alien to themselves" through mass media. By de-identifying young adults, a suspended generation is shaped choosing. If this generation's spiritual foundations and social beliefs are weak the wrong path, including addiction is chosen by them (Nikbakhsh, Bahram, 2014, 81).

Preventing Addiction

Currently, sociological studies pay special attention to examining the reasons motivating substance abuse. Anomie Theory says: individuals turn to rituals and innovations due to role pressures; while, loss of purpose and means leads them to isolation and rebellion. Thus, accommodation of goals and means leads to social cohesion whose theme is the disappearance of social goals and competition among substance abusers. Alternatively, as the Theory of Differential Multiplication states, given the influential power of peer groups or friends, parents' social care of children and their close attention to the process of choosing friends helps to block children's deviation and control their addictive behaviors. As the first and most important institution, family is like a factory that produces a product based on the market needs in different dimensions and qualities. According to the Theory of Relativity, if the products' dimensions and quality do not match the market needs, they will be discarded, and the factory owner may resort to illegal activities due to bankruptcy. In the same way, children are the products of families who should be nurtured according to the norms, values, and ideals of an educated society so that their ideology and acquired education play the role of a roadmap in their future social and personal interactions. As the Theory of Social Control states: families should teach commitment to their children and encourage them to follow the rules. They should also practically close the communication channels of addiction tendency by preventing any secret behavior of children (Yahya Zadeh, Hossein, 2009).

Strategies for Preventing Addiction

To protect the society from addiction some strategies are suggested which have already been tried in more successful societies in the field of drug abuse control:

1. Prioritizing preventive measures to protect healthy and vulnerable groups from substance abuse by raising public awareness through implementing educational, social, and cultural programs to protect the family institution, educational centers (from preschool to higher education), neighborhoods, leisure centers, community centers, and work environments (administrative, labor, and armed forces) with the participation of public, private, non-governmental organizations (NGOs), and public, non-governmental organizations.
2. Developing life skills training programs to improve knowledge, change attitudes, and create sustainable behaviors.
3. Informing the community about the dangers of substance abuse and condemnation of addiction through group meetings and mass media to change attitudes/beliefs of the target groups.

4. Developing and strengthening attractive sports, artistic, spiritual, etc., activities to enrich leisure time.
5. Implementing intervention programs through the development of counseling, support, and assistance centers.
6. Appreciating community-based preventive measures.
7. Training professional staff for performing educational addiction prevention programs.
8. Empowering NGOs to involve different segments of the population and community in preventive activities.
9. Strengthening cross-sectional cooperation.
10. Evaluating, updating, and improving preventive activities.
11. Conducting basic and applied research and using the findings in operational activities (Mohammadi, Ali, 2017).

Conclusion

In justifying the criminalization of substance abuse, it seems impossible to decide whether a behavior is good or bad or has it got any moral harms or not. At present, Article 15 of the Anti-Narcotics Law of Iran also points to a patriarchal approach, which provides addicts with the opportunity to seek treatment by initially encouraging them and ignoring their fault. The article applies the punishment policy only when the addicts are stubborn and continue their harmful behaviors. Thus, considering all the previous discussions, addiction is a behavior that criminalizing it could be interpreted and justified more strongly based on legal patriarchy.

In the Anti-Narcotics Law and its amendment in 2010, the legislature of Iran has always focused on a criminal policy based on repression and punishment by imposing disproportionately heavy punishments, especially execution and life imprisonment, while this policy is not welcomed by the criminal justice policy (Judiciary approach). The criminal policy governing substance crimes is mainly based on the government's criminal and non-criminal responses, but in terms of the non-criminal response to addiction prevention and treatment, the role of non-governmental organizations is palpable. Given the current status of Iran, in which substance use/abuse (regarding the large population of consumers) and the ease of access to drugs are wrongly or correctly attributed to a conspiracy, it is not possible to talk about addiction decriminalization. Therefore, substance abuse must maintain its criminal status (Rahmdel, Mansour, 2003, 236).

It should be noted that commonalty's attitude cannot be fully considered when it comes to the criminal policy since they cannot look at complex social issues that include a great deal of subtle technical aspects. However, if they do not agree with an adopted criminal policy, the

practical implementation of that criminal policy will face major problems.

On the other hand, decriminalization of substance use/abuse may increase the number of users/abusers, and ultimately, the number of addicts may grow. Therefore, to overcome this dilemma, maintaining the current law regarding criminalizing substance use/abuse seems justified. To solve the social problems and prevent addiction, it is necessary to pay special attention to addicts' rehabilitation and relative decriminalization. Therefore, to overcome the prominent obstacle of addiction in Iran, the emphasis should more strongly be on its prevention rather than controlling or implementing the judicial or disciplinary power. This approach will also impose a much lower cost on the government. Evidence of this claim is the increased costs for controlling addiction, while substance use has increased and is more diversified. In order to perceive the social structure of addiction in Iran, new challenges, including reduced addiction age, substance use pattern change, increase in the rate of substance use, the prevalence of addiction among certain groups (such as women and students), the emergence of new industrial and chemical substances, and a change in the pattern of substance distribution should be closely investigated.

In line with the changing social structure, strategies must also change. Furthermore, strategic policies must also go with the current structure of addiction.

Acknowledgments: None

Conflict of Interest: None

Financial Support: Personal

Ethics Statement: The ethics committee of Kerman Azad University approved this study.

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