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Negative Crime in the Saudi Law

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This paper has multifold objectives such as, an explanation of the elements and traits of the harmful crime, make clear the dangers of passive crime and defining the difference between silence that is not criminal and silence that is criminal or is seen as criminal participation. Finally it covers the strategies for preventing and reducing negative crimes, followed by conclusion and recommendation.

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NEGATIVE CRIME IN THE SAUDI LAW

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Negative Crime in the Saudi Law

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Abstract- Crimes after all is a crime and these are committed almost everywhere without fail with varies rate. High crime rate, in any society, may cause challenges for inhabitants to live peacefully. But all the crimes are not similar in nature. There are many different types of crimes and sub-categories within them, including positive crimes and negative crimes. Positive and negative crimes both have pillars and nexus, and these negative acts lead to consideration of the crime and execution of the punishment. Punishment works as deterrent if not a cure to the social harmony in an otherwise just society.

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I. INTRODUCTION

The best way to stop crimes from spreading is through punishment. Therefore, legal systems, like religious systems before them, have been interested in establishing punishments for crimes so that offenders are censured and others learn from them, which leads to a decrease in crime and the spread of security and tranquility within societies.

The origin and primary motivation for the punishments is justice, so they differ according to the different crimes. As a result, each crime has a unique punishment that is appropriate for the crime. Additionally, there are many different types of crimes and subcategories within them, including positive crimes and negative crimes. This is because crimes vary according to their components and nature.

Positive crimes, which are the most common, are those that a person consciously commits by engaging in criminal behavior, such as murder, theft, or other crimes; negative crimes, on the other hand, are those that represent abstinence by failing to carry out an order or remaining silent about an act if it was silenced. For example, failing to report a murder while the perpetrator is aware of it is a "negative crime" according to the law¹.

Positive and negative crimes both have pillars, and these negative acts lead to consideration of the

crime and execution of the punishment, which varies depending on the type of crime².

The goal of the current study is to clarify negative crimes, their forms and components, and the distinction between abstinence that constitutes a crime and abstinence that does not. It also tries to figure out what negative crime is and how much the Saudi law takes it into account by looking at legal texts and comparing them to other systems.

a) Study's Problem

People may not be familiar with all of the different types of crimes and their divisions due to the diversity of both. As a result, some divisions may include negative crimes that not everyone may be aware of.

Due to the threat it poses to society, the Saudi legislator has been concerned with crimes committed through abstinence. This has shown up in a number of systems, such as the system of criminal proceedings and the system of legal pleadings. Crimes of cover-up are a type of negative crime.

Given its prevalence, multiplicity, danger, and the failure of many people to recognize it as a crime, some people view silence as a form of non-interference in what does not concern them. This facilitates the crime. This is the issue with the study that we are attempting to solve in order to define negative crimes and their forms in accordance with the Saudi law. The research aims to respond to the following questions:

- What is meant by passive crime and what are its forms in the Saudi law?
- A number of sub-questions are derived from the main question of the study, namely:
- What are the elements and characteristics of negative crime?
- What are the risks of passive crime?
- When will there be silence regarding a mistaken crime?
- How can the spread of crimes, especially negative crimes, be curbed?

b) Study's Importance

The significance of the current study has two facets: the first is its scientific significance, and the second is its practical significance.

Scientific importance: It is reflected in identifying crimes and their divisions, identifying negative crimes and their forms and penalties in the Saudi law, as well

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¹ Al-Qahtani, Fahd: Crimes of Refrain (a comparative study between Sharia and law and its applications in the Saudi judiciary), p. 56.

² Raddad, Daoud: The Theory of Negative Crime in Islamic Jurisprudence, p. 32.

as identifying the systems that refer to negative crime in the Saudi law. It also contributes to limiting the spread of negative crime, particularly as it works to clarify the nature of negative crime, which many people overlook. The study adds to the legal research library on the subject of negative crimes.

Practical significance: It is reflected in presenting the study's findings to the researchers and starting from where the researcher left off. It also contributes to clarifying the advantages of the Saudi regimes and the potential for improving their drawbacks.

c) *Objectives of the Study*

- Definition of negative crime and its manifestations in Saudi law.
- An explanation of the elements and traits of the harmful crime.
- Make clear the dangers of passive crime.
- Defining the difference between silence that is not criminal and silence that is criminal or is seen as criminal participation.
- Mentioning the strategies for preventing and reducing negative crimes.

d) *Reasons of Study*

- Many people lack a clear understanding of what constitutes a negative crime, and they are unaware that neither silence nor abstention from the crime constitutes participation in it.
- Positive crime is more interesting to the systems than negative crime, so this issue requires more attention and clarification because both types of crime carry risks.
- Determining the Saudi law's positive and negative aspects of negative crime.

e) *Study's Hypotheses*

- There are legal and structural flaws in the Saudi law that affect how it addresses negative crime and how the Saudi legislator refers to it.
- Positive crimes are more serious than negative crimes.
- The Kingdom of Saudi Arabia strives to lessen crimes of all kinds and divisions, including negative crimes, as reflected in its legal systems.

f) *The Limits of the Study*

Objective limits: The study is devoted to clarify the nature of negative crime, its risks, elements, characteristics and introducing it according to the Saudi law.

Spatial boundaries: the study is limited to the Kingdom of Saudi Arabia, where it will be applied to the Saudi legal systems that referred to or concerned with negative crime.

Time limits: The study is implemented in the second semester of the academic year 1443 AH.

g) *Study's Methodology*

The study will rely on the descriptive-analytical method to accurately and clearly define and describe terms, then analyze them by extrapolating the legal texts that referred to negative crime. It will also use the comparative method to compare the Saudi law in some specifics with a few other systems' approaches to dealing with negative crime.

h) *Literature Review*

Al-Qahtani's study (2005)³, which sought to define negative crimes and, according to the study, it is an example of an abstinence-related crime. The study used the comparative analytical descriptive method to accomplish its goals and arrive at its findings. The study's objective was to clarify the crimes of abstinence through a comparison between Islamic Sharia and the Saudi law. One of the findings of the study is that Islamic Sharia was the first legislation to place emphasis on the notions of abstinence and abandonment as elements of crime that could contribute to the growth and spread of crime. The Saudi law is based on Islamic Sharia and uses the application of texts very well. It enjoys flexibility according to the nature of circumstances and the different times. The study indicated that the penalties approved by Islamic Sharia had a role in reducing crimes, especially negative crimes.

Raddad's study (2007)⁴, which had the objectives of defining negative crime, outlining the rules it is subject to and the risks it poses, figuring out how to stop it, and handling it in accordance with Islamic law. In order to arrive at its conclusions, the study relied on the descriptive analytical method, which involved describing the phenomenon, defining the terminology, then analyzing it in light of Islamic law and engaging in discussion. One of its most significant outcomes is that Islam punished crimes like abstinence or abandonment gradually rather than all at once, and then it saw results. In addition, there are a variety of refusal crimes recognized in Islamic law, some of which are legitimate transgressions that call for punishment in this world before punishment in the hereafter. Eventually, the punishments are: prescribed punishment, retribution and censure.

The study of Massoud (2014)⁵, in order to compare historical forms of abstinence with contemporary legal systems created by humans and links them to the Algerian legal system. The study used the comparative historical descriptive method to highlight similarities and differences and present the concept as an accurate description in order to arrive at its conclusions. One of its most significant findings is

³Al-Qahtani, Fahd: Crimes of Refrain (a comparative study between Sharia and law and its applications in the Saudi judiciary).

⁴ Raddad, Daoud: The Negative Crime Theory in Islamic Jurisprudence.

⁵Masoud, Khatir: The General Theory of Crimes of Absenteeism.

that positive crime and abstinence both cause harm to society, so there is no difference between the two. To be more precise, the Algerian system explicitly recognized the causal relationship between the omission and the criminal outcome but did not explicitly mention the negative crime. As a result, the Algerian regime did not care as much about the negative crime as it does about the positive crime.

The Khalifa and Qaar study (2020⁶), which sought to define the offences of abstinence, particularly those involving disaster reliefs, and to make clear the consequences of failing to provide relief, in accordance with the Algerian system and Islamic law as represented by the Saudi law. The Algerian system and the Saudi law, which represent Islamic law, were compared as part of the study's comparative analytical descriptive methodology. One of the study's most significant findings is that the Algerian system concurs with Islamic Sharia regarding the necessity of providing disaster relief. It also demonstrated that Islamic Sharia gave crimes of abstinence, particularly those related to providing disaster relief, more attention than positive law. The three pillars of negative crimes—the legal pillar, the material pillar, and the mental pillar—were also mentioned.

i) Study's Plan

The current study consists of two chapters; each chapter has its own discussion. This is after the introductory chapter, which is a general framework for the study from the introduction, problem, importance, objectives, limits, hypotheses and literature review.

The study plan is as follows:

- *Chapter One: The Negative Crime:*

It includes a number of topics, namely:

The first topic: the definition of negative crime.

The second topic: the characteristics of negative crime.

The third topic: the pillars of negative crime.

- *Chapter Two: Negative Crime in the Saudi law:*

It includes a number of topics, namely:

The first topic: regulations related to negative crime according to the Saudi legislature.

The second topic: Comparisons between the Saudi law and other systems in negative crime.

j) Conclusion

It includes an overview of the study, its findings, and the recommendations that were made in light of those findings.

II. THE NEGATIVE CRIME

The purpose of this chapter is to define negative crime, distinguish it from positive crime, and explain its traits, pillars, and risks through the lens of three different subjects.

a) *The Definition of the Negative Crime*

Whether through the adoption of positive legal systems or Islamic law, negative crime is expressed in a variety of ways. The terms "crime of refusal," "crime of silence," and "crime of abandonment" all convey the general idea of a negative crime.

"Withholding the will of a person from exercising the rights and performing the duties assigned to him or that he is capable of, which causes harm to property or life⁷" is the definition of refusal as a crime.

The definition makes it clear that what is meant is that the person is accused of doing something while he is able to do it but he refrains from doing it which results in harm, whether in terms of money or the soul. It is therefore obvious that this definition is limited in terms of looking at the negative crime because the negative crime is more general and more comprehensive than simply refusing to perform duties.

Among the definitions of the crime of abstinence is also: "The process of a person's refusal to do a positive act that should had been done in certain circumstances but his failure to do it contributed to the occurrence of a negative act that led to the completion and occurrence of a crime, but in condition by having a legal duty obligating the person to actually do the act in those circumstances. The abstention should be the result of a person's will after he was able to do it."⁸

Looking at the previous definition, it is evident that it is more all-encompassing and general than the first definition, as it is obvious that omission is a crime when the law specifies the types of acts that are forbidden and required.

As a result, this covers a wide range of behaviors, including refusing to report the error. However, the definition also omits the concept of silence regarding crimes that a person is aware of and whose silence regarding them constitutes a form of participation in the crime because his lack of silence will contribute to the crime's control, completion, or occurrence.

The negative crime is: "refusing to do a commended act, as this refrain leads to the loss of rights, such as the witness's refusal to testify."⁹

It is obvious that all definitions concur that a negative crime is the act of refraining from performing a

⁶ Khalifa, Nouredine, Qaar, Zakaria: The crime of refraining from providing relief to the afflicted, and the responsibility arising from it (a comparative study between Islamic law and Algerian law).

⁷ Khalifa, Nouredine, Qaar, Zakaria: The crime of refraining from providing relief to the afflicted and the responsibility arising from it (a comparative study between Islamic law and Algerian law), p. 12.

⁸ Masoud, Khair: The General Theory of Crimes of Abstinence, p. 48.

⁹ Issa, Reda: The Penal System 1 (Penal Code), p. 24.

deed that is necessary to perform and has been sanctioned by Sharia or law because this definition of a negative crime also includes the meaning of refraining.

But it is clear from the previous definitions that none of them go beyond the idea of abstaining alone. Negative crime also refers to remaining silent about information that could help stop a positive crime, such as when someone knows about a crime but keeps quiet and fails to report it, which results in the completion and commission of the positive crime. He is therefore regarded as having taken part in the crime in the negative sense.

Based on the aforementioned, a thorough definition of a negative crime can be derived, which states that it is a person's refusal to perform an act that he is required to perform, such as giving testimony, or a person's silence about a positive crime whose notification would have been a reason to control and incomplete it, such as if he had knowledge that someone would steal and was silent about the crime, then the theft has already occurred.

b) *Characteristics of Negative Crime*

Positive crime and negative crime share some characteristics because both are crimes with associated conditions and punishments that are applied in accordance with their respective natures. These differences are what set each section apart from the other.

Numerous characteristics of negative crime exist, some of which may be similar to positive crime and others of which may not be. It is one of the characteristics that set a negative crime apart from others in terms of how it is identified, not because one is superior to the other.

The following are some negative crime characteristics:

Refrain or silence: The primary trait of a negative crime is the failure to carry out an order, fulfill a duty, respect a right, or report a crime even though the perpetrator was aware of its occurrence and had the ability to do so.

The inclusion of the pillars: Where the negative crime enjoys all the pillars of the crime in general, which are the material pillar, the mental pillar and the legal pillar.

Causal link: There must be a causal connection between the act of refusal and the occurrence of the outcome that causes the harm in order for the negative crime to satisfy more than just the material pillar; Accordingly, if the causal connection is disproved, the crime is not fully committed, it may not have been intentionally committed, and there was no attempt to commit it, so the perpetrator is not held accountable.¹⁰

Multiple forms: There are many different types of negative crime; some of them are only negative, while

others might combine negative and positive elements. One of the crimes that combine positive and negative behavior is the imprisonment of a person, which is a positive act, followed by the deprivation of food and liquids, which results in his death, which is a negative action. By refraining, leaving, or remaining silent without taking any positive action, it can be abstractly negative¹¹.

Given the foregoing, it is clear that some traits of negative crime coincide with those of positive crime because both types of crime share some traits, some of which are unique to negative crime. Negative crime has ambiguity as one of its traits because many people are unaware of how dangerous it can be, especially when it comes to crimes based on failure to report potential crimes. As a result, anyone who commits a negative crime is seen as taking part in the crime. Through the characteristics of negative crime, it is possible to clarify the points of agreement and differences between negative crime and positive crime, which are represented in the following points:

- The three pillars—the material pillar, the mental pillar, and the legal pillar—all support the two crimes.
- Both crimes cause harm, so each one necessitates punishment because they both involve harm.
- The criminal acts of the two crimes are different: the positive crime involves an act or a statement, whereas the negative crime involves leaving, remaining silent, or refraining from acting.¹²
- The criminal outcome of the two crimes is different; in a positive crime, there is frequently something tangible, whereas in a negative crime, there is frequently nothing tangible.

The aforementioned makes it abundantly clear that both crimes pose a threat to society and its citizens. Systems must therefore focus on both types in order to combat crime in general, spread safety and tranquility, and protect society and its citizens from the threat of both positive and negative crime.

c) *Pillars of the Negative Crime*

The negative crime includes the physical pillar, the mental pillar, and the legal pillar, whereas the positive crime does not include any of these pillars. As we previously stated, the presence of the three pillars does not change the relationship between the two types of crimes.

- The physical pillar

The material pillar is defined as: "the act or omission of an act stipulated by the law and it is a crime according to the law. It is mostly tangible and external, indicating the occurrence of the crime and then the

¹¹ Raddad, Daoud: The Theory of Negative Crime in Islamic Jurisprudence, p. 30.

¹² Previous reference, p31.

¹⁰Al-Qahtani, Fahd: Crimes of Refrain (a comparative study between Sharia and law and its applications in the Saudi judiciary), p. 158.

crime is based on it, as there is no crime without a text or a criminal incident.¹³

Whether a crime is positive or negative, the material component expresses the criminal behavior. The difference is in the manner in which the criminal behavior is initiated; in a positive crime, the criminal behavior is initiated by performing the act, whereas in a negative crime, the criminal behavior is initiated by refraining or remaining silent.

The criminal behavior, the criminal consequence, and the causal connection make up the material pillar. Both the positive crime and the negative crime are wrong, but they differ in nature; in the former, silence and abstinence constitute criminal behavior, and the latter, the occurrence of an unlawful result, which constitutes a crime. The relationship between refusal and outcome is the causal factor, and when this relationship is realized, the material pillar elements of the negative crime are also realized¹⁴.

Based on the aforementioned, it is clear that one of the pillars that must be satisfied in a negative crime is the material pillar, which is an act of abstinence that results in a result, and that result is related to the act as a causal link so that it is intentionally and deliberately done, at which point the negative crime is complete.

The negative crime, however, is not complete and may not have been intentional or premeditated if the material pillar is missing one of its three components. As a result, the penalty may not be applied.

- The mental pillar

The mental pillar is defined as: "the criminal intent that confirms the will and knowledge of the act or abstainer. To add, the criminal intent is related to the criminal behavior, the person acting or abstaining has the freedom of choice and perception."¹⁵

The mental pillar in the negative crime is represented in knowledge and will, where the person knows that his refusal violates the law, and he or she also has a will to abstain, especially since he or she has the ability to implement, but the person refrains deliberately and realizes that his refusal is a crime.

According to many legal scholars, if the mental pillar's two components, will or knowledge, are absent, then the criminal intent is not complete; however, there are some who disagree with this and believe that the will is not a requirement of criminal intent¹⁶.

However, we follow the first and accepted opinion of the elements of will and knowledge in criminal intent, as the will must be available to the person who refrains from action; if he does not have his will to abstain, he does not deserve punishment because

either he lacks full mental strength or he is forced and refrained under pressure; however, this does not mean always responding to compelling circumstances, but rather the reasons that led to his compelling circumstances.

Moreover, if we consider the need to eliminate crime, we will also eliminate fear, and if fear leads to the occurrence of negative and positive crimes, then the original will is a projection, which is not true. Therefore, the concept of the will is crucial in criminal intent, and working on the availability of safe mechanisms to protect it is one of the factors that aid in preventing and combating crime.

- The legal pillar

The legal pillar means that the act or omission constitutes a crime and is punishable by either a legal text or a regular legal text.

The legal foundation is one of the pillars of a negative crime because it is impossible to punish something for which there has never been a warning or a crime in the first place. Therefore, the rules state that a crime or punishment cannot exist without an applicable legal text¹⁷.

Therefore, it is evident that any crime, whether positive or negative, must have the three pillars of material, mental, and legal elements.

III. NEGATIVE CRIME IN THE SAUDI LAW

This chapter is devoted to illustrate the negative crime in the Saudi law by extrapolating the legal texts that referred to the negative crime, comparing with other systems through two topics.

a) *Regulations Related to Negative Crime According to the Saudi Legislature*

Due to the danger that negative crime poses to society and its constituents, the Saudi legislator has taken notice of it and clarified it. Being silent about crimes or refusing to follow a court order can cause significant harm and has no effect on reducing or stopping crime.

The negative crime is represented by crimes based on denial and other crimes based on silence in reporting crimes, which are as stated in the Saudi regulations in the criminal justice system, the legal system, the cover-up system, and other systems.

A person who refuses to carry out decisions may be held accountable and referred to court for doing so, as well as for failing to appear when required to do so and failing to testify or sign the testimony when requested to do so. These actions may constitute violations of the law and may result in the commission of a crime that falls under the category of negative crimes¹⁸.

¹³Rawabah, Farid: Lectures on Public Criminal Law, p. 69.

¹⁴Abdul Karim, Abdul Karim: The Material Element of Crime, p. 15.

¹⁵Saber, Dari, and Youssef, Toumiyat: The Moral Pillar of Crime (a comparative study between Islamic law and criminal law), p. 9.

¹⁶Masoud, Khair: The General Theory of Crimes of Abstinence, p. 99.

¹⁷Rawabah, Farid: Lectures on Public Criminal Law, p. 42.

¹⁸See Articles 32 and 97 of the Saudi Code of Criminal Procedure.

Also, refusing to submit the documents requested by the court is considered a presumption on the abstaining person and may turn into a negative crime for the court to rule based on different situations, whether it is by dropping his right to the lawsuit or imposing a fine of up to 10,000 Riyals with a final non-objectionable ruling¹⁹.

Moreover, the negative crime is also represented in one of the types of commercial cover-up crimes, which is the failure to disclose or provide the correct information approved by the law and obligating the person to do it, but he did not provide it, which cause contributing to the implementation of the positive crime of cover-up²⁰.

The Saudi legislator also referred to the negative crime in the system of combating terrorism crimes and its financing, as terrorism crimes are crimes that require a person or the state to perform an act or refrain from an act mandatory, where the first case is considered a positive crime and the second case is a negative crime²¹.

Based on the foregoing, it is clear that the Saudi legislator did not ignore negative crime and made reference to it in a number of systems, which attests to its gravity and the necessity of confronting and limiting it, just like positive crimes.

b) *Comparisons between the Saudi Law and other Laws in Passive Crime*

Through research and analysis, it was determined that other systems, particularly Arab ones, do not differ from the Saudi law when it comes to dealing with negative crime, as they all agree that refusal or silence causes harm or facilitates the commission of another positive crime.

Even though the issue is not new, it dates back to ancient times, including the Pharaonic systems of Egypt, where one of its laws in the Hammurabi system criminalized failing to report positive crimes. For example, if a person has a place and criminals meet with him without his informing the security, he will be punished, and the punishment may reach the death penalty or be proportional to the nature of the crimes they committed²².

The Egyptian penal system has considered that refraining from performing duties is a negative crime punishable by law and the penalty may reach imprisonment or removal from the job, in addition to a fine that may be doubled in the event of endangering the health and life of people²³.

The Egyptian system also explicitly acknowledged that silence about reporting crimes that a person knows and which could be reported to prevent a felony or misdemeanor that may endanger the lives of others in the event of failure to report them, and the penalty is imprisonment or a fine depending on the nature of the crimes that refrained or remained silent about reporting it²⁴.

Based on the information presented above, it is clear that the Egyptian system has unambiguously defined the meaning of silence in reporting crimes and that it is considered one of the negative crimes that contribute to the completion and occurrence of positive crimes. Therefore, the Egyptian system has the advantage in this case because it expressly stipulated silence and was not content with abstaining only in its exposure to negative crimes.

Based on the foregoing, it is evident that all systems, particularly Arab and Islamic ones, have paid attention to negative crime and either implicitly or explicitly referred to it in terms of refraining or concealment and silence.

IV. CONCLUSION

Due to the fact that crimes come in a variety of forms and divisions and all pose a threat to society and its members, dealing with them and taking action to confront them all is crucial for achieving safety and shielding society and its members from harm.

Through the current study, some categories and subcategories of crimes were defined. These are negative crimes, which consist of failing to carry out a legal obligation or keeping quiet about breaking the law and covering it up.

Some of the fundamental elements and characteristics of negative crime resemble those of positive crime, while others do not. It can be distinguished from other crimes based on its various subdivisions, whether by its nature or by the material or mental pillar.

Some systems that implicitly or explicitly referred to negative crimes were also mentioned, including the Saudi law and some other systems, including the Egyptian system.

Based on the above, the study reached a number of results and recommendations as follows:

V. RESULTS

- Because a negative crime can either be refraining from an action that is legal or failing to report a positive crime, both of which result in harm or the commission of another crime, a negative crime is no less dangerous than a positive crime; this disproves

¹⁹See Articles 36, 61 and 119 of the Saudi Evidence System.

²⁰See Article No. 3 of the Saudi Anti-Concealment Law.

²¹Consider Articles 1 and 3 of the Saudi Law on Combating Terrorism Crimes and Its Financing.

²²Al-Qahtani, Fahd: Crimes of Refrain (a comparative study between Sharia and law and its applications in the Saudi judiciary), p. 63.

²³See Articles 122, 123, and 124 of the Egyptian Penal System Law No. 58 of 1937.

²⁴Masoud, Khair: The General Theory of Crimes of Abstention, p. 47.

- the second hypothesis of the present study and establishes that it is false.
- The Saudi law made reference to the negative crime in a number of its laws, but most of these references were implicit rather than explicit, in contrast to some other systems, such as the Egyptian system, which made explicit references to the negative crime in a number of its articles. This effectively refutes the first assumption, which postulates that the Saudi legal system has a weakness in how it addresses negative crime. However, it does not negate the fact that there is still room for improvement.
 - Although negative crime is not a result of contemporary man-made systems, it has existed for centuries and had an impact on Islamic law as well as ancient Egyptian pharaonic systems like the Hammurabi Code.
 - According to the majority opinion, both positive and negative crimes are based on the same three pillars: the material pillar, the mental pillar, and the legal pillar.

VI. RECOMMENDATIONS

- Regulations, including the Saudi law, need to explicitly stipulate the negative crime and identify the idea of silence about reporting that it is a crime as well, where silence leads to the completion or occurrence of positive crimes.
- Since many people believe that negative crimes do not qualify as crimes because they are frequently carried out by intangible acts or by positive actions that a person performs in place of positive crimes, there is a need to increase awareness of the dangers of crimes in general and negative crimes in particular.

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