2528-9705

*Örgütsel Davranış Araştırmaları Dergisi*
Journal Of Organizational Behavior Research
Cilt / Vol.: 3, Sayı / Is.: S2, Yıl/Year: 2018, Kod/ID: 81S2192

# NEW PENOLOGY IN IRANIAN AND AMERICAN CRIMINAL SYSTEMS; CHALLENGES AND SOLUTIONS

Ali DAVOUDI SALESTANI[1], Seyyed Hossein HASHEMI[2*], Shahrdad DARABI[1]

[1] Department of Law, Qom Branch, Islamic Azad University, Qom, Iran.
[2] Faculty of Law, University of Mofid, Qom, Iran.

***Corresponding Author:**
**Email:** shhashemi@gmail.com

*ABSTRACT*

*The present study evaluates and reasons the method of adolescents-specific trial authenticated by Feeley and Simon, the founders of modern school of criminology, under the title of "actuarial justice". In this regard, the present study's investigations indicated that the orientations of the tradition-based criminal policies in trying the adolescents, like imposition of punishment, are replaced by purposive and efficient trials. The same way that mathematical models are used in insurance industry for individuals to make classifications so as to ease the processing and assessment of insuring risks, they are also used in analyzing and classifying files of adolescents exposed to accusation or conviction. Part of the present study's results are suggestive of the reality that benefit-cost management, as an important pattern of modern criminology, has been somewhat taken into account by Iran's and US's criminal justice systems but with different qualities as well as different legislative and executive methods.*

***Keywords***: *Modern Criminology, Actuarial Justice, Adolescents' Trial, Iran Criminal Justice System, US Criminal Justice System.*

## INTRODUCTION

Considering the adolescents-specific trial, has brought about tangible changes in the pattern remained form the traditional criminal trials. In essence, the change has been defined by Malcom Feeley and Jonathan Simon under the title of modern criminology, in 1992, as a collection of adjusted contemporary policies with the objective of efficient and controlled cares disregarding the subjects of such common punishments as rehabilitation and incarceration (Feeley and Simon, 1992: 147). In a next step, they redefined and expanded their main observations and called it actuarial trial and offered their own theory following an evolutionary trend in criminal trial (Feeley and Simon, 1992: 152). They elaborated actuarial justice as a set of techniques and objectives without any emphasis on the criminal. In other words, this type of trial is either actuarial or estimated. This modern pattern puts forth techniques of identifying; classifying and managing groups consisted of jacks-of-all trades based on the various levels of their dangerousness. The theory assumes crime as an inevitable reality and accepts it as an ordinary deviation.

Simon and Feeley believe that "modern criminology is not a fixed identity or nature rather it is a type of knowledge and power evolution trend in the area of criminal law and criminology. Although modern criminology adopts an impartial stance towards the special goals of criminal trial, it is quite inclined towards rendering all the issues related to trial system that would be

Geliş tarihi/Recieved: 10.11.2017 – Kabul tarihi/Accepted: 03.02.2018 – Yayın tarihi/Published: 21.08.2018

eventually followed by challenges stemming from natural outcomes of punishment (Feeley and Simon, 1995: 172).

In a nutshell, the actuarial justice offers theoretical and practical patterns of criminal trial wherein it seeks taking advantage of and prescribing techniques that are somehow replaced in the current files' trials as well as convicts' surveillance for such traditional goals as rehabilitation, punishment, deterrence, deprivation of responsibilities and concentration on the process of crime occurrence or its controlling methods. Feeley and Simon are not the only ones intending to change the traditional patterns of criminal trial rather there are other researchers like Garland who have underlined such a change. As believed by this scientist, "requiring the establishment of order, law and security for all of the citizens in an effective and productive way has been replaced for the requirements of trying the complaints and decisive enforcing of punishment in the today's American community" (Garland, 2003: 285). It seems that the model is unique in terms of its specific characteristics and criteria and takes the extent to which individuals are considered dangerous to the security of the society as its primary criterion in cost-benefit management. Although justice is apparently not considered necessary and preferred in its attainment of its only goal, i.e. offering cost-effective solutions, actuarial justice holds that the justice systems should be efficient so that they can provide everyone with an excuse and reason in regard of the present social control mechanisms.

In supporting the modern criminology, Garland points out that the executive indices are currently more inclined to report the performance rather than results. The things done by an organization with its spending of time and cost exceeds what it obtains. Due to the same reason, techniques of actuarial justice are not merely means of criminal policies' implementation rather their real and primary goal is the productivity and effectiveness of these policies (Garland, 2003: 70).

The question raised herein is that has the advancement of actuarial justice been considered in Iran's and the US criminal justice system in regard of adults and adolescents equally? In case of the positive response, how much have the modern criminology teachings been effective in the area of adolescent delinquencies? The present investigations are reflective of the idea that the subject "juvenile delinquency" has not been evaluated in the area of internal researches with a concentration on the modern criminology teachings. In this article, meanwhile succinctly presenting the basic themes and criteria of modern criminology that is more than anything else known as the criminal version of actuarial justice, the foresaid teachings are analyzed and evaluated in the criminal justice systems of the US and Islamic Republic of Iran with the objective of identifying its realm in the adolescents' trial process.

### *1. Adolescents' Trial in the US Criminal Justice System on Modern Criminology Ground:*

In the US criminal justice system, territorial investigation of the adolescents' judicial trial under the status quo of the affairs will be seminally put forth along with the way the trial leads to the goals and strategies related to actuarial or estimated justice. At first, a transient look is paid to the characteristics of adolescents-specific trial in the US legal system so as to obtain an outlook of the reason why a separate trial system is required for the adolescents. Then, the evolutions of the current policies of the US will be examined in regard of adolescents' trial and also in respect to the way that these policies can be influenced by the goals and methods ascribable to the actuarial justice. In the end, the changes of adolescents-specific trials in which modern criminological teachings can be expected to objectively play dominant roles will be evaluated.

### 1.1. Political Movements Regarding Adolescent-Specific Trials in the US:

Some aspects of adolescent-specific trials appeared generally at the same time with the political reform movements at about 1900, 1960 and 1990. The first movement led to the consideration of the best interests of the adolescents in a separate system with the individualization of the trial files. The second movement kept the first movement's protocol, i.e. safeguarding of the best interests for the children, but blended it with trial-based surveillance strategies. The third movement made more emphasis on punishment and public security considerations. These movements resulted in the creation of a political space wherein the actuarial justice could have the opportunity to be developed and emerge in the fourth round of reform movement.

Adolescent-specific trial was firstly developed in 20th century at which time the general discourse on the children was pivoting about the correction and rehabilitation. The reformist policy-makers created a separate system specific to the young delinquents that aimed at setting the ground for the correction and education of this outlaw class as well as preventing the other adolescents from deviations leading to the breaking of the law. These reforms were consistent with England's legal doctrine (parens patriae[1]) based on which the government was allowed to play a role parallel to that of the parents for taking any action deemed necessary in respect to the adolescents. The doctrine also found its way into the jurisdiction of the civil courts of adolescents (Bernard, 1999: 132).

With this plan, the traditional adolescent trial system was found in need of flexibility for commencing the codification of a law on the safeguarding of the best interests for the minors. The plan was considered necessary for the correction and treatment of every individual violator or criminal. From the beginning, the adolescents were deprived of the trial rights granted to the adults. The justifications offered for the denial of such rights are as explained beneath:

Judge Julian was of the belief that the criminal suing of the adolescents is a sort of violence against childhood and that the regulations are inefficient in regard of the incapacitated individuals and against the perpetrated crimes and offences. The adolescent-specific court intends to neither punish so intensively nor severely mitigate the punishment rather it is in search of subliming and not downgrading the adolescents' personality or even revitalizing their personality hence not seeking for adding to the number of criminals but to foster a respect-deserving citizen (Mack, 1999: 107).

Since mid-1970s, a retributivism approach is encountered in the US system. A legal proverb became prevalent amongst the retributivists who stated that "if an individual's age necessitates perpetrating crime, the same holds for sustaining punishment". In other words, if a person has reached an age at which s/he can perpetrate a crime, so, for the same reason, s/he has to sustain punishment. This axiom became the primary goal of the American legislators and it meant that the adolescents should remain accountable for the crimes they commit and that the qualified institutions and adolescents' courts should concomitantly act in accordance to such a goal (1994 amendment to Washington's state law that was enacted in 1976; chap.13, article 40).

The state regulations related to adolescents determine the qualifications of the adolescents-specific courts based on their crime perpetration and there is a prerequisite alleviating sympathetic reactions to the crimes committed by the adolescents. Judicial decisions, legislation

[1] This maxim is based on the governing body's right to interfere in the punishment of children with no parents or bad parents.

reforms and executive changes have downgraded the juvenile courts from the position of a social welfare and adolescents' rehabilitative organization to a second-degree criminal court specific to adolescents (Feld, 1999: 225).

It seems that the American society considers the crimes committed by the adolescents as a problem and the criminal justice policies are criticized in whole or in parts for such reasons as promotion of criminal populism and the role of media in corroborating it (Walker, 1994: 115).

### *1.2. Current Changes of the US Criminal Policies regarding Adolescent-Specific Trial:*

In this section, a number of the statuses and changes in the important criminal policies of the US have been investigated in regard of the adolescents' trial because they are envisaged to be contributive to the elaboration of the actuarial justice evolutionary trend in this area in the present study. The extents of talents for borrowing the modern criminological teachings, that are predominantly concentrated on cost-benefit rather than on a special goal in respect to the adolescents such as rehabilitation or punishment, are rated based on the effect of the existent actuarial system in the approaches adopted by various systems towards the adolescents.

#### *1.2.1. Pre-Trial Apprehension or Deterrent Custody and Public Security:*

In 1996, about 316368 adolescents were detained in the US before having their files' destiny clarified and this number of detainees did not include the set of adolescents whose apprehension was either for serving their legal conviction period for the crimes they had done and/or resulting from the other noncriminal regulations (NCJJ/OJJDP, 1998: 14)[2]. Thus, deterrent apprehension is a large factor in the emergence of modern criminology as well as enforceable in the adolescents' trial. One stage of detaining the juvenile delinquents parallel to the protection of the society pertains to the keeping of the set of the criminals in emphasizing the apprehension effectiveness and not its elongation. The primary goal of deterrent apprehension, to wit the very protection of the social security, was confirmed as a criminal policy by the US Supreme Court in 1994. Based on this ordinance, the judges were allowed to detain the adolescents who are "at risk" of perpetrating crimes in future and it is based on the judge's mental predictions that they would not perpetrate crimes anymore if they were going to be released. Thus, under such circumstances and following the order of the country's Supreme Court, the adolescents are effectively realized as dangerous convicts unless their innocence is proved (Altschuer, 1999: 11).

With this description, the objective of actuarial justice is well clear in its effective controlling of the low classes, especially the poor young minorities who sustain the largest numbers of harm by the exertion of discrimination in apprehension policies. While the modern criminology pursues the screening of this group of adolescents and releasing of a considerable number of them, it seems that the situation would be exacerbated with the provisioning of more opportunities for making security apprehensions at the same time with the increasingly higher rate of growth in the number of the private penitentiaries and access to governmental budgets for constructing security domiciles.

#### *1.2.2. Growth in the Numbers of the Private Sector's Apprehension Houses and Prisons in the US:*

[2] The abovementioned statistic has been reflected in the common report by the "National Center for Juvenile Justice" (NCJJ) and "Office of Juvenile Justice and Delinquency Prevention" (OJJDP) in Washington's Justice Organization.

Service privatization can be seen in those American regions wherein the adolescent-specific trial system concomitantly stems from the objectives and strategies of actuarial justice. The Federal Government's orders to the states parallel to the separation of adolescents from adults' trials, freeing the adolescents from the prisons and non-institutionalized nature of the criminals' status in adolescents' trial have all directed the juvenile courts' consultants towards coming up with more creativity in their exclusive methods. Some American criminologists believe that these orders, despite their apparent concord with modern criminological teachings, would surely result in failure for the existence of solutions bypassing the aforementioned orders, including the non-classified nature of the young criminals' statuses due to partial defectiveness of the regulations or issuance of writs of insensible surveillance writs resulting from the violation of the courts' orders all of which become permits for arresting the adolescents (Gillespie and Norman, 2013: 32).

Another method of bypassing the orders includes ambiguities in regard of the adolescents' custody for avoiding the vivid enforcement of apprehension in a formal and general manner and taking advantage of the same supervised domiciles or private apprehension houses with the explanation being that the courts issue sentences either personally or via negotiating and reaching agreement with the parents who voluntarily and arbitrarily declare their agreement for their children's custody in private security domiciles and resolution of the case. Such a creativity of the courts that diverges from the primary goals of the actuarial justice has led to the increasingly larger number of adolescents detained in private institutions as well as remarkable growth in the numbers of the nongovernmental institutions specific for admitting juvenile delinquents or adolescents accused of being dangerous (Lemer, 2009: 125).

A study has demonstrated that custody in private domiciles of correction and education as an alternative to the formal governmental prisons has been most often ordered for the white adolescents whereas the verdicts of apprehension in general penitentiaries have been predominantly issued for minority (black) adolescents even if the crimes have been similar such as drug abuse (Kempf-Leonard, 2007: 75).

Disregarding the existence of discrimination in introducing criminal and/or dangerous adolescents for being guided to the state or private prisons, we believe that the current judicial procedure in the US is essentially inconsistent with the main philosophy of modern criminology teachings, to wit cost-benefit management. Insistence on the use of apprehension, including state or private, for the adolescents is open to criticism under any condition.

Nowadays, in the majority of the American states, the juvenile courts are inclined towards using private custody as a preferred method for determining the files' statuses. There are various and many motivations for the exertion of such custodies, including various perceptions of the concept "dangerous" that are most often made about the minority classes. Another reason for the speedy pace of apprehension institutions' privatization is that the majority of the state governments are incapable of providing supervision and adopting the surveillance strategies and this has made the private institutions choose the option "misuse of the federal government's orders" indicating the prohibition of the state governments for making security-driven arrests in regard of the juvenile delinquents and victims of crimes. This reasoning complies with Gilbert's perspective that holds "the notions supporting the private apprehension houses and prisons are rooted in the personal interests of the private correction and instruction institutions

more than being originated from the public interests or support of the juvenile delinquents (Gilbert, 2012: 71).

Besides the aforesaid problems implying the discrepancies in ideas and motivations, the private institutions, whether working for-profit or non-for-profit, are a sort of business hence they are to be considered naturally bound to the actuarial justice productivity principles for the fact that their performance is based on managerial models. One researcher in California University has spoken in his work of the way the private institutions bargain over the supply of their budgets with the state governments for the fact that they have found their performance success guaranteed by the governmental systems of the adolescents' trials in line with taking over the supervision and surveillance of the adolescents and this is something like Jeremy Bentham's principle of utility. Profit-oriented private institutions make efforts through profitable apprehension of the adolescents under their supervision and surveillance to increase their outputs and they only claim for the actualization of the cost-effectiveness in the guise of the public and non-for-profit institutions (Cohen, 2006: 88).

It seems according to the data provided by the American researchers that the most common aspects of management, commerce and business are seemingly charitable in the today's US but they are indeed various measures taken in line with privatization aiming at transforming functions of criminal justice to economic concepts in a new form of restorative justice.

### *1.2.3. Services based on Social Surveillance:*

Adolescent-specific courts as centralized authorities dealing with a vast spectrum of adolescents are unique institutions. This court is distinct from the other social services though they need to be adjusted in some of their parts. The prior reforms of the juvenile courts encouraged them to use the minimal alternative penalties under any circumstances in adolescents' convictions. These measures were founded based on the traditional goals of the traditional governance intervention maxim in proctoring and protecting the vulnerable adolescents and guaranteed by federal government's enactments[3] for de-adjudication of the criminals and victims that had been subjected to abuse or default in such a way that the specialization of the services based on social partnership underwent an extraordinary growth since 2006. The real nature of the social service programs and the goals set for actualizing them are largely different. The amendment, i.e. the social service program's moderation, is exerted for the series of programs related to the courts' orders based on which the adolescents are required to regularly attend school or they are restricted in their comings and goings using electronic surveillance instruments under the general title of house custody. In their studies of over 200 correction and treatment programs in some states of the US, Lipsey and Wilson reported that the most effective programs based on social partnership include individual counselling indicators, skill training in groups, other behavior therapy programs and a combination of several other services (Lipsey and Wilson, 2014: 340).

It is not surprising to see the programs with longer surveillance periods, higher quality services, well-trained staff, precisely planned and supervised treatment cycles and proportionating the addresses and the purposive programs are followed by higher levels of success.

[3] Article 8(223)a of the law on the adolescent-specific courts and delinquency deterrence, amended version, and Paragraph E of the program for the American government's challenging activities regarding the counselling research institutions and gender-based communications (2005) with the subject of selecting an appropriate reaction by the adolescent-specific courts in respect to the society's cultural diversity.

American researchers figured out that the recidivism amongst the dangerous juvenile delinquents, especially cruel and habitual criminals, becomes increasingly lower based on social service programs than based on governmental organizations' programs and prisons. They also found out that the less-organized and reaction-driven programs devoid the instruction element and that the sudden arrests are accompanied by minimal effects and that they have sometimes caused dangerous adolescents to resume crime perpetration (Montgomery et al, 2015: 125).

### *1.2.4. Policies of Juvenile Delinquents' Evaluation and Classification in the US:*

The means of objective evaluation and policies of adolescents' classification in the American criminal justice system is centered on the actuarial justice and these are tools revolving about the process of trying the lawsuits in the adolescents' trial system.

Such a type of classification in adolescents' trial has been intensively laid on the foundation of the extent of danger with which the society is faced for the reason that the emphasis on the goals of public security protection is more accentuated than paying attention to the goals of traditional trial that was directed at the adolescents' musts. Adolescents who are considered more exposed to the risk of crime perpetration are most often kept in security environments whereas the adolescents with lower risks of crime perpetration usually receive social services with an emphasis on house-based electronic surveillance plans. The absolute majority of the various kinds of crime perpetration risks' evaluation are determined using recognized scales related to the actuarial predictions in the area of adolescents' trial.

All in all, although the modern criminological teachings are infiltrating as a novel approach into the verdict issuance process of the juvenile courts, there are evidences indicating that this much of infiltration is still trivial and has not reached its expected pervasive objectivity. In 2007, youth commission of Texas started a survey in the entire US and it was made clear in comparison to the 33% of the states exercising a mixed sentencing of clear and unclear penalties that only 37% of the judicial domains apply an amalgamation of actuarial and traditional (incarceration) mix in trying adolescents. However, only about 17% of the judicial domains in the US were found completely discarding the correction and instruction of adolescents based on traditional interventionist scales and exclusively relying on the issuance of sentences based on modern criminological teachings and actuarial justice patterns with approaches towards surveillance strategies as incarceration alternatives (Texas Youth Commission, 2007:23).

In line with cost-benefit management, some state governments (as an example Arizona, Idaho, Illinois and Oregon) require parents to pay trial costs and surveillance and supervision expenditures for their adolescents. The other state governments, as well, impose costs on the parents for the custody or apprehension of their children-in Colorado, these costs top to 10000 dollars. In the end, it has to be pointed out that an increasingly large number of the judicial domains (like Arizona, Arkansas, Colorado, Washington DC, Iowa, Kansas, Utah and Virginia) permit the courts sentence parents to participation in such programs as social partnership services and parent-specific classes and the employers are ordered to grant fathers and mothers leave of absence for enforcing the courts' orders (President's Commission on Law, 2009: 9).

Of course, the study has been carried out one decade ago and there are no new statistics available and the actuarial justice might have progressed in this period. In fact, such an infiltration makes it more likely that the juvenile courts' accountability and transparency in sentence issuance might have been accompanied by a hot political pressure during this decade and which may

have also turned them into instruments for reproaching judges for their dodging of responsibilities in enforcing the political charters.

### 2. Adolescents' Trial in Iran's Criminal Justice System in Modern Criminology Grounds:

Criminal justice is an outcome of the interaction between various economic, political, cultural, and social areas with their subordinate relevant knowledge fields. Thus, adolescents' criminal justice is not the only merely philosophical and theoretical concept rather it has been the quality of reacting to the juvenile delinquents according to various political, economic, cultural and social approaches that has led to the creation of different patterns or varieties thereof. This situation can be investigated and evaluated in both national level and international realm (Gholami, 2014: 8).

Undoubtedly, various and numerous factors are effective in the variegation of the responses to the juvenile delinquents and the present study is not going to explore their roles and quotients. The essential point here is that the juvenile delinquents can be examined in certain patterns or types according to various kinds of reactions to them. Classification of the patterns of responding to the delinquency of this class also enables the exact evaluation of their effects and results thereby to investigate the model or pattern used in the criminal policy-making system so that the results and outcomes of it can be dealt with. There is no doubt that the emergence and advent of the different patterns of responding to the juvenile delinquency in various political, economic and social periods of a given society, disregarding the differences in the nature, indicators and elements of delinquency in the aforesaid periods, is influenced by the same pervasive political, economic and other conditions.

The study of the current version of the Islamic penal code of law indicates that the Iranian legislator has applied various patterns in enforcing the penal policy in respect to the juvenile delinquency. The difference originates from the type of the perpetrated crime that is per se stemming from the classification of the punishments based on canonical teachings. The investigation of the patterns existent in the internal law is reflective of responding to the juvenile delinquencies and matching it with the most important of the modern criminological teachings, to wit cost-benefit management, which would illuminate the extent to which Iran's criminal justice system conforms in regard of juvenile delinquents' trial to the aforementioned patterns. In line with this, a default pattern, i.e. penal responding and risk management, of the juvenile delinquency will be investigated in the Islamic penal code of law, passed in 2014. Then, the realm of the modern criminological teachings will be taken into consideration in respect to code of penal procedures.

#### 2.1. The Approach of Islamic Penal Code of Law, passed in 2014, towards Juvenile Delinquency in Grounds of Modern Criminological Teachings:

The criminal justice reaction of Iran's legislative system to juvenile delinquency can be evaluated and studied of its pattern according to the punishment chapters inserted in the Islamic penal code of law, to wit crimes deserving Hadd punishment, retaliation, atonement and Ta'azir. It seems that the approach of Iran's penal system towards juvenile delinquency can be evaluated and analyzed based on two substantial types, i.e. criminal justice pattern and risk management pattern, in modern criminology grounds.

##### 2.1.1. Pattern of Penal Responding to Juvenile Delinquency in Islamic Penal Code of Law:

The existence of a material action recognized as crime by the law does not suffice the verification of the criminality of the perpetrator rather the person has to be found mentally willing to commit the crime (general crimes) or, in doing an action, s/he should be found making a mistake without it being determinatively intended so that s/he can be realized as deserving criminal liability. The age of criminal liability on our country's law that is drawn on Imamiyyeh Jurisprudence (disregarding the existing discrepancies) is puberty and, as specified in article 147 of the Islamic penal code of law, passed in 2014, criminal liability age is full 9 and 15 years of age for girls and boys, respectively, in such a way that the individuals are not to be considered criminally liable before reaching the aforementioned ages (based on gender) and enforcement of punishment against them would be canonically impermissible due to their not being realized legally responsible.

Although such a scale was authenticated in the Islamic penal code of law, passed in 1992, it was essentially flawed since it made no difference in terms of exertion and enforcement of punishment between the individuals who had just reached puberty and the adults who were more perfect in wisdom and intellect. That is because the aforementioned age in the abovementioned law was not considered as the age of criminal liability initiation but the age of total criminal liability and the individuals reaching the aforementioned ages were to be completely considered criminally liable.

Iran's legislative system has adopted a dual approach in the Islamic penal code of law, passed in 2014, based on three scales, namely age, gender and crime type; the first two scales are per se dependent on canonical maturity. In a short expression, the previous approach, i.e. total criminal liability of the mature individuals, adolescents included, has been underlined in crimes deserving Hadd, retaliation and atonement and, apparently, except for some exceptional crimes, it has not found any chance for moderation in regard of these crimes due to the canonical texts based on which it has been concluded; but, in cases of Ta'azir punishment, it, disregarding the age and gender, has found an opportunity to willingly or unwillingly take into account the philosophy of cost-benefit management philosophy as the main pillar of the modern criminological teachings.

Therefore, based on the abovementioned analysis, we are essentially faced with penal responding pattern in Iran's criminal justice system in regard of the crimes committed by juvenile delinquents deserving Hadd, retaliation and atonement based on an age differentiation. As a specimen, if a young 16-year-old girl or boy commits the crime of drinking alcoholic drinks, s/he would deserve being laced for 80 whips since the perpetrated crime is amongst the specified canonical limits and the perpetrator's age indicates his or her sexual maturity as ruled according to an opposite of article 146's concept and based on article 265. Thus, the young person would not be considered different in terms of penalty from a 30-year-old person. Such retributivism seems to be more intense about the girls. As a specimen, if a 10-year-old girl, who is not considered as an adolescent from the perspective of the mores and customs of the today's society, commits the crime of lesbianism, she, in case of the crime being justified and in the first place, deserves being laced a hundred whips based on article 147 and 238 of the Islamic penal code of law. The abovementioned examples indicate that the specified legal penalties are disproportionate to the physical and age statuses of the 10-year-old girl and 16-year-old boy. Moreover, the very detrimental results of imposing such penalties on adolescents some of whom are to be envisioned as children from the perspective of the realities of the modern community

even if having reached sexual maturity are irreparable. The existential philosophy of the criminal justice systems lies in correction and deterrence so that an optimum society could be attained and not turning an individual below 18 to a symbol of crime and delineation of a vague future on his or her path into adulthood; this is what considered in growth-oriented criminology or theories related to primary and secondary deviations by the criminologists. Such retributivism towards non-adults, perpetrating Hadd-deserving crimes, retaliation and atonement, some of whom are faced with death penalty, as well, such as in first degree murder or sodomy, forced the legislator be in search of a solution for moderating the penalties for such criminals, as well. In article 91 of the aforesaid law that seems to have been laid on the foundation of jurisprudential bases, it is predicted that the exertion of such severe penalties as Hadd and retaliation is cancelled in case that the perpetrator is found below 18 years of age and having not perceived the forbiddance of the crime deserving Hadd and retaliation and/or if s/he is doubted to have reached the required growth and perfection. However, the penal responding pattern of the moderated type still holds. Priority analogy or cause rectification is amongst the intellectual proofs related to the necessity of verifying growth in criminal liability of the children and adolescents as one of the lessons learnt from the aforementioned article 91. It means that the criminal issues are more important than financial affairs considering the nature and conditions and related verdicts so, superiorly or at least based on cause rectification, the very criteria allowing protection of insane persons in financial affairs enables protection of them in criminal affairs (Hashemi, 2015: 72).

Penal responding to Ta'azir-deserving crimes perpetrated by the adolescents is also clearly visible in the Islamic penal code of law. But, it can be understood in a study of article 89 of the Islamic penal code of law that the Iranian legislator has adopted the differential criminal policy regarding the adolescents perpetrating crimes deserving Ta'azir punishment. Therefore, if, for instance, a 17-year-old adolescent commits a Ta'azir-deserving robbery, s/he would be excluded from the special punishments specified for robbers in article 652 on in Ta'azirat section and one of the penalties specified in the five paragraphs of the abovementioned article can be enforced exclusively and case-specifically. Apprehension in the centers of correction and instruction for specified periods of time, pecuniary cash with certain amounts and gratuitous public services in adherence to labor law and for certain times are amongst the strategies determined by the legislator under the title of punishment according to the beginning part of the aforesaid article. Thus, it can be expected that although the penal responding pattern is still being exercised in regard of Ta'azir-deserving crimes perpetrated by 15 to 18-year-old adolescents, the punishment-age proportion and avoidance of costly imprisonments based on cost-benefit management scale, as the important pillar of modern criminology, has been taken into consideration in the current system of Iran's criminal justice.

### *2.1.2. Risk Management Pattern and Decriminalization in regard of Juvenile Delinquency in Islamic Penal Code of Law:*

Based on criminological findings, one of the most important pre-factors in crime persistence and intensification is the criminal experience during childhood and adolescence in such a way that the earlier the criminal experience the higher the likelihood of criminality persistence and leaving it behind to enter crime perpetration in adulthood (Savignac, 2013: 171).

In regard of adolescents below the age of 15 who have committed Ta'azir-deserving crimes, our legislator has taken advantage of non-punitive strategies in lieu of punishment and considers them in terms of tolerance to the community reaction as children who are not below 9 years of age. In article 88 of the Islamic penal code of law, the legislator, without entangling himself with the gender challenges, provides the judges of juvenile courts with decisions that are not any more penal. In their mildest degrees, these decisions incorporate submission of the adolescents to their parents or the other of their legal guardians along with requiring their commitment to correct and instruct them and taking care of them in observing their manners. The strictest decisions, as well, encompass apprehension of the adolescents up to a year in correction and instruction centers. The notable point is that keeping the adolescents in correction and instruction centers as specified in the abovementioned article 88 is deemed as a decision by the legislator who subsequently does not recount it as penalty whereas the aforesaid guarantee regarding the adolescents above 15 years of age as ruled in the beginning of article 89 of the Islamic penal code of law has been recounted as a sort of penalty for its being accompanied by the expression "punishment". Disregarding the penal or non-penal aspect of the regulations indicating reaction to adolescents' criminal behavior, the courts can postpone verdict issuance or punishment enforcement regarding the entire Ta'azir-deserving crimes perpetrated by adolescents based on authorities assigned to them in article 94 of the discussed law. Furthermore, based on article 95 of the foresaid law, the children and adolescents' criminal convictions are devoid of any criminal effect. Of course, the legislator holds a silent position regarding the multiplicity of the crimes perpetrated by adolescents and it seems that there has been some sort of compromise at work.

### *2.2. The Approach of the Criminal Procedure Law towards Adolescents' Trial in Grounds of Modern Criminological Teachings:*

It can be asserted that, in Iran's prior judicial system, the court trying the juvenile delinquencies dealt with the investigation of crimes by this age group not as a specialized court but as a division of the general courts. But, the criminal procedure law, passed in 2014, has predicted it in its article 149 along with the other courts in adherence to the international principles and standards regarding the necessity of establishing special courts featuring independent inherent qualification and with adolescents and children-specific trial procedures and considers it as a specialized division of general and criminal courts or, better said, a specialized court independent from the other courts. The following discussion deals with the issue.

To try the adolescents' crimes, the mere formation of specialized courts is not sufficient rather the judges of these courts, as well, should be special persons the same way that the public prosecutors are not ordinary judges and, due to the same reason, special conditions are considered for the judges in these public prosecutor's offices. Considering the fact that the judge is the primary personality in the adolescents' courts, encouraging of the well-trained and expert individuals for accepting the judgment position in the juvenile courts is very valuable. Juvenile court judge is considered as an active element of the judicial system and he can make certain decisions alone or as the head of the court (Zakavi, 2017: 8).

Nowadays, the adolescents' lawsuits have become very complicated and the children and adolescents' violating behaviors have also become very diverse along with social and economic changes and alterations and the rates of escaping the house and school, narcotics and psychotropic drugs abuse, prostitution, various forms of robbery and bullying and cruel crimes

have also been increased amongst the adolescents and the juvenile court judges play considerable roles in offering a solution for the trial problems of the adolescents and the success of these courts depends on the legal knowledge, social perspective and personality of the judge (Zera'at, 2016: 148).

In line with this, article 409 of the criminal procedure has stipulated regarding the conditions of the juvenile court judges and the style of their appointment that the judges of juvenile courts and public prosecutor offices should be elected by the head of the judicature from amongst the individuals who at least have five-year history of judicial service via verifying their qualifications for this position based on such considerations as their age and other aspects like marital status, passing of instructional courses and preferentially being fathers of children.

The most distinct aspect stemming from modern criminological teachings in the criminal procedure is adoption of decision at the time of considering a case of juvenile delinquency, i.e. issuing criminal writ of evidence gathering. It seems that the law is laid on the foundation of the harmlessness of the adolescents and it is based on this same foundation that not only it is forbidden to detain the adolescents below 15 years of age but also it is impermissible to ask for a guarantor or mortgage as ruled by article 287 of the criminal procedure. It can be inferred from the aforementioned article's expression that not only issuance of temporary arrest orders in regard of adolescents above the 15 is forbidden but also it is seminally impossible to issue orders for keeping them in correction and instruction centers. In other words, only in case that suretyship or mortgage writs are issued for adolescents above 15 years of age and they cannot afford it, orders are issued for keeping them in correction centers. Thus deterrent apprehensions exercised in the American judicial and police system in respect to the juvenile delinquents are missing from the Iran's juvenile trial system though, in Iran's laws, the detention of the adolescents in the form of house custody has been ruled in the recent part of note 2 to article 89 of the Islamic penal code of law as an alternative for detention in correction and instruction centers. However, it seems that the required legal mandate for supervision over such custody has been left unattended by the legislator.

## CONCLUSION:

Based on the aforementioned explanations, the following results have been pointed out by the researchers focusing on modern criminological teachings:

1) More than being in pursuit of correcting the juvenile delinquents, modern criminology seeks for finding methods the implementation of which is costlier to the society than the harm caused by the perpetrated crimes to the security of the society; on the contrary, it has adopted a strict approach based on keeping the juvenile delinquents considered as constant threats to the society and its security in prison-like structures and/or away from the social spaces. In this regard, such measures as house custody with remote surveillance and community-driven partnership with superiority of parents and guardians' supervision over adolescents have been placed atop of such a stream's agenda in respect to such considerations as cost-effectiveness.
2) In articles 88 and 89 of the Islamic penal code of law, passed in 2014, the legislator found the chance for applying certain teachings of modern criminology only in Ta'azir-deserving punishments in terms of paying attention to the quality of crime perpetration and gradation principle. As for certain age groups, it takes advantage of a series of strategic decisions in

lieu of punishment. Considering the fact that the crimes perpetrated by adolescents, as compared to those committed by adults, do not cause prevalent dangers to the society's security, the legislator has considered specific types of punishment. But, in regard of the Hadd punishments and retaliation, the criterion is still the full age of the criminal liability meaning that maturity has been underlined and it is only in cases of lack of perception and growth that there is provided a way for not sentencing the adult-specific punishments and resorting to adolescent-specific punishments in article 91 of the aforementioned law.

3) The major birthplace of modern criminology is the US and the main axis of this stream's mindset is cost-benefit management. However, the problem that the today's American society of criminal justice is faced with is the corroboration of a retributivist approach based on modern neoclassic thoughts that is actively striving with the slogan of "the necessity of practicing modern criminological teachings in various parts, including police and judges' levels; at the side of the absence of certain typical and legal scales and the vast authorities of the police, the approach has provided for consideration of a great many of the juvenile delinquencies as a threat to the society due to the exercising of personal tastes and scales as a result of which the retributivism aspect and even deterrent interventions like preventive detentions prevail the decriminalization aspect while these two aspects are in fact two faces of a coin coined with the title of modern criminology.

It seems that modern criminology, in its general description and per se, features many advantages for supporting the society's security and classification of the criminals as adolescents. Thus, considering the challenges proposed herein, the researcher suggests the stipulation of more precise and more detailed scales for preventing the exercising of the police and judges' mental cliché as a first step and it is evident that these scales should be rendered vernacular and legislated in every legislative system based on the macro- and micro-level cultures existing in the society.

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