



THE UPS AND DOWNS OF A DIFFERENTIAL JUVENILE JUSTICE SYSTEM IN ISLAMIC REPUBLIC OF IRAN

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ABSTRACT

The current research seeks to study the criminal procedural model for children and young people in the legal system of Iran. Based on the results of the research, the recent legislative alterations in Iran have led to the formation of a differential criminal procedural model in the related field. This differential model, in line with the teachings of children's rights, theories of criminology and global standards of legal procedures for children and young people, has paved the way to: a) form specific institutes for the consideration of children and young people's offences, b) have special agents find jobs in such institutes and c) determine a special legal procedure; all of which differ from the ones used for adults. According to the aforementioned legal alterations, it could be stated that the criminal justice for children and young people in the legal system of Iran has moved towards an educational-welfare model, the main goal of which is not punishment, but to support children and young people who have violated the law, correct and rehabilitate them, and help them secure their higher interests.

Keywords: Juvenile Justice System, welfare model, differential legal procedure, Rehabilitation, child's higher interests

INTRODUCTION

Children and young peoples' innate qualities that make them different from adults have affected the (criminal and non-criminal) legislation used for them as well. These distinctions have also directly affected the criminal procedure arena, providing the background for a differential model of criminal procedure for children and young people. The model has gradually entered international documents so that it has started to become universal as a standard model (Goldoust Jouybari et al., 2004, p. 260). Thus, in most of the world's criminal justice systems, there are traces of the aforementioned differential procedural model. The model has a supportive and educational nature (Naji Zavare, 2015, p. 17), and the philosophy behind it is to provide *higher interests of child*, i.e. the correction and education of children violating the law (Javanmard, 2014, p. 42). In this regard, the Iranian criminal justice system is not an exception either.

The differential approach to the criminal justice for children and young people has an old history in the Iranian legal system¹ as the creation of a differential legal regime has been sought by criminal policymakers from the very beginning of the modern legislation in Iran.² With the pass

¹ See *Hemayat Az Atfal Dar Siasat-e Jenaie-ye Eslam Va Iran* (The Support for Children in the Criminal History of Islam and Iran) by Masoud Haydari (2017); Mizan Publication, 1st ed.

² See *Mavadde 35 Ta 39 Az Ghanoon-e Mojazat-e Omoomi* (Articles 35 to 39 of the General Penal Code) (1925)

of time, this approach has been highlighted in such a way that as the climax of the differential movement for children and young peoples' criminal justice approaches throughout the world, its steps are taken in Iran too, leading to the replacement of traditional criminal policies with modern ones, stemming from the criminological approaches and theories and human rights. The aforementioned movement reached its peak by the ratification of *The Law for the Establishment of a Delinquent Children's Court* in 1959, opening a new chapter in the history of the Iranian criminal justice (Sadeqzade, 1959; p. 162) through the replacement of a public model of procedure with a differential one (Niyazpour, 2017, p. 162). This model was completely different from the procedural method for adults, being in line with the welfare type of criminal justice. Such a legal event could be remembered as the differentialization of the first procedure of children in the Iranian legal system.

Yet, some practical problems (including the deficiency of specialists and the required financial sources, the lack of the establishment of special institutes as well as the lack of the ratification of by-laws, etc.) delayed the enforcement of the model. (Naeemi, 2003) ³ Even after making the preparations, a political obstacle, i.e. the 1979 Islamic Revolution appeared, because upon the victory of the Islamic Revolution, the traditional criminal policies which stemmed from the Islamic Fiqh reappeared, making the thought of differential criminal procedure for children and young people begin to fade. In this era, the revolutionary lawmaker, who considered the differential model as stemming from western law, tried to replace the old procedure with the Islamic model of procedure, and since, in the Islamic model, there was no distinction between children and adults (Moazzen Zadegan, 2004; p. 141), the Children's Court was dissolved and the consideration of children's charges was assigned to public criminal courts. Yet, the lawmaker did not make any change in the arrangements for the procedure of children.

This unpleasant situation continued for about two decades (Bashirieh and Rajab. 2014; p. 270); however, some effort was made during this period to appoint a special judge for children or to establish specialized child branches. Yet, none of the aforementioned measures was strong enough to justify the necessity for a differential model of procedure. The same story went on until Iran accepted the accession to the global papers of child's rights, especially, *The UN Treaty on Child's Rights (1989)*, when a new chapter in the field of criminal justice for children and young people opened (Asadi, 2003; p. 103). In order to honour its international commitments, Iran adopted a modern criminal policy, which was somewhat considered as a gradual return to the previous supportive policies taken before the revolution. Thus, upon the appearance of Child's Rights Discourse and Welfare-Educational Justice Discourse, the arrangements were made for the revival of the differential model of procedure for children and young people step by step⁴. The first manifestation of this differential model and its complete appearance respectively became available upon the ratification of *The Law for the Procedure of Public and Revolutionary Courts on Criminal Field (1999)* and *The Law for Criminal Procedure (2013)* (entitled the new law). This legal event could be named as *the differentialization of the second*

³ The prerequisites of the law execution were not prepared until 1966, i.e. the year of ratifying the by-laws of the law for the establishment of the delinquent children's court.

⁴ See *Ghavanin Va Mogharrarat-e Kayfari-ye Iran Dar Ghebale Atfal Va nojavanan-e Bezehkar* (The Criminal Rules and Regulations of Iran Regarding Delinquent Children and Young people) by Nasrin Mehra (2006); *Theology & Law specialized journal*, No. 20, pp. 41-59.



procedure for children in the legal system of Iran. It was a precious event, which happened around half a century after the first differentialization as a turn to the very first model.

Given the aforementioned legal evolution, the current research seeks to study the latest legal achievements and innovations achieved through the new law. The writers try to answer what legal innovations are presented via the new law, and if such innovations allow us to call it a differential model. Does the differential model meet the universal standards on children and young people's procedure? In designing this model, which of the six other models of children and young people's criminal justice have been used? ⁵And finally, what challenges does the current model face?

Finding the answers to the above questions depends on the study of the content of the law, which, in this research, will be pursued through a descriptive-analytic type of study by collecting data from library and online sources. To this end, the materials of the current research have been organized under three sections. In the first section, the legal and paralegal institutes for children and young people are studied. In the second section, the agents of such institutes are referred to, and the third section examines the special formalities for considering cases in the institutes.

1. Differentialization of Children and Young people's Procedural Institutes

The first manifestation of differentialization in children and young people's criminal justice must be sought in special institutes, which are established for the consideration of children and young people's charges. This has been drawn into the Iranian lawmaker's attention as well so that in line with the differentialization of children and young people's criminal justice, several special institutes, whether legal or paralegal, have been established, which are explained below.

1-1 Special Legal Institutes

Legal institutes are those that have legal function and legal authorities. These institutes are responsible for discovering, studying, pursuing, settling and executing judgement. In the new law, such institutes are divided into the prosecutor's office and special courts.

1-1-1 Establishment of Special Prosecutor's Office

The typical standard used in children and young people's criminal justice is that the procedural process should be as short and fast as possible, with the least amount of formalities. In fact, shortening the handling process and decreasing the number of criminal institutes are among some of the measures taken in support of children and young people. Thus, the decrease of handling stages, and the concentration on single institutes or several special ones, are pursued. The reason behind this is that the longer a child spends time in the procedural cycle, the more likely they are to face negative labels and mental harms. So, it should be tried to remove children



⁵ See *Olgooha Ya Gooneha-ye Edalat-e Kayfari-ye Atfal* (The Models or Types of Children's Criminal Justice) by Hossein Gholami (2013); *Teachings of Criminal Law*, No. 6, fall-winter, pp. 89-106 & *Moghaddame: Nezam-e Edalat-e Kayfari-ye Koodakan Va Nojavanan Dar Arseye Beynolmelal* (Introduction: The Children and Young people' Criminal Justice System in the International Field) by John E. Winterdyk (2018); *The Encyclopedia of Criminal Justice for Children and Young people, International Perspectives, Models and Inclinations*, pp. 25-58.

from this harmful cycle, (Noroozi et al., 2017) ⁶ or to help them leave it as quickly as possible when they have to enter it⁷.

Due to the above facts, as with the establishment of a special prosecutor's office, two general approaches have been revealed. The first approach believes that not only is there no need for a prosecutor's office, but it could be harmful too. On the other hand, the second approach thinks of a knowledge-based prosecutor's office- wherein the authorities have special permission to adopt educational or corrective reactions- as a significant step towards dejudicialization and the shortening of children and young people's procedural process (Jamshidi, 2003, pp. 85-86). Furthermore, the principle of the independence of the suing authority from the handling one necessitates the existence of a special prosecutor's office alongside the court (Goldoust Jouybari, 2004, p. 272).

The Iranian lawmaker has adopted a third alternative by trying to make use of the merits of both approaches and avoid their defects. At first, the Prosecutor's Office for Young people was established (Article 285 of the Criminal Procedure) ⁸. In the second step, its authority was limited to the charges that people over the age of fifteen, in solar years, face. Thus, the lawmaker, in line with the differentialization of the special institutes of children and young people's criminal justice, has assigned the preliminary interrogation of people over fifteen to another special institute, which is considered as an unprecedented event in the legal system of Iran. This measure has been taken in accordance with three principles: expertise, support and education.

There are some important points to be mentioned regarding this special prosecutor's office. Firstly, this is not an independent but a specialized prosecutor's office, i.e. it is a branch of the public and revolutionary prosecutor's offices. It seems that it would have been better to allocate a prosecutor's office exclusive to young people. Secondly, its jurisdiction is limited to the charges of people above fifteen solar years (Article 285 of the Criminal Procedure). Thus, this institute is not competent to perform preliminary interrogation of people under the aforementioned age. Due to this fact, even its name does not refer to children. Thirdly, the aforementioned prosecutor's office does not have the authority to perform preliminary interrogation on the offences against morals committed by fifteen-year-old to eighteen-year-old people either (Article 285 of the Criminal Procedural Code). In such cases, the Children and Young people's Court performs the preliminary interrogation independently.

1-1-2 Special Courts Establishment

The most significant institute specifically used for the procedure of children and young people, which cannot be ignored and must be available in any differential model of procedure for children and young people, is the Special Court. This has been paid attention to in the legal

⁶ The official criminal processes for children and young people basically lead to attaching criminal labels to them and forming a criminal character and nature or chronic delinquency in them. So, it is recommended that the criminal intervention be applied as the last resort (Mehra, 2007, p. 84), and, as far as possible, they be kept away from the criminal justice cycle (Noroozi et al., 2017, p. 153). In the Beijing Rules (Beijing, 1985) and Article 40 III (b) of the Child's Rights Treaty (1989), it has also been emphasized that, when handling the delinquency of children and young people, the non-legal non-official methods should be used.

⁷ Article 2 of the Beijing Rules (1985) and Paragraphs 2 and 3 of Article 40 of the Child's Rights Treaty (1989) emphasize on the avoidance of any unnecessary delay in handling children and young people' cases.

⁸ Alongside the Children and Young people' Court, a branch of the public and revolutionary prosecutor's office named the Special Prosecutor's Office for Young people is formed under the supervision of one of the prosecutor's deputies or with the attendance of one or several cross-examiners.



system of Iran as well so that, in the most recent alterations in law-making, some special courts have been formed to deal with such cases in the initial or appeal stages.

1-1-2-1 Court of First Instance

The courts of first instance have the authority to deal with the first instances of charges against children and young people. In the Iranian legal system, two special courts have been established to that end, which are the Children and Young people Court, and the Criminal Court I for Young people. The reason behind this division is the degree of intensity and the significance of the committed crimes, which necessitates more attention to these charges.

1-1-2-1-1 Children and Young people Court

The Children and Young people Court is the most important court for children and young people in the Iranian criminal justice system. This court, as a specialized one, deals only with the cases of children and young people who are under eighteen solar years (Article 304 of the Criminal Procedural Code). Thus, the lawmaker has appropriately formed the court to support children and young people and precisely handle their violating behaviours, separating the procedural institutes for children from the adults' ones.⁹ The importance of such courts is so much that they can be undoubtedly considered as the most significant achievement of the new law in the field of children and young people's criminal justice.

The important part that should be kept in mind regarding the competency of the Children and Young people's Court (as well as the Criminal Court I for Young people) is the age of the perpetrator. By the perpetrator's age, one means the age at the time of committing the crime, not the age at the time of settling the case. Yet, the lawmaker has violated the rule in one case, such that instead of considering the age at the time of committing the crime, the age at the onset of the trial is considered for the competency of the court. In that case, before handling the case, if the perpetrator's age exceeds eighteen solar years, the handling of the case shall be assigned to a competent criminal court (Note 2 of Article 304 of the Criminal Procedural Code).

1-1-2-1-2 Criminal Court I for Young people

The second special court for handling juvenile charges is the Young people' Criminal Court. Unlike the Children and Young people's Court, this court is a specialized one, which is competent to deal with some important crimes committed by young people (not children).¹⁰ In other words, this court is competent to deal with the crimes the grown-ups¹¹ under the solar age of eighteen commit; such crimes shall be dealt with by the Criminal Court I or the Revolutionary Court (in the cases wherein several judges take part) (Article 315 of the Criminal Procedural Code). Therefore, the Criminal Court I for Young people is competent if: a) The perpetrator is a grown-



⁹ In specific cases, other courts such as the Criminal Court I for Young people, military courts, Clergy Courts and the public peace court are also allowed to deal with children and young people' cases (in case there is no juvenile one). It should be mentioned that the revolutionary court is not competent to deal with juvenile cases.

¹⁰ In the legal system of Iran, the people under the solar age of eighteen are divided into two groups of children and young people. By children, it means the girls under the lunar age of nine and boys under the lunar age of fifteen. By young people, it means the girls above the lunar age of nine to the solar age of eighteen and the boys above the lunar age of fifteen to the solar age of eighteen.

¹¹ A grown-up is a person who has not reached the religious puberty age yet (Note of Article 304 of the Criminal Procedural Code), which is nine lunar years for girls and fifteen lunar years for boys.

up under the solar age of eighteen¹², and b) The crime is the type which is covered by the Criminal Court I or the Revolutionary Court (for the cases where several judges take part).

Thus, the lawmaker, in order to pay more attention at the time of handling cases, has assigned such cases to a court which, on one hand, handles the case with the same procedure used in Children and Young people's Court, making perpetrators enjoy all the merits of a juvenile court, and on the other hand, instead of one judge, handles the cases with several ones (two or three) who typically have more knowledge, expertise and experience than the judges at juvenile courts. Therefore, more support is given to young people, and their higher interests are best provided for.

1-1-2-2 Court of Review

The procedural courts for children and young people should not be limited to the First Instance Courts because there are two hierarchies for criminal procedure, which offers a possibility to perform hearing on merits in a higher court. Thus, it is needed that, in the higher courts level, specialized authorities be formed to complete the chain of children and young people's welfare-educational justice model. Therefore, the formation of a special court of review is also inevitable. In the legal system of Iran, the formation of such an institute has been first included in the new law, and the lawmaker, in line with three principles of expertise, support and education, has established the Special Court of Review for Children and Young people. In this way, the lawmaker has assigned a branch of the provincial court of review to deal with such cases (Niyazpour, 2017, p. 171). So, it is tried to perform a differential welfare model in the higher level of authorities.¹³ However, it would have been better to allocate an independent court to children and young people's cases, which is completely independent from the one established for adults, instead of allocating a branch of the provincial court of review for this end.

Regardless, upon the formation of these four special legal institutes, children and young people's criminal justice has gained a differential colour, and so they are entitled to use the merits of being dealt with by specialized supportive institutes. However, the lawmaker does not consider this enough, and has completed the differential model through forming paralegal institutes.

1-2 Special Paralegal Institutes

By paralegal institutes, one means those institutes without a legal nature, which are involved in the procedure of children and young people and cooperate directly with special legal authorities. Such institutes are the police of children and young people and the Juvenile House of Correction.

1-2-1 Juvenile Police

The police are the entrance to the criminal justice system, and the judiciary police are the first actors who quickly become involved in disputes. So, their ethics and organizational culture affect citizens' minds. The importance of this issue doubles for children and young people because they have an innocent sensitive nature and are yet to grow up. Thus, the way the judiciary police behave towards them greatly impacts on their character formation and judgment on the police and the criminal justice system. The first call especially, is the most important one. So, if they are

¹² Dealing with the crimes the non-grown-ups commit is assigned to the Children and Young people' Court, and the Criminal Court I for Young people is competent to only deal with the crimes the grown-ups under the age of eighteen commit (Khaleqi, 2016, p. 53 & 79).

¹³ The appealing authority for the verdicts issued by the Criminal Court I for Young people is the Supreme Court (Article 444 of the Criminal Procedural Code). Yet, in the Supreme Court, no special branch has been predicted for children and young people' cases so that their cases are addressed with like the adults' ones.



treated with violence at the very early stages, they will hold a grudge against the police and even their society, making them always look back at the society and the criminal justice system negatively. However, on the contrary, if they are treated with amity at first encounter, and the interrogation is performed in a friendly child-centred atmosphere, the very amiable behaviour will make them repentant of their deed, and so they will be guided onto the correct path of social life (Salahi et al., 2010, p. 93). It is not baseless when they say, “The re-education and correction of delinquent children mostly starts from police stations.” (Elyasi, 2007, p. 151).

Given the above facts, the formation of the Juvenile Police is necessary due to children’s sensitivity and physical and mental fragility, as well as a need for supporting them against harmful outcomes of the criminal justice system, and the prevention of their future crimes (Goldoust Jouybari et al., 2004, p. 264). In this regard, the Iranian lawmaker, in Article 31 of the Criminal Procedural Code, has prepared a foundation for the formation of the Juvenile Police, stating, “In order that the judiciary police best perform their duties regarding children and young people, the Juvenile Police shall be formed as a branch of the Iranian Police Force.”¹⁴

This way, for the first time in the history of the Iranian criminal justice system¹⁵, the Juvenile Police were formed with a special mission of *best performing duties regarding children and young people*. The formation of such an institute, apart from the scientification and specialization of criminal justice system institutes, has a significant role in the completion of the criminal procedural model for children and young people, adding another chain to the bundle of chains in the juvenile criminal justice institutes. The formation of the institute can lighten the atmosphere of police institutes and their organizational culture, bringing about a child-friendly atmosphere. Under the influence of this differential strategy, the lawmaker has tried to make the onset of the juvenile procedure child-centred like at the end of it, as its end has already become so by forming the Juvenile Correction and Education Center.

1-2-2 Formation of Juvenile Correction Education Center

While the place of keeping adult perpetrators is jail, for keeping and educating child and young people perpetrators¹⁶, a special institute named the Juvenile Correction and Education Center has been established (Article 525 of the Criminal Procedural Code), which is different from jails in many respects¹⁷, bearing a supportive educational nature. The title of this institute describes what it is, why it has been formed and how it functions. The underlying thought has been the very principle of segregating children from adults¹⁸, giving them maximum support, educating, re-educating and supporting them with their higher interests. In terms of criminology, keeping



¹⁴ See *Polis-e Vizheye Atfal Va Nojavanan Dar Nezam-e Ghazaeiye Iran (Zaroorat Va Karkardha)* (The juvenile Police in the Legal System of Iran (the Necessity and functions)) by Gholamhassan Kooshki (2015); Tehran: The Judiciary Press, 1st ed.

¹⁵ After the formation of Delinquent Child Court, a plan was suggested to form the Juvenile Police, which never succeeded. Practically, in the Criminal Investigation Department, some specialized branches were formed, one of which (Polis Station 16) was assigned to deal with juvenile crimes. This branch was dissolved after the revolution and never revived until the formulation of the Bill of Juvenile Prosecution (2005), when the thought of its formation was revived (Goldoust Jouybari et al., p. 263 & Farzinrad, 2007, p. 152).

¹⁶ Article 526 of the Criminal Procedural Code appropriately calls delinquent children not as *perpetrators* or *prisoners* but as *Assistance-dependent children*, which reveals the lawmaker’s deep human supportive insight.

¹⁷ By virtue of Note 1 of Article 513 of the Criminal Procedural Code, the Juvenile Correction and Education Center is considered one of the centers for preventive-educational measures.

¹⁸ See Article 10 (2) b of the *International Treaty for Civil and Political Rights (1966)* and Article 37 (c) of the *Child’s Rights Treaty (1989)*.

children and young people beside adults may negatively affect their mood and education, stabilizing their delinquent behaviour (Asadi, 2004; p. 120). On the other hand, the period of childhood is the spring of human education because the child is flexible enough to accept the values, standards and criteria of a social life. Thus, the required facilities should be provided for the correction, education and re-education of children and young people, which has already been catered to by establishing the Juvenile Correction and Education Center.

The Juvenile Correction and Education Center can be considered the first and the most stable institute specifically established for children and young people in the Iranian criminal justice system. It is the first institute because from the beginning of modern law making, it has been suggested as the House of Punishment in the criminal laws, which was renamed in 1959 as the Juvenile Correction and Education Center.¹⁹ It is also the most stable because it is the only special institute which was never removed from the Iranian criminal justice system. At the moment, the center has three parts: a) the Temporary Holding Section used for holding children and young people who have not been decided about yet, b) the Correction and Education Center used for holding children and young people about whom they have decided on, and c) the prison section used for holding the young people who, at the court's recognition, may cause the other young people and children to behave badly (Asadi, 2003, p. 120).

The establishment of the Juvenile Correction and Education Center has caused the children and young people's holding atmosphere to become child-centred, like their home and school, not leading to the inculcation of the criminal culture in others. This point has even been included in the architecture of the façade and the interior, so that by no means does it resemble jails. Indeed, the uniforms and behaviour of the personnel are completely different from those of jails. The formation of this differential institute, rooted in the developmental prevention discourse²⁰, rehabilitation criminology, clinical criminology, criminal welfare and child's human rights, has paved the way to take action with an emphasis on educational, recreational, sports, treatment and vocational programs for the education and rehabilitation of children and young people who have violated laws.

2. Differentialization of the Criminal Procedural Actors for Children and Young people

By differentialization of actors, one means, instead of using the very people who take part in the procedure of adults, other specialized authorities with knowledge, expertise and skills should be hired. Certainly, this is necessary for the procedure of children and young people such that it could be said the actors who must play a role in the special juvenile institutes form the most important base of children and young people's criminal justice. Without this human chain, the differential criminal justice does not make sense because the very actors must observe all the differential standards. Therefore, the existence of specialized actors interested in children is a necessity and an important part of the juvenile criminal justice standards, which is emphasized

¹⁹ The first Juvenile Correction and Education Center was opened in Tehran in 1968. It was first allocated to boys, and the girls branch was established several years later (in 1999). Now, several other large cities but Tehran (such as Mashhad, Isfahan, Shiraz, Ilam, Kermanshah, Boushehr, Sanandaj, Yazd, etc.) have such centers (Bashirieh & Rajab, 2014, p. 265 & Salahi et al., 2010, p. 11).

²⁰ See *Kanoon-e Eslah-o Tarbiat Az Manzar-e Pishgiri-ye Roshmdadar* (The Juvenile Correction and Education Center from Developmental Prevention View) by Seyyed Alireza Mirkamali et al. (2015); *The Criminal Law Research Quarterly*, 4th year, No. 13, pp. 95-120.



in universal papers as well.²¹ Fortunately, in the Iranian legal system, this important issue has been considered, and to this end, two groups of differential actors, i.e. legal and paralegal actors are predicted.

2-1 Legal Actors

Undoubtedly, the most salient actor in the juvenile procedure is the special judge. In other words, the *children judge is the central core of the legal organization for children*. (Janipour, 2014, p. 121) because it is he who judges children or young people, and upon the final decision, determines the future path of their lives. So, much care must be given to the selection of such actors. Thus, the juvenile judge should be qualified in terms of age, vocation, family, education and expertise so that they have enough understanding of children's mood. In this regard, there are some factors such as knowledge, expertise, experience, studying and research on children, attendance in educational classes, marital status and even their success in educating their own children to be considered (Asadi, 2003, p. 118).

The above point has been considered by the lawmaker, and in Article 409 of the Criminal Procedural Code, the special conditions for the judges at a Prosecutor's Office and juvenile court have been stipulated. According to this article, the head of the Iranian Judiciary appoints the judges at juvenile courts and prosecutor's offices from among judges with at least five years of legal experience, and examines their competency in terms of age, marital status, attendance in educational courses and preferably having children.

According to the article, the experience of legal service, age, marital status, attendance in educational courses, having children, etc. are among the features which have been determined by the lawmaker as the prerequisites of special judges, whether at Courts of First Instance or Higher Courts.²² It should be mentioned that such prerequisites must exist for the legal authorities at the Special Juvenile Prosecutor's Office as well (Goldoust Joubari et al., 2004, p. 293). This way, alongside the special judge, a special prosecutor, cross-examiner and an assistant to the public prosecutor general should be involved too. In fact, the lawmaker, through adopting a considerate differential policy, has tried to segregate all the legal actors involved at a juvenile prosecutor's office and juvenile courts from those of adults. Due to this child-centred policy, children and young people's higher interests are more provided for, and the lawmaker's objective of designing the differential procedural model is best met.

Yet, it should be considered that the lawmaker's effort for the differentialization of legal actors has remained incomplete because women, as the alchemists of the educational field, due to some religious and legal restrictions, have not found the opportunity to be appointed as special judges. This is so while the nature of the juvenile procedure matches best with women's presence, and like other fields (police, counsellor, social worker, etc.), the atmosphere of a court could be child-centred and lightened so that women play a greater role in the correction and rehabilitation of children and young people. It seems that the lawmaker can, based on new Fiqh theories, pave the way for the presence of female judges in the field, and this is possible because most current judges in the legal system of Iran, are not religious jurist judges, but they are magistrates who do not need the conditions of a religious jurist judge. It should be stated that, practically, it is

²¹ By virtue of Article 6 of the Beijing Rules (1985), the judges at a juvenile court must have the required qualifications.

²² The number of judges at Juvenile Courts, the Juvenile Criminal Court I and the Juvenile Appellate Court is one, and three and three, respectively. the last two courts are held sometimes with two judges.



tried to appoint most legal authorities of a Special Prosecutor's Office for Young people from among women.

2-2 Paralegal Actors

Alongside legal actors, there are other actors named paralegal actors, who, although do not have legal positions and do not perform legal activities, have significant roles in the differential procedure of children and young people. At the moment, two special paralegal actors play a role in the juvenile criminal justice system; special judiciary police and special counsellors.²³

2-2-1 Special Judiciary (Female) Police

Upon the formation of the Special Juvenile Police, it is necessary to hire specialized human force for the duties the police and judiciary police have. However, the point is that such people must have enough knowledge, expertise, skill and experience in juvenile affairs to be able to behave appropriately towards them. Accordingly, the lawmaker, being aware of the fact that children and young people have a fragile character which may form delinquency in them, has taken a differential strategy so that, on one hand, the juvenile police have been formed to best perform the duties of the judiciary police (Article 31), and on the other hand, the attendance of women in the field has been emphasized by preferring female actors for the judiciary police (Article 42).

²⁴ The reason behind this emphasis is the role, innate skill and the experimental knowledge of women in the field of correction and education. Women are at the centre of amity and better understand juvenile moods, characters, problems and needs (Farzinrad, 2007, p. 153). Furthermore, children are innately more inclined towards women because children, as one of their basic needs, need to be loved, which is most met beside women. So, the attendance of women is essential for creating a child-friendly atmosphere, leading to closeness between the child and judiciary authorities (and so a non-criminal non-police behaviour towards children) (Elyasi, 2007, p. 136).

Another important issue is the problem of *training* this group of police/ judiciary police, which has been stipulated in Article 42 of the Criminal Procedural Code as well. The lawmaker's objectives from the differentialization of the juvenile police are met when the special police/ the judiciary police, besides specialty in military area, are familiar with psychological, educational, criminological, juvenile delinquency, social working, etc. (Shirani et al., 2011, p. 83 & Goldoust Jouybari et al., p. 292). Therefore, theoretical and applied training must be planned to replace a controlling police culture with an educational child-centred one.

Moreover, the special police should also observe some apparent standards, among which are: refraining from wearing the special police uniforms, using police equipment, wearing military ranking badges, using handcuffs, taking photos of children and publishing them in the media, etc. (Goldoust Jouybari et al., 2004, p. 264; Mirkamali et al., 2016, pp. 251-252). The goal of these behavioural standards is to lighten the police organizational atmosphere and to change the dominant organizational culture in order to prevent any harm to children and young people by inculcating criminal messages in them.

²³ It should be mentioned that social workers have also significant role in the criminal procedure of children and young people, especially in the stage of filing personal data. Yet, the lawmaker has not allowed for the appointment of Special Juvenile Social Workers yet.

²⁴ The interrogation of women and the underage should preferably be done by trained female police according to religious rules. By *underage* in this article, it means only the boys under fifteen lunar years of age, and *women* refers to both underage and adult females.



2-2-2 Special Counsellors

Another actor involved in the juvenile procedure is the counsellor of the juvenile court. The presence of counsellors in the handling process leads to a type of participation, counselling and cooperation in the procedure of children and young people, violating the monopoly of legal actors. The goal of involving counsellors is to extend the judge's insight by encouraging them to pay attention to paralegal aspects of a case, and above all, help them reach a correct, precise and comprehensive understanding of children's personalities, their problems, features and needs, and finally figure out the best response to their behaviours.

To this end, the Iranian lawmaker has made the presence of a counsellor alongside the juvenile judge binding so that the sessions of a court do not reach a quorum without a counsellor (Niyazpour, 2017, p. 179). The court shall consider the counsellor's opinion after completing the interrogation. Yet, a counsellor cannot issue a verdict or affect the verdict of a court (Khaleqi, 2016, p. 80) because their opinion is applied simply as consultation. The important point is the special conditions of court counsellors. Needless to say, the counsellors working at juvenile courts must possess special features to enable them to reach a good understanding of children and young people, and transfer this inference to the judge. Accordingly, Article 410 of the Criminal Procedural Code stipulates that the counsellors of courts must be appointed from among experts of educational sciences, psychology, criminology and social working, or academics who are familiar with psychological issues of children and young people. Paying attention to the above-mentioned people's expertise implies the fact that the lawmaker is seeking the correction and education of children and young people through a type of supportive involvement.

It is to be noted that the lawmaker gives special attention to women's presence. Given the fact that the presence of female counsellors at juvenile courts is a necessity, having a great impact on the trial (Mir Mohammad Sadeqi, 2000, p. 20, Asadi, 2003, p. 118) Note 2 of Article 410 stipulates that in the cases where the defendant is female, at least one of the counsellors must be female.²⁵ The presence of women as counsellors, apart from lightening the atmosphere of the court towards becoming more child-centred, causes the children's problems, incentives and needs to be better identified and specified, finally leading to better decisions. Furthermore, experience shows that women are more sympathetic to juvenile violators of laws, and they try to correct, rehabilitate and educate them with love.

3. Differentialization of the Juvenile Procedural Formalities

The procedure specific to children and young people has three structural, humane and process aspects. Therefore, alongside the structural and actor-centred rules, the process-centred rules should also be considered, based on which the process of trial must also be child-centred in line with their higher interests. Due to this, in the current law, apart from the special institutes and actors, some special formalities have been considered for the trial. These differential formalities are paid to in three levels; before trial, during the trial and after the trial.

3-1 Special Formalities before the Trial

²⁵ The lawmaker, skipped the modification of this note in the legal reforms of 2015 because the decrease of the number of counselors from two to one necessitated the modification.



The pre-trial stage is the onset of the criminal procedure, consisting of three minor steps of discovery, research and suing. The performance of the three duties is usually incumbent upon the judiciary police and the legal authorities of the prosecutor's office (the prosecutor, assistant to the public prosecutor general and the cross-examiner). Given the importance of this stage and its influence on the final status of a case as well as children's fragility, the lawmaker has determined special standards different from those used for adults.²⁶ These differential standards are:

3-1-1 Prohibition of Interrogation by the Judiciary Police

Children and young people's nature is so that they are reluctant to continuously attend before office, legal and police authorities and to be interrogated. Thus, nowadays, the decrease of trial stages, the number of criminal institutes and procedural formalities, as well as the increase of the procedural speed, is pursued so that any harm to children's character is prevented. Furthermore, the authoritative spiritless atmosphere and organizational culture of the police force does not match with children and young people's morals. Therefore, the less they attend the police centres, the less harm to their characters they will experience.

The Iranian lawmaker has considered this as well. In Note 2 of Article 285 of the Criminal Procedural Code, the preliminary interrogation by the judiciary police, even in blatant crimes, has been forbidden and assigned to courts. By virtue of this article, for the blatant crimes children and young people commit, the judiciary police are bound to only keep the tools and evidence of crimes. However, the lawmaker stipulates that the judiciary police are not allowed to perform preliminary interrogation of them. It is to be mentioned that this rule applies to non-blatant crimes too because when for blatant crimes, the above action is forbidden, for non-blatant crimes, it shall be certainly forbidden.

3-1-2 Prohibition of Keeping Children and Young people Temporarily

In the adults' procedure, the lawmaker has exceptionally admitted that for the blatant crimes, the judiciary police may keep a suspect under supervision upon the observation of legal conditions when necessary (Article 45 of the Criminal Procedural Code). Needless to say, such a mechanism is not compatible with the gentle and growing nature of children and young people, as their keeping in these places leads to the embodiment of the criminal atmosphere of the jail in their mind, making them the target of negative opinions and criminal labels, and so a child or young person believes in their being a criminal. So, the very simple action may bring about the formation of a criminal character in them and the second delinquency. It is so especially because the judiciary police do not typically have specific centres for keeping juveniles, and they have to be kept beside adults, which in itself has devastating outcomes. In order to avoid these negative effects and to support juveniles' growth and behavioural health, the lawmaker has made the judiciary police, in case of arresting juveniles committing blatant crimes, transfer them quickly to the prosecutor's office or a Juvenile Court. This restriction is so intense that even being out of office hours or being on holidays shall not cancel quick transfer of the juvenile to a prosecutor's office or juvenile court (Note 2 of Article 285). Therefore, by virtue of this order, keeping children and young people under supervision is forbidden.

²⁶ By virtue of Article 568 of the Criminal Procedural Code, when the differential rules and regulations are not predicted, the very general rules and regulations of the criminal procedural code are executed.



3-1-3 Prohibition of Interrogation by a Prosecutor's Office (Direct Procedure)

The Iranian lawmaker has adopted an intermediary approach regarding the Special Prosecutor's Office, bearing in mind that juveniles' attendance in various institutes, even if they are specialized, may hurt their growing character, making them ready to accept criminal identity and labels. Therefore, those who are under full eighteen solar years are divided into two groups, i.e. under fifteen years of age, and above it. As for the first group, the authority of performing preliminary interrogation has been taken back from the prosecutor's office and given to the court, while for the latter group, it has been assigned to a specialized prosecutor's office, i.e. the Special Juvenile Prosecutor's Office (Article 285 of the Criminal Procedural Code). Thus, the preliminary interrogation of the crimes the people under the full fifteen solar years of age commit is directly performed at the court. On the other hand, the Special Juvenile Prosecutor's Office does the interrogation of those over the full fifteen solar years of age. Based on the above, it could be stated that the prosecutor's office may not do preliminary interrogation of the first group, and so the lawmaker has almost broken away with too many institutes by removing the prosecutor's office, paving the way for a direct procedure.

3-1-4 Obtaining Special Criminal Guarantees

Criminal guarantees are issued by the legal authority to keep the defendant available, prevent their runaway or concealment, and guarantee the plaintiff's rights (Article 217 of the Criminal Procedural Code). The number of such guarantees are various and abundant in adults' procedures (Article 217 of the Criminal Procedural Code). Yet, since children and young people usually lack any criminal responsibility, they try less to eliminate the evidence, and are more readily available. Furthermore, their freedom usually does not harm the plaintiff, and so there is no need for the guarantees that adults provide. Especially, there are some cases where using the criminal guarantees (such as Paragraph C of Article 217 of the Criminal Procedural Code) for juveniles is a type of negative proposition because of its subject being non-existent.

Accordingly, the Iranian lawmaker has extended their differential policy to the field of criminal guarantees as well, so that either has adopted special criminal guarantees for this group or has altered the public criminal guarantees as follows:

- a) Assigning the taking care of children or young people to others is a priority that is preferred over other police measures. To this end, Article 287 of the Criminal Procedural Code determines two methods. First, the prosecutor's office or the court assign the temporary custody of the child or young person to their parents or legal tutors so that at the request of the prosecutor's office or the court, they take him/her to the legal authority. Second, in case of parents' absence, not being available, refraining from taking care of children, or lack of their competency, the legal tutors, prosecutor's office or court, assigns taking care of children to any real or legal person they think appropriate so that they take the child to the legal authority if needed. It should be mentioned that in both methods, the people above fifteen full solar years of age up to eighteen full solar years of age are bound to individually check in at the court as well.
- b) The scope of obtaining a supporter of the family or a guarantee has been limited in two ways; first, the issuance of the order of obtaining these two criminal guarantees is done only in necessary situations (as the last resort when the child cannot be handed over to another person), and second, obtaining such guarantees from the defendants under full fifteen solar years of age is forbidden. Actually, its personal scope applies only to the



defendants above the fifteen solar years of age (Article 287 of the Criminal Procedural Code).

- c) Various rules for detaining young people have been considered.²⁷ The lawmaker, in order to prevent the exposure of young people to criminal atmosphere, their company with dangerous people, attaching criminal labels to them and accepting the criminal nature by them, announced several important issues in Article 287 of the Criminal Procedural Code. These are; a) The title of *Order of Temporary Detention* has been changed to the *Order of Temporary Keeping* in order that the criminal aspect of it is removed, b) The scope of its effect is limited to the defendants above the full fifteen solar years of age, and so the detention of the people under fifteen years of age is anyway forbidden, c) The issuance of this order is optional in all cases. Therefore, the legal authority is not bound to issue such an order, d) The issuance of this order is limited to two ways; firstly, the defendant cannot introduce a supporter of the family or cannot deliver a guarantee, and secondly, the ascribed crime is from the type predicted in Article 237 of the Criminal Procedural Code, i.e. serious crimes. e) The place of keeping a defendant must change from the adults' detention center to the Juvenile Correction and Education Center. It should be mentioned again that the environment of the Juvenile Correction and Education Center suits the morals of the young people deprived of freedom, f) The period of keeping the young people and children is also shorter than that of adults. Actually, the maximum detention time has been stipulated in Articles 88 and 89 of the Islamic Penal Code (2013), in a manner different from the ones determined for adults. Therefore, the temporary detention rules have been changed in terms of subject, person, place, time and the execution method.

Thus, the lawmaker, in line with the global standards on the juvenile procedure, considers temporary keeping as an exception which should be used only for serious crimes as the last resort, and after he has tried to reduce its period, change its execution place and make the conditions as child-centred as possible.

3-1-5 Keeping Case Files on Personality

In the criminal procedure, alongside the criminal file, or as the lawmaker calls *the file of criminal act* (Article 203 of the Criminal Procedural Code), keeping files on personality is a necessity. If the first case involves a legal and criminal nature and criminal interrogation, then the second case will involve a social and criminology nature, needing social research. In other words, the case involves the report of a social worker regarding the defendant's welfare, family and social relations as well as the medical and psychological reports, which are formulated by the social working department (Article 203 of the Criminal Procedural Code). The goal of recording personality features is to expand the judge's horizon, going from legal affairs to social and criminological affairs, and from present to the past and future so that through a comprehensive pathological outlook, he can examine the delinquency and make the best decision. Therefore, keeping such files is a significant step towards the individualization of criminal and non-criminal responses given during the trial (Najafi Abrandabadi et al., 2003, pp. 44-45).

²⁷ The note of Article 286 of the Criminal Procedural Code considers the order for temporary detention as under the effects and rules of custody.

Given the importance of the subject, the Iranian lawmaker, has made it obligatory through Article 203 of the Criminal Procedural Code to file personality records during preliminary interrogation and dealing with serious cases, but for other crimes, this is optional to be done by legal authorities. Thus, the criminology and paralegal aspect of criminal procedures is highlighted so that the criminal procedure has found a clinical, treatment colour. In line with this newborn policy, the judge may acquire enough recognition of the defendant and give them the best response.

What is important here is the lawmaker's differential policy regarding children and young people. The lawmaker very well knows the fact that *personality* is a major factor in juveniles' criminal justice. Thus, it must be emphasized in the procedure. Due to this, the scope of filing personality features has been extended in Article 286 of the Criminal Procedural Code, and apart from the above-mentioned crimes in Article 203 of the Criminal Procedural Code, filing personality features has become obligatory for grade five and six discretionary crimes as well. So, alongside serious crimes, the average juvenile crimes have been included in this differential policy. For the minor crimes (grade seven and eight discretionary crimes), although the filing of personality records is not obligatory, being up to the court to decide over, it should be done by legal authorities as the key to solving the delinquency problem of juveniles is the very personality files. Without them, the judge is blind and cannot obtain a good understanding of the delinquency, delinquent and even the plaintiff. Filing personality features allows the judge to gain a good understanding of juveniles, their life story, physical and mental features, physical and mental illnesses, family and social environment, talents and abilities, interests and needs, deprivations and problems as well as their incentives for violating laws (the cause and effect function), and due to this familiarity, he/she can choose the best response (responding function).



3-2 Formalities of the Trial

This stage of the trial could be named as the most important stage or the centre of juveniles' criminal justice system. Thus, most formalities and differential rules are considered for this stage. Such differential rules are:

3-2-1 Urgent Trial (short)

The juveniles' procedure should be as fast and short as possible so that they can exit the criminal process quickly. The lawmaker, in line with this principle, in Note 2 of Article 412 of the Criminal Procedural Code, allows the court to urgently hold the trial and deal with the case without delay. However, since the urgent trial could be harmful, there are some conditions determined for it as follows:

- The charge is among non-serious offences, i.e. grade six, seven and eight discretionary crimes or those the legal punishment of which is not imprisonment;
- The defendant, their parents, legal tutor or attorney are present in the session;
- The above-mentioned people demand for consideration;
- The prerequisites of such a consideration is available.

In this way, the lawmaker, through an urgent trial, supports children and young people and prevents any harm to their growing character.

3-2-2 Proceedings in Camera

While during the adult procedure, holding public proceedings is considered as an important principle showing fair judgment,²⁸ it is the opposite for the procedure of children inasmuch that the performance of it equals serious violation of juveniles' criminal justice standards. So, it is a universal rule that the procedure of children and young people must be done in camera.²⁹ This way, children and young people would not have to tolerate the pressure of public proceedings such as being labelled, belittled, etc. (Mehra, 2003, pp. 220-221), and *no record would remain in an observer's mind of a child* (Javanmard, 2005, p. 69).

To this end, the lawmaker, through Article 413 of the Criminal Procedural Code, has forbidden public proceedings, allowing only some limited people, i.e. the child's parents or tutor, attorney at law, plaintiff, those who have been summoned in the preliminary interrogation, witnesses and the social worker at the Welfare Organization to attend the trial. According to the article, the attendance of other people relies upon obtaining permission from the court, while at the adult procedure; no one can prevent other people from attending the trial unless it has been stipulated in law (Article 352 of the Criminal Procedural Code). Therefore, this differential policy keeps juveniles from public citizens, reporters and media so that they are not labelled; as such labels may intensify the delinquency and secondary deviation.

3-2-3 Application of Trial in Absentia

Through the adults' criminal procedure, the defendant is allowed to attend the trial, and even beyond that, a trial in absentia is forbidden but for in some exceptions (Articles 394 and 406 of the Criminal Procedural Code). Yet, in this special case, not only is the rule of little use for juveniles, but it is sometimes harmful as it can affect their character negatively. So, keeping juveniles away from the criminal environment is a necessity. Due to this, the lawmaker has accepted in Article 414 of the Criminal Procedural Code that when it is in line with children's interests, the whole or part of the procedure is held in absentia. Thus, depending on the child's interests, sometimes the child is fully absent from the procedure and sometimes takes part in part of it (relative trial in absentia). In this regard, the court recognizes the child's interests. In such cases, the verdicts of the court are always considered as in person (Article 414 of the Criminal Procedural Code).

The problem the lawmaker has is that they restrict the scope of the differential policy to children, and in some cases young people are treated the same as an adult. Thus, intentionally or unintentionally, a type of discrimination arises between girls and boys. To overcome this problem, it would have been better to extend the policy to all people under eighteen years of age, or at least like other cases, it would have been extended to all people under fifteen years of age.

3-2-4 Differentialization of Access to Attorney

Since juveniles do not have enough knowledge, experience, skill and power of speech to defend themselves, they always need the legal support of others during the trial. Therefore, the differentialization of power of attorney is inevitable in the field. Fortunately, the Iranian lawmaker has paid attention to this, and in Article 415 of the Criminal Procedural Code, has predicted various standards in legal support of them and in availability of attorney services, which could be classified as follows:

²⁸ Article 352 of the Criminal Procedural Code

²⁹ In Beijing Rules (1985) and Paragraph 7 of Article 40 of the Child's Rights Treaty (1989), the necessity of a closed session has been emphasized.



a) Maximization of the Obligatory Presence of the Attorneys Appointed by the Court and the Defendant

For the criminal procedure of adults, only in serious crimes (i.e. the crimes at the jurisdiction of the Criminal Court I), the presence of the attorney, either appointed by the court or by the defendant, has become obligatory as the quorum (Article 348 of the Criminal Procedural Code). At the juveniles' procedure, the lawmaker has gone beyond this by making the presence of the attorney in the court or prosecutor's office obligatory for the average crimes (i.e. the crimes for which blood money or the one-fifth of its value must be paid, or Grades 4, 5 and 6 discretionary crimes). In these cases, the prosecutor's office or the juveniles' court orders the defendant's parents or their legal tutor to select an attorney for him/her. In case the attorney is not selected or they do not attend the legal authority's place without a justified excuse, an attorney is appointed for the defendant by the court (Article 415 of the Criminal Procedural Code). Thus, on one hand, the scope of the application of this order is extended to average crimes, and on the other hand, its institutional scope/ place is also extended from the court to the prosecutor's office. Additionally, the scope of the power of attorney selected by the court (without any need for the defendant's request) has also been extended. Thus, the presence of the attorney and his/her action is more highlighted at the criminal procedure of children and young people than that of adults.

b) Preparation of Family Defence

The lawmaker, for light crimes, i.e. grade seven and eight discretionary crimes, has allowed juveniles' parents or legal tutor to either defend the defendant or select an attorney for them. It is to be mentioned that in such crimes, the young person himself/herself may undertake the defence as well (Article 415 of the Criminal Procedural Code).

c) Invalidity of Children's Defence

At the end of Article 415 of the Criminal Procedural Code, it reads "... The young person can defend himself/ herself in person". Accordingly, young people may only defend themselves for light crimes. In other words, children's defence is not valid in neither of the crimes. Because of this, they must always be supported and defended by others (like attorney, parents or legal tutor). Thus, the lawmaker, under these differential policies, seeks to guarantee children and young people's rights and give them the maximum of support during the criminal procedure. The importance of such policies is highlighted when remembering that juveniles' procedure is held in closed sessions (Article 413 of the Criminal Procedural Code), or even in some cases, without the presence of the defendant (Article 414 of the Criminal Procedural Code). So, the attendance of the attorney at law can compensate for the non-attendance of the defendant.

3-2-5 Family Members' Participation in the Procedure (family-centred procedure)

Family for the child and for young people is like water for fish, the lack of which can threaten the existence and growth of juveniles' ethical growth. This principle has penetrated into the field of criminal law as well, leading to a type of *family-centred justice*, which in turn, paves the way for the *family-centred procedure*. In such a procedural model, the juveniles' families play a significant role in the process of the trial as a major emotional supportive base. This way, it could be stated that *a child or young person has the eternal right of access to the family*. So, the Iranian lawmaker has also tried to keep the link and interaction between juveniles and their families. The goal of this differential family-centred policy is to guarantee children and young people's



higher interests and to provide prerequisites for their growth and education. To this end, the lawmaker has made the family involved in the procedure in several ways:

- First, the issuance of notifications on the time of trial and the verdicts of courts to the defendant's parents and legal tutors is obligatory (Article 412 and 417 of the Criminal Procedural Code);
- Second, one condition for an urgent trial is the presence of the defendant's parents or legal tutor (Note 2 of Article 412 of the Criminal Procedural Code);
- Third, the child or young person's parents and legal tutors are allowed to attend the trial (Article 413 of the Criminal Procedural Code);
- Fourth, the legal authority is bound to notify the child or young person's parents or tutor that they must select an attorney for the defendant (Article 415 of the Criminal Procedural Code);
- Fifth, the child or young person's parents or legal tutor are allowed to personally defend the defendant (family defence) (Article 415 of the Criminal Procedural Code);
- Sixth, the defendant's parents and legal tutor are allowed to object to the verdicts issued by the prosecutor's office or the court (Article 447 of the Criminal Procedural Code).

This is so while the procedure of adults does not have such rules, which implies the necessity of families' participation in juveniles' criminal justice because in the field of juveniles' criminal justice, justice without families is not justice at all.

3-2-6 Rehearing Request for All Verdicts (a comprehensive two-degree procedure)

The parties to the procedure may object to the verdict issued by the first case court through a higher court so that the case is reheard (Articles 426 and 427 of the Criminal Procedural Code). This rule applies to the juveniles' special procedure as well. However, the lawmaker, to support children and young people more and decrease legal mistakes and inappropriate decisions, has adopted a differential policy here too such that unlike the adult procedure, wherein most verdicts could be reheard (Article 427 of the Criminal Procedural Code), for juveniles, all the verdicts issued by children and young people's courts can be reheard in the Juveniles' Special Branch of the provincial rehearing court (Article 445 of the Criminal Procedural Code). Furthermore, in order to guarantee the children and young people's rights, the defendants' family members are involved in the procedure, and their parents or legal tutor may request for rehearing (Article 477 of the Criminal Procedural Code). This is of importance because children (but not young people) cannot personally request the court for rehearing (Article 477 of the Criminal Procedural Code).

Moreover, the lawmaker has restricted the authority of the two other sides of the criminal case, i.e. the public prosecutor and the personal plaintiff. This is so that during the adult procedure, the public prosecutor can request for rehearing because of the defendant's acquittal, the incompatibility of the verdict with law or the inappropriateness of the punishment (Paragraph C of Article 433). For juveniles, only when the verdicts of the court are considered contrary to the law, can they request rehearing (Article 477 of the Criminal Procedural Code). It seems that the lawmaker has not allowed the public prosecutor to request rehearing upon the reason of the defendant's acquittal or inappropriateness of the punishment. Furthermore, a personal plaintiff may only request for rehearing in the case of harm, acquittal, order of suspension or halt of prosecution or filing the case (Article 447 of



the Criminal Procedural Code). Therefore, a personal plaintiff may not request a rehearing for other verdicts of the court.

Moreover, since the defendant may be kept, during the trial, at the Juveniles' Correction and Education Center, the lawmaker has stipulated in Article 446 of the Criminal Procedural Code that the request for rehearing or pleading to the Supreme Court must be presented to the office of the center.

3-3 Post-trial Formalities

The post-trial stage starts after issuing verdicts by the first instance, rehearing or appeal courts (the execution of criminal verdicts) and lasts until the complete return of the child or young person to the society (care after exit). This stage is of great importance as the execution of all the verdicts issued by the court to rehabilitate and educate juveniles happens in it. Therefore, much care must be taken because minor mistakes in the way of treating children may bring about severe problems in their future. So, both the sensitivity of the stage and the education of juveniles make the stipulation of differential rules inevitable. This differential regime is manifested in the Iranian law as follows:

3-3-1 Periodic Inspection of the Juveniles' Correction and Education Center

For the juveniles' criminal justice, the lawmaker does not consider the judge's duty as finished upon issuing the verdict, but tries to maintain the relationship between the judge and juveniles. This relationship must continue up until the full execution of the verdict, which shows the prerequisites of juveniles' procedure. In fact, the ruling approach at this period is a clinical one. In this approach, the goal is to correct, educate and treat children and young people. Thus, the judge, like a doctor, should continuously visit the patient (the child having violated the law) and become aware of their moral regression or progress. To this end, the lawmaker, through Article 526 of the Criminal Procedural Code, determines one of the juveniles' judges' duties as the periodic inspection of the Juveniles' Correction and Education Center, which must be done at least once a month. This legal inspection, apart from some merits it has, helps the judge to watch the child or young person's life status and decide upon the continuation or halt of the moral measures. By so doing, if the juvenile has experienced moral regression, the measures may be changed, and in case he/she is in progress, the measures may be kept until the completion of the educational course. It seems as if the judge, like a nice father, always thinks of his child's education, and tries to regularly supervise this process.

3-3-2 Revision of the Previous Verdicts

In the law of criminal procedure, the final judgement of a court is much respected and valued so that, but in some exceptions following the law, it cannot be cancelled (Article 474 of the Criminal Procedural Code). Accordingly, on one hand, it has been accepted that a judge may not change their verdict after issuing it, which is named as the *Res Judicata* (Asadi, 2003, p. 114), and on the other hand, the issued verdict, after becoming irrevocable, implies a completed case known as the *Rule of Res Judicata*. These two legal rules provide the validity of legal verdicts and guarantee individual and social security. Yet, this strictness is not sometimes appropriate for the educational supportive procedure of juveniles, and so the lawmaker seeks to modify it. Therefore, although the criminal sentence will linger on, the punishment or response is changeable based on the juveniles' moral progress or regression



(Moazzen Zadegan, 2004, p. 157). Accordingly, the Islamic Penal Code (2013), in two ways, allows the judge to revise his/ her previous verdict:

- a) In Note (3) of Article 88, the juveniles' court is allowed to revise the verdicts issued by Paragraph (a) (giving the responsibility of the child to parents or legal tutors) and (b) (giving the responsibility of the child to other real or legal persons) of Article 88 *as many times as the child or young person's interest requires*.
- b) In Article 90, the court is allowed to, based on the reports received on the child or young people's status or behaviour at the Juveniles' Correction and Education Center, revise its verdict once, decrease the keeping period to one third or assign the juveniles' keeping to their legal tutors. Of course, this is possible only if the child or young person has passed a minimum of one fifth of the keeping period at the Juveniles' Correction and Education Center. Therefore, through these two legal rules, the lawmaker has paved the way for issuing *open verdicts* in the field of juveniles' criminal justice to make the best decisions and individualize the educational/ criminal responses.

3-3-3 Separation of Problematic Juveniles from Others

Some of the juveniles at the Juveniles' Correction and Education Center have a different behavioural style, which gradually negatively affects others and disrupts their growing process and moral progress. In order to solve the problem, the lawmaker, through Article 527 of the Criminal Procedural Code, has allowed the juveniles' judge to deal with the problem upon receiving reports from the managers of the center, and if required, order that the place of their keeping be changed, which will linger on until the next order is issued by the court. This measure is taken to guarantee the juveniles' moral health and appropriate education.

There is one point here. The separation of children or young people from others can be harmful in terms of child's educational principles so that the harm to a child's character and spirit is sped up and their moral regression happens. Thus, it should be tried to shorten such a separation period as far as possible and not to impose any other restriction but the place separation. It should also be tried to visit the child or young person regularly and assign him/her educational, recreational and sport activities so that they do not feel lonely.

CONCLUSION

Upon the ratification of the Criminal Procedural Code (2013) in Iran, a new chapter was opened in the history of juveniles' criminal justice, and a differential criminal procedural model specific to children and young people was revived based on *welfare justice* and *educational justice*. In line with this modern model, several institutes were established, such as the Special Police, Specialized Prosecutor's Office, Juveniles' Court, Criminal Court I for Young people, Juveniles' Court of Appeal and Juveniles' Correction and Education Center (differentialization of institutes). Furthermore, in order to create a child-centred atmosphere and lenient behaviour towards children and young people, it has been tried to hire specialized personnel at these special institutes, such as the juveniles' police, judge, special counsellor, etc. (the differentialization of personnel). As for the judging formalities, various rules and regulations have been predicted for the three stages before the trial, during the trial and after that, the most important of which include proceedings in camera, trial in absentia, special criminal guarantees, the ban of interrogation by the judiciary police and keeping children temporarily, etc. These three classes of the differential procedural standards, all of which pursue children and young people's higher

interests, support in the criminal procedure, and prevention of any harms to them towards their best education, leave no doubt of the formation of a differential procedure. Such differential policies are in line with the universal juvenile procedure standards and the teachings of criminology.³⁰ So, it can be said that the Iranian criminal justice system has achieved significant success in the standardization of the juveniles' criminal justice system.

However, the full execution of the differential model of the Iranian criminal justice system faces several legal problems and practical obstacles that must be removed. In the new law, there are several legal defects inconsistent with the philosophy of juveniles' differential procedure. So, it is necessary to make the procedure of children and young people as child-centred as possible by applying some corrections and removing defects.³¹ Moreover, there is a great vacant position, i.e. corrective justice plans at the juveniles' criminal justice. While the Iranian lawmaker, in spite of accepting some intermediary criminal institutes, compromise, etc., has adopted no differential approach regarding the corrective justice for juveniles, the corrective justice plans, and especially the problem-solving courts, have played significant roles in juveniles' education, providing juveniles' higher interests in a better way.³² The practical obstacles facing the execution of this differential model should also be remembered. The creation of modern institutes, the hiring of special actors, the education of these actors and of the specialized forces etc. demand time and an appropriate budget. It is highly expected that in the near future, through legal corrections, these obstacles will be removed to fulfil the pleasant dream of juveniles' differential criminal justice.

Nonetheless, none of these challenges and obstacles facing the new welfare-education model is so large that they can hide the sunshine of juveniles' differential criminal justice behind the clouds. The Iranian legal system has just started to design and stabilize this modern model towards child-centred criminal justice.



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³⁰ The evolution must not be limited to this extent as the Iranian criminal justice system, in line with as much support of delinquent juveniles as possible, has just applied the Delinquent Juveniles' Procedural Code into the scope of its differential policy-making. These policies have not reached the ideal point yet, but it is hoped that the ratification of *the bill on the support of juveniles* helps them be completed.

³¹ Such as dealing with the military cases of juveniles at military courts or dealing with the cases of clergies under eighteen years of age at the Clergy Court

³² See *Pasokhdehi Be Bezehkariye Koodakan Va Nojavanan: Takhmini Ya Tarmimi* (Response to Juveniles' Delinquencies: Approximate or Corrective) by Nasrin Mehra et al., 2017; *Research on Private and Criminal Law Journal*, Vol. 13, No. 2 (32 sequentially), summer, pp. 85-121.

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