



## Challenges in the Trial of Cases Related to Children and Adolescents in Iranian Criminal Law

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### Abstract

The handling of cases related to children and adolescents is one of the issues that has received special attention from legislators in many cases in various criminal and legal laws. The special importance of this issue is due to the connection between children's crimes and their personality characteristics, as well as their transitional stage from childhood to adolescence and then youth. The process of handling cases related to children and adolescents should be based on the principles of fair trial so that, while protecting their rights, the trial process proceeds based on accepted international criteria and standards. In this regard, the present study has examined the challenges of litigation of cases related to children and adolescents in Iranian criminal law. The aim of this study is to explain the challenges of litigation of cases related to children and adolescents in Iranian criminal law. The method used in this study is descriptive and analytical. The findings of the study showed that the most important challenges in the trial of cases involving children and adolescents are related to the flaws in the formal laws and the trial process of children and adolescents, especially in the preliminary investigation and crime detection stages, as well as in the appeal stage of important juvenile convictions in the Supreme Court, and also in the execution stage of criminal sentences that have not been established in a differentiated manner. Also, the behavior and approach of preliminary investigations in the trial of children and adolescents lacks a differentiated criminal policy, and when dealing with children and adolescents, the adult criminal policy is used. Developing a differentiated criminal policy based on supportive intervention and observing national and international principles and standards, as well as establishing a children and adolescents court in its scientific and realistic sense, changing the method of selecting judges, and also establishing a special advocacy institution in children's cases are among the most important solutions in eliminating the gaps and shortcomings in the trial of children and adolescents in the criminal regulations of Iran.

**Keywords:** Trial process, children's cases, differentiated method

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### Introduction

Today's children are the future builders of tomorrow's society, for this reason, protecting, caring for and supporting them can be a guarantee for a better society in the future. Among the examples that are of concern to scholars is the judicial protection of children; because this vulnerable segment of society has a high potential to commit criminal acts compared to other groups in society due to factors such as family, crime-prone living area, interaction and communication with older criminals, family economic problems, and lack of a suitable role model. This has caused their criminal population to increase and requires the legislator to adopt a differentiated model in the legislative approach in the field of juvenile delinquency proceedings. However, it seems that this issue is not only related to the Iranian penal system and has also been considered by legislators in international documents (Seddiq, 1400: 33).

A judicial system whose main goal is the reform and treatment of children and whose main focus is on the child's rehabilitation instead of imposing repressive punishment, in this regard, despite the fact that children often lack criminal responsibility in all criminal policy approaches until they reach the age of eighteen, but according to the Convention on the Rights of the Child, in order to resolve the crisis of juvenile delinquency and observe law and order on the other hand, it is necessary to establish a special and distinct juvenile justice system. In fact, the importance of childhood as an important period in the formation of children's personalities is such that it completely distinguishes the trial of children from adults. Also, what makes such a differentiated trial important is the need for the social rehabilitation of delinquent children and establishing their psychological security during the trial. From this perspective, criminal policy approaches have taken on a differentiated aspect in order to search for the causes of juvenile delinquency and establish supportive and corrective therapeutic approaches. Different approaches to the trial of children and adolescents are reflected in international documents and regulations and in the domestic laws of countries today (Farhang et al., 1401: 573). Considering the above, the important questions are: What are the challenges of trial of claims related to children and adolescents in Iranian criminal law? Also, what is the behavior and approach in the trial of claims of children and adolescents in Iranian criminal regulations, and what are the effective solutions to eliminate the gaps and shortcomings in the trial of claims of children and adolescents in Iranian criminal regulations? In line with the principles of distinguishing the trial of children from adolescents, the impact of criminological teachings cannot be denied, although the impact of human rights and penal approaches cannot be ignored. Modern studies of developmental criminology in the field of the etiology of delinquency of children and adolescents emphasize confronting and creating obstacles to the factors that create the basis for delinquency and express the necessity of creating an appropriate mechanism for special trials for children. Other principles of differentiating the proceedings of children and adolescents include avoiding the application of repressive punishments, preventing consequentialist approaches, and replacing educational and supportive goals with the aim of rehabilitating and properly educating children (Mousavi, 2011: 112). Such an approach, which has as its main goal the application of educational and supportive measures for children, uses all available support tools to reform and socialize delinquent and law-breaking children and adolescents. The important point is that providing such goals in a context that can be combined with repressive and punitive punishments requires the use of all available capacities by resorting to differentiating the proceedings and determining special procedures and specialized and fundamental organizations, because this supportive approach also requires its own specific framework (Laserge, 2019: 86).

Childhood is the period of development and formation of human personality. The task of raising and educating children, in addition to the family, is the responsibility of social entrepreneurs, who should take into account and organize economic, political, cultural, social and other factors in creating a normal and healthy society. Special regulations for children should be aimed at reactions in the trial and investigation of crimes committed by children in conflict with the law that seek to rebuild their personality, reform and educate them, and return them to a healthy life. Therefore, the trial of children and adolescents' claims is considered one of the new issues of criminal law. Since, from the perspective of fair trial, dealing with juvenile delinquency is fundamentally different from their adult counterparts, it is essential to create a special method of trial for juveniles and adolescents, including specific substantive laws and a special juvenile procedure. However, the necessity and importance of conducting this research is that, given that juvenile delinquency is related to elements related to their personality and the period of their transition from childhood to adolescence and youth, the trial of cases related to them must also have special nuances and characteristics.

### **Theoretical Approach**

- **The Concept of Child in Legal Terminology**

From a terminological perspective, childhood is also the years in which the fundamental backgrounds and perspectives of the individual, the values and ideals of the individual and society of the child are largely formed (Ebadi, 2007: 5). The term child, in its terminological sense in the science of law, is actually defined in such a way as to indicate the distinction between adulthood and the period before it. For this purpose,

international documents have introduced a child as a human being under the age of 18, although the age of puberty has been considered effective in expressing the concept of a child (Abachi, 2016: 27).

In the Iranian criminal system, given the adherence to Imami jurisprudence, what is obvious in expressing the concept of a child is a term that, relying on the verses of the Quran with puberty as the axis, has sought to consider it as the boundary between a person's achievement of a correct understanding of correct and incorrect actions. With this description, in the Iranian penal system, the legislator in the Islamic Penal Code, in the tenth chapter, has referred to both crimes committed by adult and juvenile children and adolescents, and has set the age of trial for crimes of this group in court at 9 years for girls and 15 years for boys. However, in Note 1 of Article 304 of the Criminal Procedure Code, the legislator has considered a child to be someone who has not reached the age of religious maturity (Seddiq, 1400: 33).

Some jurists, without distinguishing between the definitions of children and adolescents, have defined these individuals as follows: "A child and adolescent in criminal law is a person who lacks the mental, mental, physical, and social conditions to accept responsibility or full responsibility for responding to violations of criminal laws" (Moezinzadegan, 1387: 163).

- The concept of fair trial for children and adolescents

The principles of fair trial in children's trials mean that during the trial of children and adolescents, a series of principles must be observed and applied in their trials. These principles are different in different societies; in Iranian criminal law, the principles that the legislator intends to consider are a combination of the principles of legality and welfare. Legality trial has paid attention to the formulation of the law, and in the welfare model, attention is paid to the welfare of the child. Principles such as the principle of legality, explanation of the charge, etc. can be examined under legality trial, and principles such as the right to a lawyer and the formation of a personal file can be examined under the welfare model (Kam, 2019: 124).

An article was written by Elahi-Manesh and Taherkhani (1402) entitled "Judgment of Children in the United Nations Standard Minimum Rules for Juvenile Justice, Beijing Rules." The aim of this study is to examine the process of child and adolescent justice in international documents, especially the Beijing Rules, and to identify the extent of future protections and guarantees for them. The findings showed that in international documents, especially the United Nations Standard Minimum Rules for Juvenile Justice, the Beijing Rules, the minimum rules and standards for juveniles are a child or minor who, under the relevant legal system, is subject to treatment that is different from the current treatment of adults. Although these regulations do not explicitly specify a specific age as the determinant of the age of juveniles, governments are required not to determine a low age in determining the age of criminal responsibility, considering the mental, intellectual, and emotional maturity. In juvenile proceedings, the principle of advancing the interests of juveniles and the principle of proportionality of the response to the offender in determining punishment have been declared as the principles determining the policy for dealing with juveniles, and compliance with guarantees such as the presumption of innocence, the right to be informed of the charges, the right to remain silent, the right to access a lawyer and legal counsel, etc. have been foreseen as minimum necessary standards. Considering the undesirable effects of criminal labeling on juveniles, necessary provisions have been made to protect privacy and decriminalize.

An article by Khatri et al. (1401) entitled "The chessboard of the trial of juvenile and juvenile delinquents in Iran with the implementation of the English criminal system" was conducted. The aim of this research is to accurately identify the process of juvenile proceedings and compare it with the English criminal system. The findings showed that in recent revisions of the Criminal Procedure Code in Iran, the legislator tried to separate juvenile proceedings from adults, and by legislating new methods, tried to harmonize with international goals and differentiate the proceedings. Despite the history of legislation and correct guidelines of the criminal law doctrine and even the compilation of a complete children and juvenile proceedings bill, there are many shortcomings in what was approved as a law, which has left the desired outcome and ideal horizon resulting from the differentiated judicial system with a void. The current Criminal Procedure Code, in some stages, has departed from the differentiated system and has outlined the

basis of action similar to the adult proceedings. In other words, in the process of differential trial of children and adolescents, we are faced with a black and white checkered method.

An article by Farhang et al. (1401) entitled "Approach to the trial of children and adolescents from the perspective of criminal policy models" was conducted. The aim of this study is to examine the situation and tools provided to protect the rights of children and adolescents. The findings showed that in various criminal policy models and plans and various international documents, criminal policy officials have usually recognized and confirmed the right of children and adolescents to access a fair trial in legislative and supra-legislative rules, but the proposed right faces many legal problems and shortcomings when it comes to implementation and in the scope of application. Therefore, this research examines the situation and the means created to protect the rights of children and adolescents as one of the effective means in fair trials from the perspective of criminal policy models, relying on the freedom-oriented and power-oriented model, along with analyzing the contrast between the two theories in the form of different attitudes towards creating fair and dignity-oriented trials in dealing with juvenile and adolescent delinquency. It also analyzes the shortcomings, challenges, and all problems in the field of juvenile and adolescent trials that may, under the pretext of dealing with crime, cause harm to the fundamental rights of children during the trial and hinder the prevention of crime and the child's reintegration into society.

### **The method under study**

The type of research in this study is descriptive-analytical based on the purpose. The research method is library, in that information is collected by referring to reliable and primary books and articles. The tool for collecting information in this method is by using a receipt; and after collecting the information, it is analyzed. In this study, in addition to books, articles and internal theses have also been used to write the theory and research literature. Also, magazines and websites have been used to enrich the research literature and increase its credibility.

### **The Approach to Juvenile and Juvenile Litigation in Iranian Criminal Law**

#### **❖ Juvenile and Juvenile Delinquency Trials in the Preliminary Investigation Stage**

In terms of the judicial organization and structure, the Criminal Procedure Code of 1392 has provided for the Juvenile and Juvenile Prosecution Office, the Special Juvenile and Juvenile Court, and the Provincial Criminal Court for Special Juvenile and Juveniles, which in the case of the prosecution has ordered the establishment of a Special Juvenile Prosecution Office to handle and conduct preliminary investigations into crimes committed by individuals aged 15 to 18 (Amoshahi Khozani, 2016: 32). Preliminary investigations in criminal proceedings, which include the discovery of a crime, investigation, and prosecution of the accused, are of particular importance in the formation of criminal cases. At the same time, respecting the rights of the accused and holding a fair trial at this stage are considered to be among the most important points of concern for organizations and institutions supporting human rights. The sensitivity of this issue is doubled where the accused in the criminal case is a child or a teenager. The way in which officers react, the way they investigate and prepare the case, and the different rules of the prosecution regarding juvenile delinquents are important issues in juvenile criminal proceedings, which have also been emphasized in the United Nations guidelines (Khateri et al., 2014: 163-164).

#### **Courts dealing with juvenile and juvenile delinquency**

With the enactment of the Criminal Procedure Code of 1392, the legislator explicitly referred to the Juvenile and Juvenile Court and the Special Juvenile Criminal Court, along with other criminal courts, and by assigning inherent jurisdiction to these two courts, he has prescribed special procedural procedures in various articles of the law.

##### **•Juvenile and Juvenile Court**

The Juvenile and Juvenile Court is a court that hears juvenile and juvenile crimes in cases concerning adults that fall under the jurisdiction of Criminal Court Two. The jurisdiction of the Juvenile and Juvenile Court is limited to hearing crimes committed by persons under the full age of eighteen, and the jurisdiction of this

court is a type of "inherent jurisdiction" and other criminal courts do not have the jurisdiction to hear crimes within the jurisdiction of this court. Likewise, this court is not capable of hearing crimes within the jurisdiction of other courts except in cases that the legislator has mentioned as an exception in Articles 304 and 312 of the Criminal Procedure Code.

By changing the legislator's previous approach and defining special jurisdiction for the Juvenile and Juvenile Court, from Articles 412 to 417 of the Criminal Procedure Code, By adopting a differentiated structure, the Criminal Court has established special procedures for handling juvenile and juvenile crimes in juvenile and juvenile courts. These procedures are above all supportive and based on conducting a fair trial for the child or juvenile.

#### **•Criminal Court One Special for Juveniles**

Regarding the crimes committed by juveniles, which are under the jurisdiction of Criminal Court One, the legislator has considered the establishment of Criminal Court One Special for Juveniles, considering the need for special care and sensitivity of the matter, and has also briefly stated the jurisdiction and organization of this court, which is considered a positive matter and in line with differentiating the proceedings of juveniles in serious crimes. According to the first paragraph of Article 315 of the Criminal Code of Iran, the age of the juvenile delinquent, like the Juvenile and Juvenile Court, is the criterion for determining the jurisdiction of Criminal Court One Special for handling juvenile crimes. According to this article, only the handling of serious crimes by adults under the age of 18 is within the jurisdiction of this court; Therefore, as previously mentioned, if a minor girl (under 9 full lunar years) or a minor boy (under 15 full lunar years) commits serious crimes under Articles 297 and 302 of the Criminal Code, their case will not be heard in a special juvenile criminal court, but rather in the competent authority, the Children and Juvenile Court, and the hearing will be by a single judge, which does not ensure sufficient accuracy in the case of a "multiple judges" (Khateri et al., 1401: 180 and 181).

#### **•High Courts and Investigative Hearings of Criminal Cases of Children and Juveniles**

According to Article 427 of the Criminal Code, the decisions of criminal courts in eighth-degree ta'zir crimes and blood money or arsh of less than one-tenth of the full blood money are final; however, according to Article 445 of the same law, the decisions of the Children and Juvenile Court are subject to appeal "in all cases." Therefore, all decisions issued in accordance with Article 88 of the Criminal Code and decisions issued in accordance with Article 89 of the Criminal Code are subject to appeal. Also, according to Article 444 of the Criminal Procedure Code, a branch of the provincial court of appeal is designated as the authority to hear appeals from the decisions and opinions of the juvenile and juvenile court by notification from the head of the judiciary.

According to the last part of Article 444 of the Criminal Procedure Code, the authority to appeal from the decisions and opinions of a special juvenile criminal court is the Supreme Court. Unlike the first instance and the court of appeal, the legislator did not refer to the designation of a special branch for handling juvenile crimes in the Supreme Court, and the failure to designate a specialized branch for final hearing of juvenile criminal cases in the Supreme Court has led to discrimination in the administration of judicial justice in serious crimes such as intentional murder and different interpretations of Article 91 of the Islamic Penal Code (Khateri et al., 1401: 181-182).

#### **Juvenile and juvenile delinquent trial in the stage of sentence execution**

The execution of criminal sentences is one of the most important stages, or in other words, the final stage of criminal proceedings. It has been necessary for the legislator to distinguish between the method of executing sentences for children and adolescents, in accordance with the "differentiation policy" of juvenile and juvenile proceedings. Although the legislator has not dedicated an independent chapter of the Islamic Penal Code to the concept of security and educational measures, their applications, types, and sentences (Tozahi, 2015: 138), providing the basis for making new decisions and innovations in punishment and alternatives to imprisonment for children and adolescents in Articles 88 and 89 of the Islamic Penal Code of 2013 required providing the basis for implementing these decisions and sentences in a differentiated

manner, and so far, the necessary measures in this regard (except for the establishment of correctional and educational centers) have not been provided. Unlike other stages of the trial, the legislator did not pay attention to the appointment of "special judges for the execution of children and adolescents' sentences" in the stage of sentence execution and did not differentiate the trial (Khateri et al., 1401: 183 and 184). Therefore, sufficient facilities and conditions for the implementation of correctional and resocialization programs for children and adolescents are not provided in many implementation criteria.

✓ **Method of executing criminal sentences for delinquent children and adolescents**

Unlike adults who, if sentenced to imprisonment, must serve their sentence in prison, persons under the age of 18 or persons sentenced to detention by the children and adolescents court, their place of "detention" is necessarily a correctional and educational center. The separation of the place of detention of persons under the age of 18 from adults in cases where they are deprived of their liberty is also emphasized in paragraph "p" of Article 37 of the Convention on the Rights of the Child. The correctional and educational center is one of the achievements of modern criminology for the correction and resocialization of children and adolescents. Also, monthly visits of the Juvenile and Juvenile Court judges to the correctional center are stipulated in the law, which can have positive effects. According to Article 304 of the Juvenile and Juvenile Court, which hears crimes of persons under the age of 18, if after hearing and issuing a verdict it is determined that the age of the accused and convicted persons of this court is over 18, they are still kept in the "youth detention section" that is established in the correctional center and are not transferred to other prisons (Khateri et al., 1401: 184-185).

✓ **Effect of criminal conviction of children and adolescents**

According to Article 95 of the Juvenile and Juvenile Court, "Criminal convictions of children and adolescents have no criminal effects." Similarly, according to Article 5 of the Judicial Record Regulations approved in 2005, it was stipulated that "a judicial record sheet will not be prepared for persons under the age of 18 who receive a criminal conviction"; Therefore, the effects that are created through criminal convictions for adults, such as deprivation of social rights (Article 25 of the Criminal Code) or prevention of postponement of the issuance of a sentence (Article 40 of the Criminal Code), will not be created for people under 18 years of age, but in practice, the inclusion of suspended and deferred sentences and records that are entered in the judicial case management system contradict this practice and sometimes, under the impression of creating a criminal record, discourages children and adolescents and causes them to drop out of school (Khateri et al., 1401: 186).

**Challenges and solutions for the trial of claims related to children and adolescents in Iranian criminal law**

**Challenges in the Trial of Cases Related to Children and Adolescents**

Looking at the criminal procedure laws for children and adolescents in Iran, it should be noted that despite the legislator's efforts to differentiate the trial of children and adolescents, due to the fragmentation and separation of the comprehensive bill prepared in 2013 and the lack of greater attention to academic doctrine and judicial experiences, the formal laws still have significant flaws and the trial process for children and adolescents has not been established in a differentiated manner in the police and crime detection stages, as well as in the appeal stage of important juvenile convictions in the Supreme Court, and also in the execution stage of criminal sentences. Despite the positive approaches and special attention of the legislator to the trial of children and adolescents in 2013, there are still dark and black spots in the trial of children, and until they are resolved, the complete clarity and whiteness of this path will not be revealed. Here, the following points are suggested to eliminate these harms: - Legally prescribing the maximum application of the principle of necessity of prosecution in juvenile and adolescent crimes and preventing as many juveniles and adolescents from entering the criminal justice system as possible, legalizing and implementing the establishment of juvenile and adolescent police, explicitly prohibiting the handling of juvenile and adolescent criminal cases by juvenile judges and prosecutors, implementing the employment of social workers by the judiciary to file juvenile and adolescent personality cases, and other legal duties,

including: taking necessary precautions in cases of suspension and postponement of prosecution, requiring courts to mention the summary of the personality case and the opinions of juvenile and adolescent court consultants and social workers in final decisions, being explicit about child support orders, specifying the competent authority to conduct preliminary investigations of serious crimes against children under 15 years of age, including the fees of juvenile and adolescent court consultants and attorney fees of attorneys selected by the court, informalizing the time and place of juvenile proceedings, non-publicly announcing juvenile and adolescent proceedings in the law in the manner of the previous law, differentiating all stages of juvenile and adolescent criminal proceedings (Khateri et al., 1401: 188).

-Even in the stage of hearing in the high courts and the execution of criminal sentences and the appointment of a special branch in the Supreme Court as well as in the prosecutors' offices and military courts, the appointment of a special judge for the execution of criminal sentences for children and adolescents, the assignment of special care and escort officers for children and adolescents in correctional centers, the creation of preparations and arrangements for the implementation of alternative punishments to imprisonment and other new innovations in the recent substantive law, the transformation of correctional centers and the creation of fundamental changes in correctional methods and the establishment of youth sections and the implementation of precise classification along with a comprehensive correctional program to teach norms and resocialize children (Khateri et al., 1401: 188).

### **Challenges of detecting and prosecuting juvenile and juvenile crimes**

It should be noted that in the general rules of detecting crimes and the legal aspects of initiating prosecution, there is not much difference between adult crimes and juvenile delinquency, but there are differences in the application of the necessity or non-necessity of prosecution and the policy of its application. "The rule of necessity of prosecution in the field of juvenile and juvenile crimes means that the prosecution authority can, at its discretion, not prosecute some criminal cases of this category (Norouzi et al., 2017: 181).

- Challenges of the Juvenile Court in Handling Juvenile and Juvenile Crimes

#### **1- Handling the charges of some defendants under 18 years of age in the Special Juvenile and Juvenile Court**

A non-discriminatory case is that the charges of some defendants under 18 years of age are not handled in the Special Juvenile and Juvenile Court. For example, special military crimes committed by persons under the age of eighteen for the entire solar calendar, according to Article 599 of the Criminal Code. A. D. K. is heard in the military courts and prosecutors' offices, and there is no reason to maintain this dual approach towards juveniles in the law. Another example of non-discriminatory proceedings is the opposite concept of Article 315 of the Criminal Procedure Code; so that if minors (girls under 9 full lunar years and boys under 15 full lunar years) commit serious crimes under Article 302 of the Criminal Procedure Code, their crimes will be heard directly in the juvenile and juvenile court; therefore, if a 14-year-old boy commits intentional murder, the case will be sent directly to the juvenile and juvenile court, and the prosecutor's office and Criminal Court One do not have the jurisdiction to hear these cases, and these crimes will be heard in the juvenile and juvenile court without multiple judges and with "unity of judges" (Khateri et al., 1401: 177). This is taken from the word "adult" in Article 315 of the Criminal Procedure Code. On the other hand, there is a difference of opinion regarding the determination of the authority to directly investigate crimes committed by adults under the age of 15 who commit serious crimes and the authority conducting preliminary investigations, which has led to differences in practice.

#### **2-The absence of a consultant in the court environment**

One of the special procedures of the Children and Adolescent Court is the presence of a "consultant" in the court session according to Article 298 of the Criminal Procedure Code. Given the need for careful treatment and identification of the personality of children in all aspects, the legislator has mentioned the presence of a consultant in the court session as one of the procedures for the treatment of children and adolescents' crimes, and the session is formalized with the presence of a consultant. The philosophy of the presence of

a consultant is to create peace in the court environment for the child or adolescent and to provide useful consulting opinions to the judge of the Children and Adolescent Court in terms of psychology and other behavioral and moral characteristics of children, in order to make the right decision regarding them.

The consultant's opinion is advisory, and therefore the final decision lies with the judge of the court, and the consultant has no role in issuing or changing the verdict. The name of the consultant, like the consultant of courts formed by multiple judges, is not mentioned in the final verdict and decision. Also, unlike the consultant of the family court, the consultant of the juvenile court does not have a judicial basis. The consultant is present only in the juvenile court and the criminal court of a special juvenile court, and therefore, according to the law, the presence of a consultant is not required in the juvenile court, the court of appeal, and the Supreme Court. However, the problem is that the law is silent regarding the fees of the consultants of the juvenile court, and this is one of the fundamental problems that has reduced the presence of consultants and practically made the presence of the consultant a formality in many juvenile courts. Also, studying the case file, asking questions and talking to the accused and the parents of the accused or his lawyer in a separate place by the consultant, studying the personal file, asking questions in the court session, requesting that some investigations be conducted by the consultant, are among the issues that the law is silent about. This is while the law related to the establishment of the juvenile delinquent court in 1338 was devoid of many of these ambiguities (Khateri et al., 1401: 178). On the other hand, one of the persons who, according to Article 413 of the Criminal Procedure Code, appears in the children and youth court, as the case may be, is the "social worker of the welfare organization," but the problem is that the position, reason for the presence, and method of inviting the social worker of the welfare organization are not specified in the law.

3- The challenge of the right to a lawyer and access to a lawyer

"The right to a lawyer" and access to a lawyer are considered one of the rights of the accused in criminal proceedings. In the Criminal Procedure Code approved in 2013, the right to a lawyer and immediate and easy access to a lawyer and the explanation of this right at different stages of the proceedings have become more prominent than in previous laws. With regard to children and adolescents, the legislator, considering the rule of positive discrimination, has paid more attention to ensuring the implementation of their rights than other adults. In the issue of the right to a lawyer, it has also announced this support and, in the event that the accused does not choose a lawyer in many crimes, it has required the prosecution and court to choose a chosen lawyer or a hired lawyer for the child or adolescent. The duty of appointing a lawyer for the accused child is the responsibility of the juvenile and juvenile court, and the duty of appointing a lawyer for the accused juvenile is the responsibility of the prosecution. According to Article 347 of the Criminal Procedure Code, the lawyer's fee for the chosen lawyer is paid from the funds of the judiciary, and the court's decision must also specify the person responsible for paying it, according to Article 562 of the Criminal Procedure Code; However, the problem is that in practice, due to the non-payment of attorney fees by the judiciary or their non-payment on time, the implementation of this right in the children and adolescents court has faced challenges (Khateri et al., 1401: 179).

#### 4- Problem related to the deviation from the rule of the judge's vacation

Another point is that, considering the special conditions and characteristics of protecting children and adolescents, the legislator, in accordance with Note 3 of Article 88 and Article 90 of the Islamic Penal Code, has made it possible by deviating from the "rule of the judge's vacation" that even after issuing a verdict, the judge of the court can reconsider his decision based on the interests of the child or adolescent. The problem with this issue is that in cases where the case has been finalized in the court of appeal or the verdict has been issued after being overturned by the court of appeal, the competent court for review (appellate authority or primary authority) has not been determined, which has currently caused differences in court practice.

5- Referring adult cases to a special court Another fundamental flaw and harm in the differentiation of juvenile proceedings in serious crimes is that in the current practice, considering the final phrase of Note 2, Article 315 of the Criminal Procedure Code, which states that "the specialization of a special juvenile criminal court does not prevent other cases from being referred to them," in practice, referring cases of

serious adult crimes to this court has caused the heavy shadow of the handling of adult criminal offenses in all aspects in this special court to once again prevail and the rules of differentiated proceedings to be dimmed (Tojhi, 2015: 138).

### **Conclusion**

1- In the process of child and adolescent trials, there are certain principles and patterns, the most well-known of which include the welfare, legalism, and participatory models. These models provide a platform for various principles to be examined within their framework.

2-With the approval of the Criminal Procedure Code in 2013, changes occurred in the trial system. One of the most important of these developments was the changes in the process of handling crimes committed by children and adolescents in court. Special juvenile trials, from the time the child and adolescent first encountered law enforcement officials until the end of the investigation of the charge, are of particular importance with the humane and noble goal of reforming, educating, and preventing reoffending. This type of trial must be completely non-public and protecting their privacy must be a priority. One of the essential tools in this process is the formation of a personality file, which, in addition to the criminal file, is used with the expert opinions of specialists to provide a response appropriate to the child's psychological and social conditions.

3- Considering that juvenile crimes are governed by fair trial principles, it should be emphasized that these principles have also been raised within the framework of their special trials. Among the most important of these principles is the principle of innocence, which was formed in order to avoid prejudice against children or adolescents and is absolutely stated in Article 4 of the Criminal Procedure Code. In addition, children and adolescents must enjoy other rights such as the right to a lawyer, the privacy of hearings, the right to remain silent, the prohibition of being forced to incriminate themselves, and other similar principles. Articles 285 to 287 of this law, as well as Articles 2 to 7, have specifically emphasized the observance of these rights. Finally, the concept of restorative justice, which has been considered by the legislator as one of the new theories of criminology, can be implemented alongside existing models in juvenile trials. However, a combined approach of the two models of legalism and welfare seems to be the most feasible solution for the juvenile and adolescent trial process.

4- Juvenile criminal proceedings, from the first moment of the child's contact with police officers until the end of the investigation of his or her charges, are of particular importance in terms of ensuring an appropriate approach to correction, treatment, and prevention of crime. For this reason, it can be said that the principles governing fair trial should also apply to juvenile proceedings. Principles such as the right to remain silent, the principle of innocence, the right to access a defense attorney, and holding a closed trial are all essential and necessary for the realization of a trial process based on respect for the human dignity of children and adolescents.

5- In addition, with regard to juvenile proceedings, it can be acknowledged that the proposed framework for this trial is based on the logic that crime is a reflection of social problems and punishment alone is not an appropriate solution; it may even worsen the situation. For example, sending children to adult prisons can provide a basis for training in criminal behavior or recidivism in prison. Therefore, the use of security and educational measures for children and adolescents for the purpose of correction, treatment and prevention of crime, along with the observance of restorative justice, is of fundamental and inescapable importance. In this regard, in order to ensure the effectiveness of security measures, it is appropriate for the judicial authority to ensure that the educational and educational goals have been achieved or are close to being achieved through continuous monitoring of the process of education, correction and treatment of the delinquent child or adolescent during the implementation of decisions. It is also possible to continuously review decisions to ensure fair proceedings for children. Therefore, it can be stated that the most appropriate model for dealing with juvenile crimes is a combination of a law-based approach and restorative justice, as a new and emerging criminological theory.

6- In general, in explaining the problems, harms, and gaps in the criminal procedure laws for children and adolescents in Iran, despite the legislator's efforts to differentiate the proceedings of children and adolescents, due to the disaggregation and separation of the comprehensive bill prepared in 2013 and the lack of greater attention to academic doctrine and judicial experiences, the formal laws still have significant flaws and the process of prosecuting children and adolescents has not been established in a differentiated manner in the police and crime detection stages, as well as in the appeal stage of important juvenile convictions in the Supreme Court, and also in the execution stage of criminal sentences. Despite the positive approaches and special attention of the legislator to the proceedings of children and adolescents in 2013, there are still dark and black spots in the path of children's trials, and until they are resolved, the complete clarity and whiteness of this path will not be revealed.

7- It can be stated that the most important challenges in the trial of cases involving children and adolescents are related to the flaws in the formal laws and the trial process of children and adolescents, especially in the preliminary investigation and crime detection stages, as well as in the appeal stage of important juvenile convictions in the Supreme Court, and also in the execution stage of criminal sentences, which have not been established in a differentiated manner. The behavior and approach of preliminary investigations in the trial of children and adolescents lacks a differentiated criminal policy, and when dealing with children and adolescents, the adult criminal policy is used. Developing a differentiated criminal policy based on supportive intervention and observing national and international principles and standards, as well as establishing a children and adolescents court in its scientific and realistic sense, changing the method of selecting judges, and also establishing a special advocacy institution in children's cases are among the most important solutions in eliminating the gaps and shortcomings in the trial of children and adolescents in Iran's criminal regulations.

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