

Rehabilitation of delinquent children and adolescents (contrary to law) in Iranian regulations

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Abstract

Background and Aim: Rehabilitation of children and adolescents in conflict with the law is one of the most important issues in the criminal policy of a legal system that must be committed through extra-legislative, legislative and sub-legislative regulations, according to future-oriented, reformist and education-oriented approaches. It de-considered it, so that on the one hand, children and adolescents are allowed to return to the family and community environment, and on the other hand, it prevented various harms caused by committing crimes against them and the community. Therefore, considering that children and adolescents are the human capital of the society for the future in various fields of science, industry, education, etc., so their rehabilitation and adaptation policy is of great importance. **Methodology:** This research has been organized analytically-descriptively using existing rules and regulations and library resources. Results and

Findings: It should be noted that the juvenile justice system is organized with the aim of educating and securing the interests of them and society, and the foundation of this system is based on growth-oriented prevention¹ to finally abolish the process of stability in delinquency. To prevent their future deviation in society. Due to the fact that children and adolescents generally commit crimes by accident and many factors such as age sensitivity, psychological weakness, lack of awareness, etc. are effective in this regard, so the implementation of rehabilitative measures compared to criminal responses. It is more effective only.

Keywords: Juvenile delinquents, rehabilitation, prevention, reformist approach, education-oriented approach

introduction

From the past to the present, human beings, in addition to imposing punishments on criminals, have been faced with the issue of the fruits of various punishments, and through this, several attitudes have been raised in the field of the functions of punishment. These attitudes generally look at responding to criminals with two approaches: punitive and utilitarian, or in a futuristic sense. One of the concerns in the futurist approach has been how to punish the offender

¹- Mir Kamali, Seyed Alireza, Hosseini, Ensieh, Correctional Center from the perspective of growth-

oriented prevention, Criminal Law Research, Winter 2015, No. 13, p.5.

so that on the one hand he is disciplined for the crime committed and on the other hand as a member of society with the wrong attitude that an undesirable element, due to To commit a crime, not to be excluded from society, and to provide the ground for his return to his family and society and to prevent his re-delinquency.¹ In the category of rehabilitation of delinquent children and adolescents, considering that they are the main capital of the society and have a vulnerable personality and a sensitive mental state, and especially that the criminal capacity of this group is generally not developed and they have a very high adaptability. It will create a greater commitment to a forward-looking approach to sentencing than for the legal system that governs society.

The issue of rehabilitation of criminals was first raised in the eighteenth century by the founders of the positive school. The followers of this school studied delinquency based on biological, psychological and sociological criteria² and stated that the delinquent is not completely free to commit a crime and the said factors are effective in his delinquency. Cesar Lombroso, the founder of criminal anthropology, studied the criminal from a biological point of view and stated with a visual therapy that the criminals are patients, who used this punishment to treat this group of people. From the perspective of this school, in principle, preventive action

against delinquency in society is limited to medical measures.³

Gradually, with the expansion of criminological studies and findings, crime prevention became a broader concept and from the patient's point of view to the offender and their treatment, punishment was exceeded and delinquency was presented as a social and human harm and problem. This increased the range of rehabilitative measures from medical to social-medical measures. Thus, under the influence of criminological developments and the emergence of different criminological perspectives, the corrective and rehabilitative aspect of punishment is more than just punishment in society,⁴ and criminal politicians along with the punishment aspect in their criminal policy to be corrective and rehabilitative. They paid attention to it and over time, criminal justice systems became more inclined to the reformist aspect of criminal law than to its punitive aspect. In the international arena, criminal policymakers have tried to prepare and approve some binding and guiding documents that, both with the membership of governments in treaties and treaties and as a guide, have enabled governments to take rehabilitative measures in criminal policies. Guide themselves and most of them to the reformist and reconciling aspect of punishment in comparison with its punitive aspect, and the main reason for the need to adopt such a view of delinquent children and adolescents is that the child delinquent child violates acceptable norms and values. It is a

¹- Gholami, Ali et al., The Impact of Repressive Criminal Policy on Crime Rates with a Look at Islamic Criminal Policy, Journal of Islamic Law, Imam Sadegh (AS) University, Volume 10, Winter 88, No. 30, p.149.

²- Saffari, Ali, Criminal Law and Criminology, Knowledge Center Publications, First Edition, 2005, p.115.

³- Kuh-e Rangiha, Amir, The place of correction and rehabilitation of criminals and those in a dangerous

situation in Iran's criminal policy, Kashan University, February 2014, p.16.

⁴- Ki Nia, Mehdi, Fundamentals of Criminology, Volume 1, University of Tehran Press, Eighth Edition, 2006, p.35.

society that commits such an act by chance, and after applying the guarantee, disciplinary performances will re-enter the society, and on the one hand, the members of the society will have a negative view of them, and on the other hand, due to the age sensitivity of children and adolescents. The special features of this age group and social harms and deviations will have the greatest impact on them, so in order to prevent their stability in the delinquency process and to prevent future delinquency and rejection, adopting rehabilitative measures in criminal policy is doubly important. The 1989 Convention on the Rights of the Child is the most important international document referring to the readmission of juvenile delinquents.

Inspired by the teachings of clinical criminology, Iranian criminal policy makers have also tried to incorporate the corrective and rehabilitative aspects of punishment in proportion to the crimes committed in responding to anomalies.¹ The Constitution of the Islamic Republic of Iran, as the mother of laws, in paragraph 5 of Article 156 emphasizes the appropriate action to prevent crime and reform criminals, which indicates the importance of the legislature to the rehabilitation of criminals and the need to consider it as a criminal policy in sentencing. As a result of this regulation, the drafters of legislative and sub-legislative regulations have foreseen the rehabilitation of criminals in a number of laws, regulations, statutes and instructions as one of the goals and duties of the judicial, executive and legislative apparatus. Chapter 10 of the Islamic Penal

¹- Niazpour, Amir Hossein, The Rehabilitation Function of Community-Based Punishments with Emphasis on the Alternative Social Punishment Judicial Bill, Quarterly Journal of Crime Prevention Studies, No. 6, 2008, p. 59.

²- Haji Dehabadi, Mohammad Ali, Correction of Criminals in Iran's Legislative Criminal Policy, Private Law Studies, Fall 2009, Year 39, No. 3, p.95.

Code of 1392 on punishments and security and educational measures for children and adolescents is a manifestation of the legislative rehabilitation policy regarding this age group.

Merely adopting a criminal approach towards children and adolescents who oppose the previous law, because it is not compatible with their physical, mental and psychological condition, causes mental and psychological tensions, creates complications and failures in them, and becomes more and more familiar with delinquent techniques. As a result of associating with other criminals in the peer group and providing them with separation from family and society, and as a result leads to gaining experience (one of the preconditions for stability in delinquency) and turning them into delinquent criminals.² Juvenile delinquency occurs primarily not intentionally or intentionally, but more accidentally or as a result of ignorance or internal emotions and based on age requirements and without attention or knowledge of the results, and most importantly, children. Adolescents are the human capital of society in various economic, cultural, educational, etc. dimensions, and society should not easily deprive them of their talents. Therefore, reforming and re-socializing children and adolescents who oppose the law can be more than punishment. Be helpful.³

In this article, first, a brief description of the concept of rehabilitation and the history of corrective policy towards children and

³- Yazdani, Yousefali, Zahedian, Mohammad Hossein, Differential Penal Policy Against Juvenile Delinquency and Sexual Offense in the Iranian Legal System, National Conference on World Scientific Research in Management, Accounting, Law and Social Sciences, 2017, Volume 2, Page 1.

adolescents in the application of punishment will be mentioned, and then corrective and rehabilitative policy towards children and adolescents contrary to the law in the legislative, judicial and executive contexts of society. We will examine the existing legislative and sub-legislative regulations.

The concept of rehabilitation

Regarding the concept of rehabilitation, several definitions and descriptions have not been proposed, but more about its examples have been discussed among criminologists, and even in the field of Iranian criminal policy, a clear definition of the word correction and rehabilitation has not been provided by the legislator. But some jurists and criminologists have commented on this.

In the criminology literature, according to various criminologists, in general, rehabilitation can be defined as a return to the previous state free of crime.

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Larousse's French dictionary defines correction and re-socialization as: "Acting in such a way that the offender can re-adapt himself to social life"), accepting and recognizing the values and usefulness of something after the period (Forgetting), ending suspicions, criticisms and indifference towards a person with the

official announcement that he still deserves trust.²

Rehabilitation of children and adolescents in the term means improving the personality, psychological, emotional, moral and social of children and adolescents who oppose the law in terms of age sensitivities, to return to society and normal and pre-criminal life in a way that allows him to be actively involved in society, learn useful and socially acceptable skills and use these abilities in practice.

Others have defined rehabilitation as: "A psycho-moral treatment program with the necessary conditions to ensure the security of society for the social adaptation of the offender."³

The Quebec Society for Social Reconstruction Services defines rehabilitation as: "not repeating a crime or acting in such a way that a person can then live in accordance with the law and social norms, or strengthening a sense of belonging to society."

Bernard Bullk states the purpose of correcting and rehabilitating the offender (correction of the offender) or (re-training through punishment) in such a way as to lead the person to follow the basic rules of life.⁴

Verse 32 of Surah Ma'idah refers to the issue of rehabilitation and Islam considers preventing the offender from committing a crime as reviving him and all human beings.⁵

¹- Dekhoda dictionary

²- ebrahimi, Shahram, Fair Rehabilitation of Criminals, Teachings of Criminal Law, Razavi University of Islamic Sciences, No. 3, Spring-Summer 2012, p.153

³- Najafi Aberandabadi, Ali Hossein, Beigi, Hashem, Encyclopedia of Criminology, p.163.

⁴- Bullk, Bernard, translated by Ali Hossein Najafi Aberandabadi, Majd Publications, third edition, 2003, p.9.

⁵- ((I Ktbna Da'vat death on Israel Middle killing me mentally corruption on earth except his breath Fkanma killing of people Jmya I Fkanma revival of the revival of the people Jmya Vlqd Ja'thm Rslna Balbynat Then surely I too Ksyra Da'vat earth after Lmsrfvn)):

History of rehabilitative criminal policy towards juvenile delinquents

Before the eighteenth century, the most important feature of criminal responsibility was that it was collective, and children and adolescents, like other members of society, had equal criminal responsibility. From the eighteenth century onwards, the major schools of criminal law came into being, and over time, juvenile delinquency and the principle of proportionality of punishment to the offender were accepted as criminal rules. The followers of the classical school (Joseph de Masters and Emmanuel Kant) believed that people commit crimes voluntarily and that the punishment should be commensurate with the understanding of the offender. It is milder than ordinary people, and in this school, little attention was paid to the issue of correction of punishment, and children were punished like adults in ordinary prisons. The followers of the neoclassical school also paid attention to the will and authority and choice of the offender and stated that the amount of punishment should be commensurate with the intellect and the amount of moral responsibility arising from the individual's choice and authority and since children do not have enough intellect and purity. The judge should be allowed to determine the amount of punishment in proportion to the degree of reason and discernment of the perpetrator, which refers to the principle of individualization of punishments, but nevertheless did not explicitly address the issue of correction and rehabilitation of the offender. The prosperity and reform of criminals in recent centuries owes much to

because the children We decreed that whoever kills a soul without right or without corruption or sedition on earth, it is as if he killed all the people, and whoever gives his life (saves it from death) is like killing all the people. Brought to life. And indeed, our messengers came to them with clear miracles, then

the school of inquiry and mainly to the modern social defense movement.

The followers of the orthodoxy school (Lombroso, Enricofri, Garofalo) believe in coercion in committing a crime and deny any will and authority for human beings to commit a crime, stating that the punishment is based on social responsibility, not moral responsibility and children. They do not know of moral responsibility and attention to the issue of correction and rehabilitation of the offender and the application of security and educational measures was first stated by this school and stated that the basis of security and educational measures is based on the correction and rehabilitation of the offender and criminal responsibility of children to They accepted the form of partial and more responsibility for their correction and education and stated that correction and rehabilitation is an approach to prevent crime in the future and children and adolescents are accidental offenders and by taking rehabilitative measures appropriate to their personality, they should be addicted. Prevent their guilt.

In the twentieth century, the social defense movement (Gramatica) considered the criminal as a sick and abnormal person and stated that he should become a normal and acceptable person in society¹ and did not believe in rejecting the criminal but in socializing and rehabilitating the criminal. Is. This school states that defending the community against the offender is necessary, but this defense should not lead to the exclusion of the offender, but should be done through socialization and social

many people, after the arrival of the messengers, laid the foundation of corruption and rebellion on the earth.

¹- Saffari, Ali, Criminology, Developments, Principles and Execution of Liberal Punishment, Jangal Publications, 17th Edition, 2011, p.85.

reconstruction. Criminal responses are not the only way to reconcile the offender¹. The followers of this school believe that the best way to defend society and make it healthy is through rehabilitation and re-socialization of criminals because criminals are also human beings and society is obliged to plan the way of their readmission to prevent the recurrence of crime.² They also say that preserving the sanctity and value of childhood is important and the legislator has an important role to play in this regard, and that rehabilitative measures should be taken to ensure that children return to society and prevent future delinquency.

The New Social Defense Movement (Mark Ansel) argues that in the case of delinquency, members of society should act on the basis of criminal law and develop it according to a sound and useful criminal policy without eliminating punishment, Defended. In this school, it is necessary to pay attention to the personality of the offender and to recognize him and to use all the facilities in this regard. This school is inspired. The followers of this school believe that by accurately recognizing the personality of the offender, especially children and adolescents, the ultimate goal can be achieved better and more effectively, which is to re-socialize the offender and return him to society. The followers of this school, in addition to considering the necessity of punishment in society, also consider the application of security and educational measures necessary in order to rehabilitate the offender and prevent his future delinquency, and attach importance to

the application of security and educational measures.

In Iran's criminal policy, the legislator has more or less paid attention to the criminal policy of correction and rehabilitation in different time periods, but in recent years, due to the increase in delinquency by members of society, especially children and adolescents and the lack of proper efficiency of criminal policy The legislature has increasingly shown a policy of reform and rehabilitation in dealing with and preventing crime.³ In the General Penal Code of 1925, the legislature did not mention any specific rehabilitative action against children and adolescents and was more inclined to impose punishment, although in Article 47 of the law, the institution of suspension of punishment was generally accepted and a look at correctional institutions. had. However, in 1960, with the approval of the Law on Security and Educational Measures in Articles 1, 2 and 3, the legislator paid attention to the issue of correction and rehabilitation of delinquent children and adolescents along with other delinquents, in order to prevent their future delinquents. In the 1973 law, the legislature provided for security measures, and in Article 33 of the law, it provided for rehabilitative measures against delinquent children and adolescents, including surrender to parents, but on the other hand, the institutions suspended the execution of punishment and reiterated the legislator's desire to Punishment has been more than correction and rehabilitation. In the Islamic Penal Code of 1982, we can understand the reformist view of the

¹- Madani, Seyedeh Raya, Correction and Rehabilitation of Criminals in Iran's Criminal Policy with Emphasis on the New Islamic Penal Code and the Fifth Development Plan Law, Imam Khomeini International University, October 2013, p.8.

²- Gholami, Hossein, Repetition of Crime in the Light of Legal-Criminological Studies, Mizan Publishing, First Edition, 2001, p.53.

³- Haji Dehabadi, Mohammad Ali, Correction of Criminals in the Criminal Policy of Islam and Iran, PhD Thesis, University of Tehran, 2007, p.2.

legislature, for example, in Article 37 of the law, the legislature provides for the employment of prisoners outside the prison, which is an example of rehabilitation measures. In the Islamic Penal Code of 1991, the legislature provided for security measures and institutions of suspension, amnesty and parole, but on the other hand, security measures and suspension of punishment were limited, and even the legislator in Article 49 of the law provides corporal punishment to juvenile offenders. It is subject to expediency, which in itself indicates the legislator's attention to the policy of rehabilitation of children and adolescents. Finally, the legislature in the 1992 law pays more attention to reform and rehabilitation than the previous laws, and by accepting institutions such as postponing the issuance of sentences, suspending the execution of sentences¹, the semi-liberty system, replacing imprisonment and allocating the tenth chapter of the law as measures The provision of children and adolescents and the classification of children and adolescents in conflict with the law and the provision of a diverse range of rehabilitation measures for them, has emphasized the adoption of rehabilitation policy for juvenile delinquents as its criminal policy and in general The effects of correction and rehabilitation of the offender in this law are more than before.²

First speech: Rehabilitation of delinquent children and adolescents in the legislative context

Although the authors of the Constitution of the Islamic Republic of Iran (as a supra-legislative law) in paragraph 5 of Article 156

¹- Sharifabadi Azizi, Fatemeh, Fair Rehabilitation of Criminals, Its Principles and Position in Iranian Law, Shahid Bahonar University of Kerman, June 2014, p.56.

have introduced the judiciary as the custodian of the rehabilitation and correction of criminals, it should not be overlooked that the Constitution of the Islamic Republic of Iran The title pursues a goal³, so in addition to the fact that the laws passed by the legislature as a legislative body in Iran should not be in conflict with the principles set out in the constitution, but on the other hand these laws should be in line with constitutional goals and accelerate achievement To those goals. On the other hand, the judiciary is not a legislative institution but is basically an executive institution. Therefore, the legislature of society plays the most important role in the success of the judiciary in rehabilitating criminals. Consequently, the judiciary, by implementing these laws, will implement the policy of rehabilitation of criminals in the context of society more successfully. The following are some of the important rules that follow the rehabilitation policy for children and adolescents.

a. Islamic Penal Code approved in 2013

As mentioned earlier, the legislative power of the society plays the greatest role in rehabilitating the criminals of the society because other institutions of the society are basically implementing the policies of the legislature. The Iranian legislature, in terms of many years of experience in dealing with criminals, today more than ever tends to rehabilitation policies, which can be confirmed by Chapter 10 of the Islamic Penal Code on juvenile delinquents. In this chapter, the legislator has divided children and adolescents into three age groups in ta'zir crimes and crimes causing hadd and qisas,

²- Javanmard, Behrooz, Zero Tolerance, Strict Penal Policy Against Minor Offenses, Mizan Publishing, First Edition, 2009, p.37.

³- Azimzadeh Ardabili, Faezeh and others, criminal policy and its conceptual evolution, Excellence in Law, Fourth Year, February and March 2012, No. 15, p.20.

and has considered answers for each category according to the type of crime committed.

Article 88 of the said law states that the court shall make one of the following decisions for children and adolescents who have committed criminal offenses and who are nine to fifteen full solar years old at the time of the commission of the crime:

A- Submitting to the parents or guardians or legal guardians by making a commitment to discipline and upbringing and care for the good morals of the child or adolescent.¹

Note: If the court deems it expedient, it may, as the case may be, from the persons mentioned in this paragraph, undertake to undertake matters such as the following and to announce the result to the court within the prescribed time limit:

1- Introducing the child or adolescent to a social worker or psychologist and other specialists and cooperating with them.

2- Sending a child or adolescent to an educational and cultural institution for the purpose of education or vocational training.

3- Necessary action to treat or quit the addiction of a child or adolescent under the supervision of a doctor.

4- Preventing harmful association and communication of the child or adolescent with persons at the discretion of the court.

5- Preventing children or teenagers from moving to certain places.

B- Submission to other natural or legal persons that the court deems to be in the best interest of the child or adolescent, with the obligation to carry out the above-mentioned

¹ Asadi Namini, Homa Sadat, The evolution of Iran's criminal policy regarding juvenile delinquents, Islamic Azad University, Damavand Branch, Winter 2017, p.47.

orders in prison (a) if the parents, guardians or legal guardians of the child or adolescent are not competent (1) Civil law.

C- Advice by the judge of the court.

D- Warning and warning or obtaining a written commitment not to repeat the crime.

E- Keeping in the correctional center from three months to one year for first to fifth degree criminal offenses. As it can be seen, the surrender of a delinquent child and adolescent to the parents or other natural or legal persons or his advice by a court judge or a warning to the child and adolescent and obtaining a written commitment not to repeat the crime are examples of rehabilitative actions that Rehabilitation measures are effective due to the emotional and psychological sensitivity and personality of children and adolescents and due to the fact that children and adolescents generally commit crimes by chance.² The family as the smallest and most fundamental social unit that plays an important role in integrating the behaviors of individuals with the social environment and can through the use of cultural, professional and medical rehabilitation measures, personality disorders of delinquent children and they Move towards social adaptation. However, the objection to note A is that in such a way that the parents do not try to carry out the headquarters order in paragraph A, which is of a rehabilitative nature, there is no executive guarantee for it.

The legislature also notes in Note 3 of the latter Article that the Juvenile Court may, however, rely on the decisions made in paragraphs (a) and (b) with respect to the

² Najafi Aberandabadi, Ali Hossein, Criminology textbook, Shahid Beheshti University, Discussions in Criminal Sciences, Collection of Lectures, p. 2436.

investigations made, as well as the social workers' reports on the child or adolescent's condition and behavior. If the best interests of the child or adolescent require it to reconsider its decision. Giving this legal authority to the judge of the court is in line with the child and adolescent rehabilitation policy, because the decision made by the court regarding the child or adolescent may not be appropriate in practice and has a negative aspect, so the court has the legal authority. It can be changed according to the interests of the child or adolescent.

The legislature has stated in Article 90 of the said law: Transfer custody to the custody of the child or juvenile to his or her guardian or legal guardian. The court's decision on appeal will be made if the child or juvenile has spent at least one-fifth of the custody in the correctional facility. This does not preclude the use of parole and other legal rebates when their conditions are met. This regulation is also mentioned on the basis of rehabilitation policy because although the correctional center has positive effects on the one hand, but also has negative effects on the other. Over time, the correctional center, in order to keep children and adolescents out of the open environment and impose restrictions on them to do things that are appropriate for their age, leads to a weakening of the morale of children and adolescents, and on the other hand, It exposes it to corruption because children and adolescents with different criminal situations are present there, and this

¹- Article 18 of the Islamic Penal Code: Ta'zir is a punishment that is not subject to the title of hadd, qisas or diyat and is determined and applied in accordance with the law in cases of committing sharia prohibitions or violating government regulations. The type, amount, quality of execution and regulations related to discount, suspension, fall and other punishments are determined by law. In issuing a ta'zir

and their relationship with each other is a factor in transmitting the criminal subculture.

Article 94 of the legislature states: "The court may postpone the issuance of a sentence or suspend the execution of punishment for all criminal offenses committed by juveniles." Postponement of sentencing and suspension of execution of punishment are among the compassionate institutions that have a rehabilitative nature and the judge of the court can according to the above regulation according to the personality of the juvenile delinquent and the circumstances of the crime and according to their interest Use these reform institutions.

B. Criminal Procedure Code approved in 2013

One of the most important provisions of the law, which refers to rehabilitation policy, is the subject of filing a personality file regarding juvenile delinquents. The legislator has stated in Article 286 of the said law:). The filing of a personality file is one of the achievements of modern criminology in criminal law in order to help the re-socialization of the offender. In this file, a report on the personality, psychological, personal and family status of the delinquent child or adolescent is recorded by experts. Paying attention to the personality of the offender and recognizing it and using all the facilities in this regard is essential, and the legislator in Article 18 of the Islamic Penal Code¹ also implicitly refers to the formation of a personality file. And the issue of forming

sentence, the court, considering the legal provisions, shall consider the following:

- A- Motivation of the perpetrator and his mental and psychological state while committing the crime
- B- The manner of committing the crime, the extent of the breach of duty and its harmful consequences
- C- Actions committed after committing a crime
- D- Records and personal, family and social status of the perpetrator and the effect of ta'zir on him

a personality file for criminals, especially children and adolescents, the basis of which is rehabilitation and the proportion of punishment to the delinquent personality, is inspired by the ideas of the followers of the new school of social defense.

Article 298 of the said law states: "The juvenile court is formed in the presence of a judge and a counselor. The opinion of the counselor is advisory" and in this regard, Article 410 of the law states: "Advisors of the juvenile court from They are selected from specialists in educational sciences, psychology, criminology, social work, academics and educators familiar with the psychological and educational issues of children and adolescents, both employed and retired. The presence of a counselor in the juvenile court and providing an advisory opinion to the presiding judge on how to commit the crime and the personality, psychological, family and social status of the delinquent child or juvenile in order to adjust the guarantee of criminal execution, the ultimate goal of which is child rehabilitation. Or the juvenile delinquent and his return to pre-crime status.

The legislature also states in Article 414 of the said law: "(Whenever the best interests of the child subject to Note (1) of Article (304) of this law so require, all or part of the proceedings may be held in his absence. Is considered a presence)). The more a child and adolescent relate to the criminal justice system, the more likely they are to accept the offender label as a personal identity, because gaining criminal experience is one of the most important preconditions for stability in delinquency. The absence of the delinquent child or juvenile in the criminal proceedings

¹- Niazipour, Amir Hossein, The Criminological Duty of the Judiciary in the Light of the Law of the Fifth

is a rehabilitative matter that the legislature has addressed.

P. Fourth, fifth and sixth development laws of the Islamic Republic of Iran

Today, the main purpose of legal systems is to impose punishment and security and educational measures with emphasis on providing the ground for successful social, moral, psychological, etc. return of the offender to society. In this regard, the Iranian legislature in paragraph b of Article 130 (through the Alternative Bill of Imprisonment) and Article 132 of the Fourth Economic, Social and Cultural Development Plan of 1383, to the policy of reform and rehabilitation of criminals and in Article 211 of the Fifth Five-Year Development Plan Islamic Republic of Iran, approved in 2010, has referred to the policy of correction and rehabilitation of criminals in general, and in paragraph 5 of paragraph C and paragraph 3 of paragraph T of Article 113 of the Sixth Five-Year Development Plan Law approved in 2016, the policy of correction and rehabilitation of criminals through employment Refers to compassionate institutions.

Speech 2: Rehabilitation of juvenile delinquents in the judiciary

Since the judiciary is envisaged in accordance with Article 156, paragraph 5, of the Constitution as the main custodian of the rehabilitation of criminals in Iran¹, a number of legislative and sub-legislative provisions that refer to the rehabilitation of juvenile delinquents in line with the reform mission of the judiciary are examined. Will take. In this speech, we talk about the rehabilitation of juvenile delinquents in the judiciary through correctional centers, after-care centers,

Economic, Social and Cultural Development Plan, Legal Journal of Justice, No. 80, Winter 2012, p. 194.

psychiatric hospitals for criminals and treatment centers for addicted criminals.

a. Rehabilitation of delinquent children and adolescents in the correctional center

The idea of rehabilitating and reforming criminals and not adopting a mere repressive criminal policy and paying attention to the personality of the offender and the proportionality of the punishment to the personality of the offender was first expressed by the founders of the research school. In relation to mere criminal policies and under the influence of criminological studies and findings, various educational, vocational, psychological, etc. programs have been developed by criminal policymakers and the relevant corrective bodies have been established in this field to be multilateral. And take comprehensive action in the field of rehabilitation.¹ Correctional Center is one of the correctional and rehabilitation facilities for juvenile delinquents in Iranian criminal law.²

Iranian criminal policymakers, on the one hand, following the criminological developments and on the other hand, considering that children and adolescents generally have weak criminal capacity and high adaptability and educability, in some laws regarding the issue of child rehabilitation and Adolescents have emphasized through the Center for Correction and Education.³ In this regard, we can refer to paragraph 1 of Article 2 and paragraph 5 of Article 3 of the Law on Security and Educational Measures of 1960, Article 49 of the Islamic Penal Code of 1991

and Note 1 of Paragraph B of Article 224 of the Code of Civil and Revolutionary Courts (in criminal matters). 1378 (all obsolete laws) and paragraph e of Article 88 and Article 90 of the Islamic Penal Code of 1992 and Articles 287, 525 and 527 of the Code of Criminal Procedure of 2013 pointed out that the legislator referred to the Correctional Center as a rehabilitative institution for children and adolescents.⁴ The offender has paid attention. Also, in order to emphasize the rehabilitative role of the Correctional Center in Article 132 of the Fourth Development Plan Law, the legislator has referred to the optimization of physical spaces with the priority of developing correctional centers.

Also in the field of sub-legislative provisions in paragraph 3 of the Articles of Association of Prisoners Support Associations in 1981, Article 2 of the By-Laws of Prisoners Support Associations in 1981 and paragraph B of Article 4 of the Articles of Association of Prisoners' Cooperatives and Vocational Training in 2003 and Article 5 of the By-Laws Separation and classification of prisoners, to help improve the health situation, to encourage and encourage cultural, sports, professional and educational activities in the correctional center, to help establish correctional centers, to establish organizations for technical education, and Professionals of adolescents residing in correctional centers and teaching different specialties refer to them and classify how juvenile delinquent children and adolescents are cared for in correctional centers. Also, the Iranian legislator for the first time in 1338

¹- Saffari, Ali, Criminal Law and Criminology, First Edition, Knowledge Center Publications, 2005, p.115.

²- Ghasemi Moghadam, Hassan, Quarterly Journal of Crime Prevention Studies, Third Edition, Spring 87, p. 150.

³- Taj Zaman, Danesh, Who is the culprit and what is criminology, Kayhan Institute, seventh edition, 1997, p. 332.

⁴- Ghasemi Moghadam Hassan, Quarterly Journal of Crime Prevention Studies, Third Edition, Spring 87, p. 150.

with the development of the law on the establishment of juvenile delinquency, using the name of the Correctional Center in Articles 1, 9, 17, 18, 19, 21, 22, 23 and especially Article 24 of the law He pointed to the establishment of the Correctional Center for juvenile delinquents and juveniles and the need to keep them in these centers, and following that, the authors of the sub-legislative regulations have compiled the executive regulations of the Correctional Center in 1968.

Article 1 The executive regulations of the Correction and Training Center are obsolete according to the approval of Article 525 of the Criminal Procedure Code of 2013. The latter article considers the correctional center as a place for the care and education of children and adolescents.¹ Therefore, according to Articles 4, 15 and 16 of the above-mentioned regulations, the center is obliged to use medical, psychiatric, psychological, educational and social work specialists to improve the physical, mental (psychological) and educational status of juvenile delinquents Try.

As a result, it is observed that Iranian criminal policymakers under the influence of clinical criminology models and by anticipating several regulations at both legislative and sub-legislative levels in the field of correctional center for juvenile delinquents and the need to keep them in these centers, seeks reform And they have come to re-socialize.

B. Rehabilitation of delinquent children and adolescents in post-discharge care centers

Juvenile delinquents after serving a sentence (especially after being released from the center) to return to society and continue to live a normal life, due to the criminal label given to them, as well as the psychological and emotional damage inflicted on them Numerous become material and spiritual. Therefore, adopting protective-care measures, especially care after their departure from the correctional center, plays an important role in reducing the likelihood of their re-inclination to delinquency. Because the implementation of supportive-care measures by the institutions that are created for this purpose, reduces their material and spiritual problems and, as a result, completes the rehabilitation process and prevents their re-delinquency. Iranian criminal policymakers have also pointed to the importance of this in the rehabilitation of children and adolescents at both legislative and sub-legislative levels.

Using the teachings of clinical criminology and in order to develop the process of rehabilitation of children and adolescents released from the center, the legislator provides care after their departure from the center through paragraph H of Article 2 of the Law on Transformation of the Guardianship Council and Security and Educational Measures To the Organization of Prisons and Security and Educational Measures of the country in 1985 and paragraph 12-9 of paragraph b (policies) of the first part of the law of the first economic, social and cultural

¹- In order to achieve such a thing, in Article 286 of the Criminal Procedure Code of 1392, the case of juvenile delinquents, which includes information on education, family, social, moral, physical, psychological and even vocational training, is

established. Experts have been instructed by those involved in criminal justice to take appropriate measures to correct and educate juvenile delinquents and juveniles.

development plan of 1989, Article 132 of the law of the fourth economic, social and cultural development plan of the year 2004 has entered the legislative area of Iran. Although the mentioned laws do not explicitly mention after-school care for children and adolescents who oppose the law from the correctional center, but in the opinion of the author of the mentioned laws, they express a general rule and include children and adolescents.

In addition to the above-mentioned legislations, in some sub-legislative regulations, including Article 2 and 3 of the Statute of Prisoners Support Associations in 1981¹, paragraph c of Article 1 of the Executive Regulations of Self-Sufficiency of Prisons and Security and Educational Measures of 1999, paragraph 3 of Article 1 Regulations on Addiction Prevention, Treatment of Drug Addicts and Protection of People at Risk in 1998, Paragraph C of Article 28 of the Executive Regulations of Article 70 of the Law on the Third Economic, Social and Cultural Development Plan of 2000 and Paragraph N of Article 18, Paragraph H of Article 24 And Articles 237, 238 and 239 of the Executive Regulations of the Prisons and Security and Educational Measures Organization of the country in 2005, to provide material and spiritual support to prisoners released from prison, assist their families, assist in improving health, treatment, psychology, education and Raising prisoners and paving the way for the participation of social institutions in the care and support of this group of criminals in order to rehabilitate them socially and return them to pre-criminal life, which, as mentioned earlier, although explicitly mentioned in the regulations, Withdrawal of children and

adolescents contrary to the law from the correctional center It is not mentioned, but in the opinion of the author, the mentioned laws express a general rule and also include children and adolescents.

In order to emphasize the effective role of post-exit care centers in the rehabilitation of criminals, criminal policymakers in 1378 have developed regulations in this area, separately. Article 1 of the regulations for post-departure care centers states:

After leaving, the administration of the care center is obliged, according to the recent law, to provide material and spiritual support to the released children and adolescents and to provide a favorable environment for their return to a healthy life, in order to prevent the occurrence of crime.

Finally, it should be noted that post-discharge care centers with a clinical and supportive-care approach, especially for delinquent children and adolescents who are sensitive in age and more exposed to psychological and emotional damage and judgments of society than other sections of society. Plays an effective role in reforming and re-accepting them to return to normal life.

P. Rehabilitation of delinquent children and adolescents in clinical centers

Some delinquent children and adolescents have been investigated, and reports in the personality file commit crimes under the influence of neurological, mental, personality, and physical disabilities. Therefore, adopting clinical-therapeutic measures for this group of children and adolescents and keeping and rehabilitating them in clinical-medical centers and hospitals

the ability to provide jobs, and an organization called the Prisoners' Support Agency is set up under the high leadership of the Minister of Justice.

¹- Previously, the legislature in 1941 approved the statute of the Prisoners' Protection Agency, which Article 1 of the statute stipulated: They do not have

helps them to adapt to the society more than the usual security and educational measures. Therefore, during the preliminary investigation, the legislator stated in Article 202 of the Criminal Procedure Code of 2013: "Whenever the investigator during the investigation suspects that the accused was insane at the time of committing the crime, he will conduct the necessary investigation from his relatives and other informants." He studies forensic medicine and, in case of insanity, sends the case to the prosecutor with a warrant for the prosecution. The Welfare Organization and the Ministry of Health, Treatment and Medical Education are transferred, the centers are obliged to accept and if they refuse to carry out the prosecutor's order, they will be sentenced to refuse to comply with the order of the judicial authority according to the Islamic Penal Code.

The legislature also states in Article 502 of the Code of Criminal Procedure at the stage of execution of a criminal sentence: "If the convicted person suffers from a physical or mental illness and the execution of the punishment aggravates the illness or delays his recovery, the execution judge shall obtain The forensic opinion delays the execution of the sentence until recovery. Turning to another appropriate punishment, taking into account the type of disease and punishment, sends a final decision to the issuing authority). As it is clear, the legislator has considered rehabilitative criminal policy both in the process of criminal proceedings and in the execution stage of the sentence, and performing such medical and clinical measures has a more adaptive effect than the usual security and educational measures.

On the other hand, the legislator in the executive regulations of the Correctional Center in 1968 in Article 14 of care and treatment of "children and adolescents in one of the medical or medical-educational institutions if their care or illness due to illness or mental condition, "It is not possible in the center of correction and education."

d. Rehabilitation of delinquent children and adolescents in treatment centers for addicted criminals

According to the latest research, the average age of starting to use drugs in Iran has reached 15 years.¹ Considering that children and adolescents are the human resources of the country for the future in the fields of science, research, industry, etc., so the phenomenon of drug use by them and the resulting crime requires serious attention and appropriate and efficient solutions. It is for their treatment and rehabilitation to return to normal life. Hence, criminal policymakers, in the light of a number of legislative and sub-legislative regulations, have considered the treatment and rehabilitation of this group of criminals. In paragraph 3 of note A of Article 88 of the Islamic Penal Code, the legislature mentions the obligation of the parents or guardians of the juvenile delinquent to treat or quit the addiction of a child or adolescent under the supervision of a physician as a security and educational measure. Also, in Article 81 of the Code of Criminal Procedure, the legislator referred to the application of a compassionate and rehabilitative institution of suspension of prosecution and considered its implementation subject to the orders of a judicial official. , Hospital or in any other way within a maximum of six months. In Articles 43 and 48 of the Islamic Penal Code,

¹- Deputy of Mental Health and Addiction Office of the Ministry of Health in an interview with IRNA dated 14/4/2019

the legislature provides for the postponement of sentencing and suspension of punishment, which can be accompanied by the execution of some court orders, one of which is the treatment of illness or withdrawal from addiction.

On the other hand, the legislator has referred to the treatment and rehabilitation of addicts in paragraph 2 of Article 1 of the Regulations on Addiction Prevention, Treatment of Drug Addicts and Support of at-Risk People Also, in Article 1 of the Executive Regulations of Authorized Treatment Centers and Reducing the Harm of Drug Addiction and Psychotropic Substances, the legislator is the subject of Note 1 of Article 15 of the Amendment to the Anti-Narcotics Law Amendment Law of 2012 to designate medical centers to provide treatment services and reduce harm to people. Somehow they have become addicted to drugs or psychedelics. Also, in Article 1 of the Regulations for Care after the Addiction of Addicts in 2013, the judicial authority determines the task or duties in relation to the person who leaves the center after the prescribed period, and the legislator has given a performance guarantee for not performing the duties.

Thus, it can be seen that the legislator in the light of the regulations imposed on the treatment of juvenile delinquent children and adolescents who use drugs and generally commit crimes due to drug use and drug supply, without imposing a mere criminal policy, By treating these criminals, he has taken steps to rehabilitate them.

Third speech: Rehabilitation of juvenile delinquents in the context of the executive apparatus

In addition to delegating the rehabilitation of criminals to the legislature and the judiciary,

Iran's criminal policymakers have also required a number of executive bodies to rehabilitate criminals. In this speech, the rehabilitation of delinquent children and adolescents in the executive apparatus through the Welfare Organization and the Anti-Narcotics Headquarters is examined.

a. Rehabilitation of delinquent children and adolescents through the Welfare Organization

In all human societies, human beings do not have the same appropriate economic, social, physical and psychological conditions, and in the meantime, some children and adolescents are able to survive without the support of other individuals and institutions due to poor economic, social, physical and psychological conditions. They are not normal life. For this reason, policymakers in these societies try to improve the living conditions of these people in some way. One of the measures through which these communities usually seek to improve the living conditions of human beings, is to provide psychological, welfare and rehabilitation services through relevant institutions to members of society.

In Iran, various institutions such as the Social Security Organization, etc. are working to eliminate the deficiencies in the various fields mentioned, and one of the most important of these institutions is the Welfare Organization. Legislator through Articles 21 and 29 of the Constitution and following the law, Article 192 of the Law on the Third Plan of Economic, Social and Cultural Development in 2000, Article 29 of the Law on Amendment of Articles of the Fourth Plan of Economic, Social and Cultural Development in 2008, Article 211 Law of the Fifth Economic, Social and Cultural Development Plan of the year Articles 2, 80 and 113 of the Law of the Sixth Economic, Social and Cultural Development Plan of

2016, paragraph 3 of paragraph c of Article 38 and paragraphs 7 and 8 of paragraph c of Article 57 of the Law on Permanent Provisions of the Hub Program Development of the country in 2016, the bill on the formation of the Welfare Organization in 1980, the law on providing women and orphans in 1992 and the law on the fourth economic, cultural and social development plan in 2004, the law on the protection of orphaned children and adolescents 2013, Article 55 of the Social Security Law of 1975, policy-making and planning in the field of social welfare, material and spiritual support for homeless and needy families, providing services to children and adolescents in various material and spiritual aspects, such as providing facilities Education, welfare, sports, etc., supporting the disabled and the needy O, they have entrusted the prevention of social deviations and social harms and the correction of deviations and social harms to the Welfare Organization of the country. Although some of the mentioned laws do not explicitly refer to children and adolescents, He also mentioned the provision of material and spiritual support to members of society in an absolute way, which includes delinquent children and adolescents.

Also, in some sub-legislative regulations, the issue of correction and rehabilitation of criminals has been mentioned, in which the mentioned organization plays a role. Therefore, according to Article 1 of the Executive Regulations on how to identify the needs of clients and use the credit of the internship and social rehabilitation program of the Welfare Organization in 1992, Article 1 and 2 of the Executive Regulations of Support and Rehabilitation Centers for girls and women at risk of social harm Acute and socially disadvantaged women in 1992, Article 1 of the Regulations on Addiction

Prevention, Treatment of Drug Addicts and Protection of People at Risk in 1998, Regulations on Social Welfare Umbrella in 2005, Regulations on Organizing Street Children in 2005 By adopting appropriate educational, upbringing, service, welfare, treatment - medical and psycho-social measures to support vulnerable and injured people in the community, including delinquent children and adolescents (in order to rehabilitate and socially adapt them to return to life Healthy and normal) and facilitate the field of support as well as correction and rehabilitation of this group of people in line with the set goals.

B. Rehabilitation of criminals through the Anti-Narcotics Headquarters

Substance abuse among adolescents increases problems such as the risk of injury and death through interpersonal violence, the commission of criminal acts, especially in the form of criminal groups, and educational problems. On the other hand, the undesirable phenomenon of drug use by adolescents in the sense that they are the country's alternative forces in the future and the country's capital in the fields of science, research, industry, etc., requires serious attention and effective solutions . Given the statistics on drug use and the number of users and related crimes, over time criminal policymakers realized the desirability of purely repressive criminal policy and, under the influence of the teachings of clinical criminology, also considered reformist criminal policy. put.

In our country, since the victory of the constitutional movement in 1945, several laws and regulations have been enacted at the legislative and sub-legislative levels in order to combat the production and consumption of

drugs.¹ The Anti-Narcotics Law was passed in 1988. Considering the passage of laws in the history of Iran regarding drugs, it is concluded that the legislator over time more and more realized the destructive effects of drug use on society and its individuals, and in this regard, strict laws and regulations. But in recent decades, criminal policymakers have been more inclined to a rehabilitative criminal policy than to a repressive one, given the increase in consumers and the declining age of use and drug-related crimes.

By accepting the rehabilitation policy in the Law on Amending the Anti-Narcotics Law and adding articles to it in 1997, the Iranian legislature has made the Anti-Narcotics Headquarters the main trustee of reforming and rehabilitating addicts in authorized centers. In Article 15 of this law, in addition to accepting the punishment model in order to respond to addiction (in Article 16 of the law), the legislator has also provided a clinical model for the treatment and rehabilitation of addicts.² In other words, the legislator in this article has given priority to the treatment and rehabilitation of addicts over their punishment, and on the other hand, the legislator in the mentioned article has not set a specific age range in rehabilitation and rehabilitation as a general policy that includes children. And teenagers can also be raised. Also, paragraph 14 of the second part of the law of the second plan of economic, social and cultural development of 1995, Article 97 of the law of the fourth plan of economic, social and cultural development of 2004, paragraphs 2 and 3 of paragraph 80 of the law of the sixth plan of economic, social and cultural development. The year 2016 emphasizes the role of the Anti-Narcotics

Headquarters as a government institution in the fight against addiction and rehabilitation of addicts.

Also, some sub-legal regulations emphasize the process of rehabilitation of addicts, including children and adolescents, by the mentioned headquarters. In this regard, paragraph 4 of Article 4 and Article 29 of the Executive Regulations of the Law on Amending the Anti-Narcotics Law of 1998, Articles 1 and 2 of the Regulations on Post-Addiction Care in 2013, Article 1 of the Regulations on Addiction Prevention, Treatment of Addicts Drugs and protection of at-risk individuals in 1998, Note to Article 1 of the Executive Regulations of Authorized Treatment Centers and Harm Reduction of Drug Addiction and Psychotropic Substances Note to Article 15 of the Amendment to the Law on Amending the Anti-Narcotics Law of 2012, which Participation of other organizations and social institutions takes place.

Therefore, according to the mentioned regulations, the Anti-Narcotics Headquarters, in cooperation with a number of executive bodies and social institutions that work in the field of counter-narcotics and protection of children and adolescents, to policy and plan in the field of rehabilitation of addicts. Especially for children and adolescents.

Conclusion and Recommendations

Today, the rehabilitation of delinquents, especially juvenile delinquents, due to their age sensitivities and especially the fact that they are the most important human assets of societies, is one of the main issues of criminal

action to revive and establish rehabilitation camps for drug addicts."

¹ Madani Ghahfarkhi, Saeed, 2011, *Addiction in Iran*, Third Edition, First Edition, p.145.

² According to Note 3 of Article 15 of the said law, "the government is obliged to take the necessary

policy in many countries. Iran's criminal policy at the supra-legislative level and following it at the legislative and sub-legislative level, has recently commented on the delinquent actions of children and adolescents under the influence of criminological developments and theories of some criminological schools that have commented on the rehabilitation of criminals. Has taken on a correctional-therapeutic aspect, so that in a number of Iranian regulations, the establishment of special centers for the rehabilitation of children and adolescents contrary to the law is provided. But at present, Iran's rehabilitative criminal policy towards juvenile delinquents is favorable, but due to lack of sufficient tools to reform and rehabilitate them, lack of necessary expertise and lack of specialized personnel in this field, the implementation of some policies and programs Correctional treatment due to disagreements between experts and relevant trustees, limited funds, lack of adequate and effective support from civil society organizations and non-governmental organizations that work to support and rehabilitate juvenile delinquents and ... It is not completely comprehensive and effective. Therefore, in order to fully implement the child and adolescent rehabilitation program, several suggestions are presented.

First, looking at Chapter 10 of the Islamic Penal Code and other relevant regulations, it should be noted that the correction and treatment and rehabilitation of delinquent children and adolescents requires the development of a comprehensive law in which the institutions in charge of correction and rehabilitation, the conditions of actors in rehabilitation programs, unlimited Rehabilitation measures for more freedom of action of the judiciary in their use, full and effective support of civil institutions and non-

governmental organizations to intervene in rehabilitation, etc. have been accurately predicted because today the rehabilitation of criminals, especially children and adolescents In order for them to return to normal and pre-criminal life, it is a right for the offender and a duty for the criminal justice system.

Second, the formation of criminological and personality files for children and adolescents according to the principles of rehabilitation and the provision of rehabilitation solutions appropriate to the contents of the personality file by experts to the judiciary in the form of advisory comments. Although the legislator in Article 286 of the Criminal Procedure Code of 2013 has correctly emphasized the formation of a personality file, but regarding the fact that the relevant specialist after assessing the personality, psychology, etc. of children and adolescents can have their own advisory opinion on the nature and The type of rehabilitation action that is commensurate with the personality findings of the child and adolescent should be submitted to the judicial authority so that the rehabilitative decision of the judicial authority is in full and effective compliance with the child and adolescent rehabilitation process, and according to the author, this vacuum The presence of the counsel in the juvenile court will not be eliminated because the counsel will only face the child or adolescent in limited court hearings, while the person involved in filing the personality file will spend more time with the child and adolescent and have more personality nobility over them. They can provide more principled and appropriate opinions.

Third, holding workshops and classes in criminal psychology and personality for children and adolescents, for judges and informing and informing them about the personality and psychological needs of

children and adolescents and their shortcomings in today's society in order to inform judges in order to Full adaptation in making rehabilitative decisions towards children and adolescents.¹

Fourth, the lack of need for children and adolescents to enter minor crimes, especially forgivable crimes, to the judiciary in order to prevent the acquisition of criminal experience and correction and rehabilitation of children and adolescents for such crimes by the local community and with the participation of special local police. Children and adolescents, psychologists and families, and of course under the supervision of the judiciary, because one of the most important factors in the stability of children and adolescents in delinquency is gaining criminal experience and normalizing it for them, and this issue has been neglected by the legislature. On the other hand, the intervention of the criminal system in all the crimes of its children and adolescents is criminal and strengthens their deviant nature and helps their stability in delinquency, so the legislator should pay attention to this legal vacuum.

Thus, the correction and treatment of children and adolescents in conflict with the law is one of the most important and necessary concerns of societies in recent years, and Iranian criminal policymakers must remove these obstacles, the grounds for a more complete and effective implementation of processes. Provide rehabilitation for children and adolescents, who are the human capital of society, in order to return them to normal and pre-criminal life.

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