

# Decriminalization of Criminal Justice through the Exclusion of Judicial Processes in the Trial of Juvenile Offenders in Contemporary Iranian Social System

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The decriminalization of criminal justice through the exclusion of judicial processes is a new concept aligned with the policy of non-intervention in criminal law. It has emerged as a response to the failure of the traditional punitive approach that seeks to suppress offenders. Adherence to international standards and rules regarding the trial of children and adolescents is essential to avoid stigmatizing them and prevent the imposition of criminal labels on minors. This approach helps to prevent major issues such as the development of criminal identities and recidivism among juveniles. The importance of avoiding the stigmatization of children and adolescents who commit crimes lies in the aforementioned reasons, and the further removal of them from formal judicial proceedings is considered one of the key achievements of decriminalization in juvenile justice within criminology. This research, based on an analytical-descriptive method and utilizing source collection through library research and note-taking, explores this issue. The commission of a crime by children brings them within the scope of criminal law, and once a child enters this domain, the concept of juvenile criminal law arises. This is because children, like adults, have rights in this area and must be dealt with according to their own specific rules and regulations. Due to their unique individual, emotional, and psychological characteristics, children and adolescents are entitled to specific rights and decisions within the criminal justice system. The solutions employed by the criminal justice system regarding juvenile offenders, depending on the circumstances of the offender, victim, and the nature of the crime committed, aim to achieve various goals such as rehabilitation and treatment of the offender, vocational skills training, or compensating for the damages caused.

**Keywords:** Decriminalization, Exclusion of Judicial Processes, Criminal Justice, Juvenile Trials.

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## 1. Introduction

The struggle against crime and criminality has always been a persistent challenge for human societies. Throughout this ongoing battle, humans have experienced many solutions from ancient times to the

present, and among these, the easiest path chosen has been the imposition of punishment. The increasing growth of criminality, the rise in crime rates, and the ineffectiveness of certain punishments have prompted criminal justice system officials to seek alternative



solutions, one of which is decriminalization. In fact, we are primarily concerned with preventing crime, and one of the methods for preventing crime is decriminalization. When children commit crimes, they enter the realm of criminal law, and as soon as a child enters this domain, the issue of juvenile criminal law arises, as children, like adults, have rights in this regard and must be treated according to their specific rules and regulations (Abachi, 2021).

Due to their unique individual, emotional, and psychological characteristics, children and adolescents are always entitled to special decisions and rights within the criminal justice system of various countries. The current perspective of legislators, policymakers, and relevant officials is that juvenile offenders should not be viewed purely as criminals with the aim of intimidating and excluding them from society. Instead, a restorative or corrective approach to the judicial process for juvenile offenders should be adopted. Therefore, measures should be taken to create conditions that, considering their lack of criminal responsibility and their age, protect them from the harmful and undesirable consequences of involvement in formal legal proceedings.

Decriminalization in the trial of juvenile offenders does not indicate a weakness or failure of the criminal justice system, as it is believed that the solution to juvenile delinquency should not be sought solely within the criminal justice system. Attention to internal deterrence and its enhancement, particularly for juveniles who commit crimes, and refraining from judicializing the process of prosecution and trial, represents the most effective and logical way to address juvenile delinquency. Therefore, decriminalization is an ideological concept based on the belief that the jurisdiction of the judicial system is not exclusive in the fight against crime, particularly for juveniles, and arises from the theory of the incapacity of punishment to fully fulfill its role against crime. This is why decriminalization is discussed in the context of crime reduction. Consequently, the concept of decriminalization in the trial of juvenile offenders refers to removing them from the formal judicial process with the aim of avoiding labeling, promoting peace and reconciliation, encouraging mediation, and preventing the psychological and personal consequences of involvement in judicial proceedings, among other corrective and restorative motivations. In various legal

systems and numerous international treaties, decriminalization has gained significant value and importance. Thus, promoting voluntary actions, particularly with an emphasis on religious motivations and the intervention of religious communities, is crucial in eliminating conflict and addressing positions of contradiction in social reform and rehabilitation, as well as decriminalizing juvenile justice.

## 2. Concepts

In this section, we will examine the concepts related to the topic, including decriminalization, criminal justice, and dejudicialization.

### 2.1. *The Concept of Decriminalization*

Decriminalization in its broad sense refers to criminal policy measures aimed at reducing or eliminating punishment for certain offenses, based on the belief in the inability of punishment to rehabilitate and prevent further crimes. One of the significant issues in modern management methods is decriminalization and decentralization. The first step towards escaping centralization is decriminalization. Decriminalization is a form of organization where specific responsibilities are delegated within defined boundaries (Ashouri, 2016, 2019).

Criminal decriminalization is a new movement within the framework of systematic criminal policy, aiming to adjust or eliminate the punitive nature of criminal sanctions for certain offenses and replace them with non-punitive measures aimed at the rehabilitation and education of offenders, in alignment with societal needs and developments. The idea of criminal decriminalization was first proposed by Enrique and Frey, scholars of the social defense school, and later expanded by the founders of the modern social defense school.

In fact, criminal decriminalization is a new movement that seeks to adjust the punitive aspect of punishment or remove the criminal label from a criminal act and replace it with non-criminal measures aimed at rehabilitating and educating the offender (Aqa'i Janat Makani, 2012).

The prediction of criminal decriminalization may have been enacted by the legislator under certain conditions in the criminal law texts (legislative decriminalization), or the discretion to apply it may lie with the judge

(judicial decriminalization). In the decriminalization process, society's reaction to crimes is preferably non-punitive, and by emphasizing that punishment is not the only appropriate response to societal violations, better results can be achieved by eliminating or reducing punishment when more effective and beneficial measures are available (Mahmoudi Janki, 2008; Najafi Abrandabadi & Beki, 2018).

The initial roots of criminal decriminalization can be traced back to the movements for prison abolition and jail reform. Later, with the emergence of criminology and a focus on the deterrence of punishments rather than their severity, decriminalization became the focus of criminologists. The history of decriminalization can be summed up by the famous criminologist "Ehring" who stated: "The history of criminal law is the history of the continuous abolition of punishment" (Karabasi et al., 2019, p. 336).

From the 18th century onwards, especially after the intellectual movement initiated by Bakari and the subsequent rise of the positivist school of criminal law, this issue gained scientific significance. Thinkers and social reformers began to strengthen the idea that the goal of punishment is not just to inflict suffering and punishment for breaking societal rules, but to serve as a means of individual and public prevention, aimed at correction and rehabilitation. Criminal decriminalization has become a method to improve criminal justice and also a strategy to reduce costs. Criminal decriminalization offers significant benefits for all criminal justice agencies, especially for the accused. In fact, the ultimate goal of criminal decriminalization can be summarized in the following sentence: The ultimate goal of the criminal justice system cannot be the elimination of punishment, but it can be its reduction.

As mentioned earlier, criminal decriminalization refers to processes aimed at releasing one or more individuals from the punishment of a crime, encompassing both legislative and judicial decriminalization (Ansell, 2012). Legislative criminal decriminalization is the clearest form of decriminalization, often involving measures such as adding restrictions or qualifications to the elements of a crime, emphasizing the presumption of innocence and its effects, which sometimes lead to deviations from the rules based on a practical principle, and creating unreal consequences for it (Ashouri et al., 2004, p. 348). Judicial decriminalization, on the other hand, results from the

efforts of judicial authorities, such as judges, prosecutors, or investigators, who may, for example, issue a deferral of prosecution, allowing the accused to avoid punishment or at least serve a lighter penalty, thus creating a relative form of decriminalization. In this case, the punishment eliminated is compared to the more severe punishment that would apply without the application of mitigating circumstances chosen by the judge (Kordalivand, 2003).

## 2.2. Concept of Criminal Justice

The term "criminal justice" was first used in the 1920s in the legal-philosophical literature of England (Najafi Abrandabadi & Beki, 2018). In a comprehensive definition, criminal justice refers to:

A set of procedures and governmental institutions aimed at regulating and determining the boundaries of citizens' behaviors, strengthening social controls, preventing the commission and repetition of crimes, enforcing sanctions against law violators, attempting to rehabilitate offenders within society, and protecting citizens.

Sanders and Young define criminal justice as "a complex social institution influenced by policy," which:

Controls, corrects, and regulates potential, attributed, and actual criminal behaviors within the confines of procedural limits, and protects citizens from wrongful actions, such as unnecessary and instrumental criminalizations, the enforcement of unjust laws, unfair trials, and wrongful convictions. Additionally, it places law violators under the protection of criminal law and reintegrates them into society.

This definition is more useful than others that focus solely on the functional aspects of the criminal justice system because it not only specifies the scope of the criminal justice system's activities, but it also allows for the analysis of issues and problems that lead to practical methods for achieving the system's goals, thus confronting social policies. In this definition, the element of the "citizen" is crucial. In Sanders and Young's definition, the criminal is a law-breaking citizen who, despite their offenses, remains under the protection of criminal law. The criminal is not an enemy of society (Norbaha, 2008) who requires suppression through a war-like approach, and even after being convicted in criminal trials, they remain citizens with all their rights and responsibilities intact. Focusing on the concept of

the citizen is key to connecting social justice with criminal justice. Conversely, neglecting this concept causes a divergence of criminal policies from their main objective, which is to administer justice for all citizens (Hezber al-Sadati & Habibzadeh, 2014).

### 2.3. Decriminalization

Decriminalization is a technical solution to reduce the volume of cases in formal judicial authorities, which is certainly relative. The relativity of this solution is self-evident and logical; absolute decriminalization, in the sense of suspending the judicial institution and eliminating the primary role of judges in its specific sense, is a governmental responsibility (Article 156, Constitution). Thus, under no pretext can all legal powers necessary for the administration of justice be removed from the state.

An investigation into the origin of the term "decriminalization" reveals that the English term "diversio" has been translated into Persian as decriminalization. However, in English legal literature, this term means "diversion," referring to a set of strategies used to redirect a case from its standard and usual course. Therefore, it becomes clear that the term "decriminalization," in its technical, legal, and judicial sense, has not been used appropriately, and its interpretation may be considered a form of leniency. It seems that the term "decentralization of judicial proceedings" would better reflect its inherent meaning.

### 3. Main Function of Decriminalization

From our perspective, the primary function of decriminalization is to delegate certain duties of the formal judiciary to institutions outside of it. However, the realization of this process, even in relative terms, seems impractical, because:

1- If, in line with this idea, we delegate the resolution of some cases to non-judicial or quasi-judicial bodies such as dispute resolution councils or non-governmental organizations, despite the apparent structural differences between these bodies and the general judiciary, the essential functions of adjudicating, resolving disputes, and concluding matters, which are inherent to any form of adjudication, still exist. In other words, decriminalization may be achieved in form, but the substantive judicial functions remain, meaning that

even outside the formal judicial system, a form of judicial process persists.

2- If, as a result of decriminalization, some cases are referred to non-judicial bodies, such as administrative courts or executive bodies, it is possible, according to the legal competencies of the Administrative Court of Justice (Article 173, Constitution), to review the final decisions of those bodies. Furthermore, in our country, the Administrative Court of Justice is part of the judicial system (the last part of Article 173 of the Constitution). Thus, even if the responsibility for proceedings is delegated to administrative or executive bodies, the essential concept of decriminalization does not materialize because the final review is still within the purview of a judicial body, and the judicial system retains control over the final rulings. In other words, at the first instance and appellate levels (court and administrative bodies), decriminalization is achieved in form, but the substantive aspect of adjudication remains visible. However, at the level of cassation (formal review at the Court of Justice), both the formal and substantive dimensions of judicial proceedings are simultaneously present.

### 4. Decriminalization and the Constitution

The overall policy of judicial and legislative bodies regarding the adoption of decriminalization processes may reflect a response to civil reforms in the judicial domain. In democratic systems, judicial oversight and the protection of citizens' freedoms are fundamental principles, with the presumption of permissibility of individual actions, except when the legislator, based on superior interests, restricts or prosecutes certain actions with prior notice and under specific circumstances. If decriminalization involves referring judicial proceedings to people's institutions or non-governmental organizations, it can be seen as a step towards strengthening public participation, enhancing human dignity, and enabling citizens to take control of their own fate (in the realm of judicial justice) (Article 56, Constitution). Moreover, this process may lead to a reduction in the state's sovereign control and, consequently, free the judiciary from the overwhelming burden of handling numerous cases, an issue that has led to extensive government intervention in people's lives. The Constitution of the Islamic Republic, following the prevailing principles of its legal framework, highlights

decriminalization as a potential reform, particularly when evaluating institutions like the Dispute Resolution Council. This body and others potentially created to expand public participation may function as either courts or administrative bodies. The judicial nature of these bodies and the role of the state in appointing their members, including the involvement of an appointed judge in the process, indicate a tendency to treat them as courts. It seems that, given that courts in our country are fundamentally based on the presence of one or more judges—depending on the trial level—the role of adjudication is not one that can be delegated to the people, nor can the judicial function be divided among them. The classification of bodies such as the Dispute Resolution Council, despite the involvement of non-professional members in decision-making processes, remains questionable. This view aligns with the logic of the Constitution, as citizen participation in judicial proceedings is only permitted within the context of the jury system for political crimes and related proceedings (Article 168, Constitution).

Thus, as the fundamental principle is that a professional judge or multiple judges handle the appellate and cassation stages, with exceptions made only for political and press crimes, the core legal principles must adhere to these exceptions. Deviation from this principle requires clear justification, particularly within the same law that established the exception. Therefore, as long as the Constitution of the Islamic Republic of Iran is not amended, the creation of other courts with judicial functions based on public participation remains questionable. Consequently, it is evident that one aspect of the decriminalization philosophy contradicts the logic of the Constitution.

#### 4.1. *Decriminalization and Legal Documentation*

According to Article 156 of the Constitution, the judiciary is responsible for adjudicating and issuing judgments on grievances, complaints, and the resolution of disputes. However, in order to reduce the severe congestion of cases in judicial authorities and the associated costs, the concept of decriminalization has emerged.

It is a technical solution aimed at reducing the number of cases in official judicial institutions, which is certainly a relative matter, as absolute decriminalization would lead to the closure of judicial bodies and the elimination of the

judicial function in its specific sense, which is recognized as a duty of government (Mahmoudi Janki, 2008).

Thus, decriminalization can be considered one of the fundamental principles for reducing the number of prosecutions. However, the legislator, under the influence of this perspective, has not decided absolutely and without regard to the offender in criminal cases. Rather, by considering the offender and other factors, institutions such as suspension of prosecution, etc., have been incorporated into the 2013 Criminal Procedure Code. The concept of decriminalization is primarily related to the use of alternative criminal procedures by prosecuting authorities in the prosecution and trial of crimes. The effect of such a method is to remove the suspected individual from the criminal judicial process (decriminalizing), and it can occur at any stage of the judicial proceedings (Najafi Abrandabadi & Beki, 2018). Although Article 159 of the Constitution of the Islamic Republic of Iran designates the judiciary as the official authority for grievances and complaints, this does not imply that, for multiple reasons, the prosecution of certain crimes cannot be considered outside this institution.

In this process, the goal of criminal policy makers is to avoid engaging offenders in the criminal justice process or, if they enter this process, to prevent their continued involvement through special measures that the legislator has included in the 2013 Criminal Procedure Code, such as file archiving, suspension of prosecution, etc., in line with limiting the scope of criminal rights, which is one of the key missions of criminology. For instance, suspension of prosecution can be considered in two separate articles. First, Article 81 of the Criminal Procedure Code, which allows the prosecutor to suspend prosecution for certain crimes by requiring the defendant to fulfill specific obligations for a period of six months to two years. The second case is found in Article 82, which provides that after mediation, prosecution can be suspended if the complainant forgives or the defendant compensates for damages, and in the absence of prior criminal conviction, prosecution may be suspended under the same conditions stated in Article 81 (Rutherford, 2001).

This approach can be seen as deriving from the theory of utilitarianism. According to this theory, only future outcomes should be considered in making current decisions. Prosecution is justified when its probable

effects are considered as tools for social order. Past wrongdoings have no direct influence on today's decisions (Basari, 2008).

The main objective of criminology in relation to decriminalization is to prevent an individual from entering the criminal justice system. In other words, decriminalization is the policy of non-interference by institutions, with an emphasis on minimizing criminal rights. For this reason, the legislator, in the 2013 Criminal Procedure Code, has anticipated institutions like file archiving and suspension of criminal prosecution to prevent the adverse effects that occur when a defendant enters the criminal justice system. The trend toward decriminalization not only avoids inefficiency and sluggishness in the criminal justice system but also prevents habitual contact between offenders and law enforcement officials, thereby preventing the normalization of such relationships (Sadati et al., 2020). As discussed, preliminary investigations have been eliminated or severely marginalized in many European countries. For example, in France, the percentage of cases referred for investigation in the 19th century was around 40%, but this percentage decreased to about 20% in 1960 and 8.7% in 1988 (Delmas-Marty & Abrandabadi, 2016).

Thus, it is evident that the pursuit of decriminalization to combat the inflation of criminal cases, especially in matters related to adjudication—such as reducing case congestion, speeding up proceedings, lowering litigation costs, and ensuring more accurate proceedings—has become highly beneficial and necessary.

In the next section, we will show that the legislator, in the 2013 Code, by utilizing criminological achievements and recognizing that prosecution is not always in the best interest of society, the defendant, and the criminal justice system, has taken steps to reduce the criminal process in minor crimes through the use of labeling approaches and, specifically, the decriminalization institution.

## 5. Manifestations of Decriminalization in Juvenile and Adolescent Judiciary

Decriminalization, by introducing new principles, foundations, philosophies, and questions, has provided a new framework for thinking about crime and punishment. This shift in perspective has not only impacted the acceptance of more restorative models, such as group social meetings, but also influenced

traditional judicial mechanisms. Supporters of restorative justice emphasize that a fundamental reevaluation should occur regarding crime and punishment, especially when it comes to juvenile offenders. They seek to introduce a new value and priority that addresses the needs of juveniles and expands the network of interveners in examining criminal incidents and deciding upon them. Therefore, in a gradual move toward a fully restorative model for juvenile justice, new initiatives have been adopted for responding to juvenile offenders, including decriminalization, based on the available capacity for accepting restorative concepts.

These transformations, on the one hand, aim at the intervention of participants including the offender, the victim, and the local community in the judicial process, and on the other hand, create additional values and goals to address the needs arising from the crime, offering compensation to the victim, the community, and even the offender. This approach has resulted in the establishment of new forms of enforcement that are restorative and reformative rather than punitive (Winter, 2019).

### 5.1. Punitive – Reformative Measures

One of the fundamental principles of juvenile justice is the discretionary power to suspend proceedings at any stage of the trial. This discretion allows the judge to suspend public prosecution based on the best interests of the child and the circumstances surrounding the crime (Jadidi Kardi, 96).

#### 5.1.1. Postponement of Sentence

The 2013 Islamic Penal Code introduces provisions aligned with the concept of decriminalization, such as the exemption from punishment, the postponement of sentencing, the semi-liberty system, and electronic monitoring, which previously had no historical basis in Iranian law. It seems that the legislator's approach in the Islamic Penal Code leans toward leniency for offenders and the development of supportive institutions. All the strategies mentioned above aim to individualize punishments. The principle of individualizing punishment refers to aligning the punishment with the offense on the one hand and the physical, mental,

familial, and social condition of the offender on the other hand.

Regarding juvenile delinquency, there is a view that children should not be labeled by the crime they have committed. In cases of petty theft and minor crimes, labeling them as thieves should be avoided, and instead of using the term "thief" or any other crime committed by the child, the term "juvenile delinquent" should be used. This term indicates that the child requires care and correction, and their act should not be regarded as fault or sin, and thus should not lead to punishment. According to this philosophy and the criminal policy approach, delinquency is specific to the mental, psychological, and age-related condition of the offender, and children are not considered criminals (culpable) based on this characteristic. Instead, they should be regarded as delinquents within the criminal justice system. From the perspective of this theory, delinquency does not call for punishment but requires educational, protective, and reformatory measures. Therefore, a child who commits a crime, even if done by adults, should not be treated as a criminal. According to labeling theory, such children are not stigmatized. However, in this case, labeling them as delinquents does not carry any stigma or shame because the term implies training, supervision, and correction, not criminality and punishment (Basari, 2008).

### 5.1.2. Suspension of Sentence Execution

After the sentence is determined, the principle of individualizing punishment can also be applied at the stage of sentence execution. The court's discretion in mitigating or modifying the punishment extends to this stage as well. The introduction of the semi-liberty system, sentence postponement, exemption from punishment, suspension of sentence execution, and parole in various criminal codes are in line with this approach.

The term *probation*, which has been translated into Persian as "suspension of supervision," refers to the proof of something. This institution originates from British law and much of medieval common law, where criminals' freedom was contingent upon a guarantee, conditioned on good behavior and public order. In other words, it was a system of liberty based on surety (Ashouri, 2019).

The conditions for the suspension of sentence execution are the same as those for sentence postponement, as described in Article 46 of the Islamic Penal Code. The court, considering the social status and background of the defendant and the circumstances leading to the crime, may suspend all or part of the sentence.

The authority to issue an order for the suspension of sentence execution rests with the court, meaning the court, upon finding the conditions for suspension, may choose not to grant it. In other words, the suspension of sentence execution is not an inherent right of the delinquent but a discretionary power held by the court. The court has no obligation in this regard. Defendants in specialized courts can benefit from the suspension of sentence execution. The court's discretion may apply to the entire sentence or only part of it. In the case of juvenile offenders, no specific exceptions have been made, and no separate decision has been taken in this area.

Some criminal law scholars argue that suspending part of the punishment is incompatible with the logic of suspension. They believe that it is unclear whether the executed portion of the punishment should be noted in the defendant's record (Norbaha, 2008).

However, in the case of juveniles, there is no such ambiguity. As mentioned, juvenile convictions do not carry criminal consequences (Kordalivand, 2003). In the case of juveniles, as indicated in probation, some instructions that are prescribed in the period of postponement apply only to adult proceedings and are not relevant to juvenile offenses.

Measures applicable to juvenile offenders include: a. Submission to parents, guardians, or legal caretakers with a commitment to discipline, education, and maintaining good morals of the juvenile.

1. Referring the juvenile to a social worker, psychologist, or other professionals and cooperating with them.
2. Sending the juvenile to an educational and cultural institution for education or vocational training.
3. Necessary action for treating or rehabilitating a juvenile's addiction under medical supervision.
4. Preventing harmful associations and contacts of the juvenile, as determined by the court, and prohibiting visits to specific locations.

b. Submission to other individuals or legal entities deemed appropriate by the court for the child's welfare. c. Advice from the judge. d. Warning or written commitment not to repeat the offense. e. Detention in a reform and rehabilitation center.

If these measures are specifically implemented for juvenile offenders and appropriate provisions, such as social workers specializing in juvenile justice, are made, the criminal justice system can move closer to its goals of rehabilitation and reform of juveniles.

Ultimately, it must be noted that the suspension of sentence execution, as a form of enforcement, requires the participation and cooperation of social institutions and citizens. Without this, it cannot be effectively implemented in society (Jadidi Kardi, 2008).

It should also be noted that in many cases, such as the suspension of sentence execution, the legislator has not distinguished between juvenile offenders and adults committing crimes. Crimes have been outlined in the law that are not subject to suspension, and although the legislator has certain objectives in this regard, it would have been preferable to exclude juveniles and adolescents from this provision. Some crimes, due to their adverse effects on public security or the economy, are prohibited from suspension. Clearly, excluding these crimes from the regulations of suspended sentences can have a deterrent effect, as leniency is not appropriate for crimes causing significant damage to society (Sadati et al., 2020).

Some legal scholars argue that the prohibition of suspension based on the type of crime is incorrect. They believe that the prohibition or allowance of suspension should depend on the dangerousness or the likelihood of reoffending, not on the specific crime committed. According to them, the criterion for the suspension of a sentence should be the type of punishment and other criminal measures, which may require the legislator's authorization (Ardabili, 2023).

The question raised by the author is why, in our laws, there has not been separate legislation for juvenile offenders committing such crimes, with a more lenient and considerate approach?

### 5.1.3. *Judgment on Compensation for Damages Caused by Crime*

Emphasizing damages resulting from the commission of a crime is one of the fundamental and key aspects of the

process of decriminalization. These damages include all material, moral, psychological, and emotional damages, communication disturbances, and the social consequences, such as feelings of insecurity, lack of trust in public authorities, as well as damages caused by the crime itself.

Here, direct compensation for the victim is examined from a restorative justice perspective. Compensation for the victim, as the person who has directly suffered from the crime, takes precedence over secondary victims, such as the local community. Support for the victim's situation and the elimination of damages to victims has been proposed in all legal systems as an alternative to imprisonment. However, these institutions and the evolution of penal thinking have undergone transformations. From the classical view of justice, there is a fundamental transfer of property from the offender to the victim, which leads to the compensation of the victim's material losses by the offender, but without considering the personality, emotional, and psychological differences of the victim. With the transformation of this institution and the emergence of a more moderate perspective, attention was also given to the victim's moral losses. However, for compensating moral damages, the same mechanisms applied to material damages were used.

In practice, none of these methods have succeeded in providing satisfaction or compensating the victim's damages. Restorative justice, considering all the needs and losses that the victim has suffered from the crime, does not make arbitrary decisions regarding the valuation of those losses. Instead, this value is determined through a negotiation process between the victim and the offender. Hence, as part of the reconciliation process, it has a more corrective-restorative and educational nature.

In restorative justice, community service is considered an appropriate measure to compensate for damages and losses inflicted on society. This is because the individual, by performing tangible restorative activities such as compensating the damages to the victim and society, can express their commitment to adhering to laws and regulations. Although this action is primarily symbolic, it can benefit the local community through effective and constructive activities.



## 5.2. Decriminalization in Formal Criminal Law

In this section, we will examine examples of decriminalization in juvenile and adolescent adjudication.

### 5.2.1. Suspension of Prosecution

In Iranian law, although the institution of suspension has been foreseen for adults since 1973, it has not been considered in the special laws for juvenile offenders. It has only been applied by some juvenile judges based on general laws. In the draft prepared for the Bill on the Establishment of Juvenile Courts, the possibility of suspension has been made available for the prosecutor's office through the provision of a specific branch of the public and revolutionary prosecutor's office in conjunction with juvenile and adolescent courts. According to Article 17, Paragraph 2 of this draft, it is stipulated: "In crimes where the legal punishment is up to three years of imprisonment or another penal sanction other than imprisonment, whether alone or combined with other punishments, the prosecutor, considering the personality, character, social status, and educational situation of the accused, as well as the circumstances of the crime, can suspend the criminal prosecution, provided that the accused does not have a complainant or private claimant, or the complainant has withdrawn their complaint" (Ghaffari, 2005).

The use of suspension as a mechanism that can have a restorative nature offers numerous benefits for juvenile offenders.

### 5.2.2. Criminal Mediation

Mediation is one of the tools of decriminalization and one of the most effective alternatives to criminal prosecution. The application of this institution has two major impacts: reducing criminal inflation and encouraging people to resolve criminal disputes privately. On the other hand, the lack of necessary legal support for democratic institutions under the security-oriented policy dominating the judiciary presents a serious obstacle to the promotion of decriminalization in Iran.

The mediation method is an example of deviation from the formal criminal process for resolving disputes and problems arising from crime, which can be applied at any stage of the legal process. Mediation is a three-party

process, free from the usual formalities of criminal procedures, based on a prior agreement between the complainant-victim and the accused-offender, with the involvement of a third party called the mediator, to resolve the disputes and issues arising from the commission of a crime (Najafi Abrandabadi & Beki, 2018).

Criminal mediation seeks to compensate for damages in such a way that is acceptable to both parties and does not overlook their rights. With the implementation of criminal mediation, the position of victimology is recognized in the judicial process, and special attention is given to the needs and demands of the victim. It also encourages the offender's responsibility and commitment to compensating for the damages caused by the crime, as well as fostering empathy and understanding of the victim's situation.

Regarding the criminal mediator, they are either an individual or an authorized association from the prosecutor's office, with the same conditions as a prosecutor's representative, working to facilitate the amicable resolution of a minor criminal case. The mediator operates in a court, association, or judicial house, with the goal of ensuring judicial presence in large residential areas. In criminal matters, justice and law houses are organized to promote actions aimed at crime prevention and providing an appropriate response to minor crimes by using alternatives to public prosecution. Although the role of the mediator is mainly practiced within the framework of criminal mediation, which is an alternative to public prosecution, the criminal mediator can also intervene at the prosecutor's request to propose a criminal settlement to the offender (Aqa'i Janat Makani, 2012).

The mediator's role is to facilitate the exchange of information between the parties, help resolve it through dialogue, express their demands, assign responsibility, and ultimately resolve the dispute. Criminal mediation can be divided into several types, which will be examined in detail below.

#### 5.2.2.1 The Role of Criminal Mediation in the Context of Criminalization and Criminal Overcrowding in the Prosecution Stage

The Criminal Procedure Code accepts two types of mediation, namely customary and voluntary mediation. Article 82 states: "In crimes classified as misdemeanors

of degrees six, seven, and eight, whose punishments are subject to suspension, the judicial authority may, at the request of the defendant and with the consent of the victim or private plaintiff and upon securing appropriate guarantees, grant the defendant a maximum of two months to obtain the victim's forgiveness or compensate for the damages caused by the crime. Furthermore, the judicial authority may refer the matter to the Dispute Resolution Council or to an individual or institution for mediation with the agreement of the parties to facilitate reconciliation..." The initial part of this article, which foresees granting the defendant a time limit to obtain the victim's consent (without mentioning the mediator), and also does not provide the judicial authority with oversight, suggests that this is customary and voluntary mediation. It is inspired by the reactive participatory criminal policy where, after the crime occurs, the public participates in the criminal process, and the resolution of the dispute is entrusted to them. Therefore, if successful, the criminal case is suspended; otherwise, the charges are processed according to the usual criminal procedure. Hence, mediation can be considered an alternative method, as it temporarily halts the criminal trial, and the resumption of proceedings depends on the failure of the mediation process (Sadati et al., 2020).

In the second part of the article, where it is stated: "The judicial authority may refer the matter to the Dispute Resolution Council or to an individual or institution for mediation with the agreement of the parties..." only voluntary mediation is accepted. In this type of mediation, after the resolution is reached, the judicial authority, if the legal conditions are met, approves it and takes appropriate action. The judicial authority is required to consider the competence, expertise, and acceptance of the mediator by the parties when referring the matter for mediation. According to Article 5 of the "Criminal Mediation" regulations, if both parties agree on a mediator and the mediator's consent is mutually acceptable, mediation can take place after the judicial authority's confirmation. Additionally, the judicial authority oversees the mediation process, depending on the case (Articles 5 and 35 of the regulations). In fact, the legislator has placed criminal mediation under the control of the judiciary and the courts, even though it may originate spontaneously from the local community. In the previous version of the Criminal Procedure Code, the legislator had mandated courts to resolve disputes

and encourage peace and reconciliation between the parties when the issue could potentially be resolved through negotiation (Article 195). This indicates the applicability of peace and reconciliation at the court stage. However, Article 82 of the new law is structured in a way that some may interpret as indicating that criminal mediation is only applicable in the prosecution stage and cannot be applied in the court stage, as the legislator has separately outlined the roles of the various judicial authorities involved in the criminal procedure, and the referral to mediation is specified under the prosecutor's duties. Furthermore, a provision in the same article stipulates that the investigating judge can request the prosecutor to refer the case for mediation, or in the case of offenses subject to pardon, the judicial authority may suspend prosecution upon reconciliation, while for non-pardonable offenses, prosecution may be suspended after obtaining the defendant's consent (Ghaffari, 2005). Additionally, from Note 5 of Article 82 of the Criminal Procedure Code, concerning the suspension of prosecution, which states that in cases directly presented to the court, the court may apply the suspension provisions, it can be inferred that provisions related to the prosecution stage in the prosecutor's office are also applicable when the case is directly brought to the court. Moreover, the Criminal Mediation Regulations have established that mediation matters in the court may be applied and managed under the supervision of the head of the local judiciary (Article 2).

#### 5.2.2.2 *Limitations of Criminal Law in Mediation for Criminal Justice Decongestion*

The mediation institution allows the parties to resolve their disputes easily and outside the judicial system. However, the legislator has created obstacles and limitations that slow down and restrict the use of mediation. Some of these limitations include:

#### 5.2.2.3 *Limitation on Types of Crimes*

Regarding the types of crimes that may be eligible for mediation in the context of criminal justice decongestion, mediation in the Criminal Procedure Code is only applicable to misdemeanors of degrees six through eight, provided that the crime is subject to suspension.

#### 5.2.2.4 *Limitation on Criminal Guarantee*

Another limitation concerning mediation is the requirement for a guarantee. This is the second limitation: the judicial authority requires the defendant to provide appropriate security so that within the specified time, they can seek the victim's forgiveness or compensate for the damages caused by the crime. Therefore, if the defendant does not provide security, the possibility of applying mediation is either unavailable or significantly hindered (Basari, 2008).

#### 5.2.2.5 *Time Limitation*

The third limitation is the time frame for referring the case to mediation, which is only three months and may be extended only once, for the specified duration. It seems that this time limitation is based on the restrictions set for arbitration in the Civil Procedure Code, whereas the arbitration period can be extended based on the agreement of the parties. Therefore, the mediation period could also be subject to the parties' agreement (Sadati et al., 2020).

#### 5.2.2.6 *Limitation on Judicial Authority's Confirmation*

A limitation regarding the judicial authority's confirmation of mediation is another restriction within criminal law for using mediation provisions. It should be noted that, according to the regulations, even if the parties agree on a mediator, the selected mediator must still be approved by the judicial authority (Article 5). When the parties agree on a specific person to resolve their dispute, they are fully aware of the mediator's qualifications and have selected them knowingly, believing that the mediator can resolve the issue. Thus, placing the sole responsibility for confirming the mediator's qualification on the judicial authority may impede the resolution of the dispute (Hezber al-Sadati & Habibzadeh, 2014).

#### 5.2.2.7 *Limitation on the Mediator's Qualifications*

Furthermore, conditions such as the requirement for the mediator to have Islamic citizenship for Iranian nationals or the minimum age of 25 years for a mediator (Article 10 of the regulations) are factors that may complicate the referral to mediation and the use of this institution. When the parties to a dispute mutually agree on a

specific mediator to resolve their issues, such restrictions should not be imposed, as the parties have a better understanding of their situation, the circumstances, and the nature of the crime involved (Sadati et al., 2020).

## 6. Conclusion

Today, the impact of criminological findings on all areas of criminal law, including criminal procedural law, is undeniable. The reality is that Iran's current criminal policy regarding the prosecution of juvenile offenders has made significant progress. However, from various perspectives, it still does not align with international policies, treaties, and standards and requires a revision and reconsideration of its principles and structures.

As discussed, the criminal policies of most countries have shifted towards the decriminalization process for juvenile offenders and avoiding formal judicial proceedings. The adoption of international conventions, such as the Convention on the Rights of the Child, the Beijing Rules, the Riyadh Guidelines, and many other relevant resolutions, along with the explicit emphasis on the necessity of adopting decriminalization measures in juvenile justice, is an undeniable reality. Iran, by joining these conventions, has formally declared its agreement with their provisions and committed itself to adhering to these regulations.

However, the current criminal policy concerning juveniles still has shortcomings, including:

1. Despite existing commitments, it remains evident that the age of criminal responsibility in our laws is considered below 18 years. With a gender-biased approach, the criminal responsibility age for girls is set at 9 years, and for boys, it is 15 years. Although there have been advances in this area by setting gradual criminal responsibility and introducing mental maturity in addition to physical maturity, it still significantly diverges from international standards.
2. It is still observed that in certain cases of decriminalization, such as the delay of sentencing and suspension of punishment, no specific decisions have been made for juveniles, and the laws on this matter are the same for both minors and adults.

- The necessary institutions and mechanisms to support juveniles when exiting the formal justice system have not been sufficiently provided, leaving room for concern about rehabilitation and reform. If juveniles are left to fend for themselves after leaving correctional facilities, there is a high likelihood that they will return to committing crimes and may be led astray.

Thus, the idea of decriminalization, with the aim of avoiding stigmatization and removing juveniles from the burdensome and harmful process of formal judicial proceedings, is presented as an unavoidable necessity. However, regarding the conflict between excessive criminalization and decriminalization in the criminal justice process at the prosecution stage, the result that emerges is that criminological findings have affected all areas of criminal law, including criminal procedure law. One of the institutions impacted by this shift is the prosecutor's office. The prosecutor, representing society, is responsible for pursuing offenders and is required to send the case to court for further proceedings by issuing an indictment.

#### Authors' Contributions

Authors contributed equally to this article.

#### Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

#### Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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#### Declaration of Interest

The authors report no conflict of interest.

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