

# The concept and position of circumstantiality mitigation in clinical criminology approach

Sorayya Hosseinpour, Amir Iravanian

Department of Law, Fars Science and Research Branch, Islamic Azad University, Fars, Iran

Received for publication: 18 October 2013.

Accepted for publication: 03 December 2013.

## Abstract

Determining the penalty for offenders with regard to circumstantiality mitigation, including valuable gains of criminal law and its best examples refers to “personalization of penalty”, which developments in this field are recognized throughout history and influenced by the teachings of the neoclassical school and social defense movement among legislators and judicial authorities. This legal entity with available judicial and legislative tools gives judges the possibility to determine sentence commuted based on the criteria such as physical and emotional state, economic - social and familial conditions. On the other hand, it seems that the commutation entity has been redefined in discursive space of this approach through influence of clinical approaches that are based on the belief of offender corrigibility, on the field of criminal law and tackle with penalty and intimidation approaches. This paper examines the norms, rules and principles governing circumstantiality mitigation in the context of clinical criminology theory regardless of committed crime. The present study was theoretical and by using analytical - descriptive method has studied mitigating measures of penalty in clinical criminology regardless of the nature and type of committed crime.

**Keywords:** penalty, commutation, circumstantiality mitigation, clinical criminology, personalization of penalty, character file

## Introduction

Clinical criminology as one of the main branches of criminology includes concepts monitoring ref-

ormation and treatment, identifying dangerous offenders and finally the prevention of crime. In this field of criminology, practical attitude toward the offender is somewhat similar to physician's attitude toward the patient. Thus the essence of clinical criminology takes pattern from medical model. Clinical criminology pay attention to the contexts and causes of crimes committed and find the causes about a person who has committed a crime. If offenders despite the first crime committed, still tend to repeat offenses and in other words, has the dangerous condition, clinical criminology should be looking for appropriate reformation and treatment ways. Clinical criminology before enters to the realm of criminal law immediately, first quickly opened its place in the penal system of children and then went to the adult criminal system. Effective deal with crime repetition which is the purpose of clinical crime requires understanding different personality of offenders and its components. Examining the character of the offender and component analysis in clinical criminology, since followers of scientific determinism was searching for a new criminal rule. Following the discussion of this science as a synthetic and practical science by using results of general and specific Criminology Science studies in addition to surveying the individual and his characteristics with knowledge of the degree of dangerousness and adaptation power and his coordination with social criteria and standards, provides necessary treatments and aims to keep away the offenders from crime repetition. Experimental results of applying the clinical criminology teachings are manifested in principle of personalization of penalty. In other words, personalize judicial punishment

**Corresponding author:** Sorayya Hosseinpour, Department of Law, Fars Science and Research Branch, Islamic Azad University, Fars, Iran. E-mail: hoseinpoursoraya@yahoo.com.

is under the authority of judge to fit the defendant's crime with his status, circumstances and personality. Offender is considered as social patient, punishment as medical treatment should be commensurate with the degree of dangerousness of offenders in order to correct and prepare them to return to society. Unlike the objective view of punishment, the judge has a lot of authority to implement this principle. In remuneration-oriented system of punishment, relying on a fixed and definite punishment and its relation to the severity of the crime, limit the judge's authority in determining the penalties. In reformation and treatment system, judge like physician should examine the accused in terms of personality and factors leading to crime in order to determine the appropriate penalties. This principle is applicable about real entities and about legal entities is also applicable in systems that criminal liability is accepted for this person. For a long time the scope of this principle limited to the circumstantiality mitigation, resorting to the mentioned circumstantiality, allow judge to mitigate the penalty lower than its legal minimum or converts it to other penalties. Mentioned qualities are generally predicted in the general Penal Code and its application quality with determining the mitigation aspects was under authority of judge. In legislative developments of Western Europe countries, after passing the period of fixed penalties (code 1791 penalties in France) that the individual differences of criminals were ignored, gradually in code 1810 penalties have minimum and maximum and judge determines penalties in this range and in next developments, commutation circumstantiality, entered into the Penal Code which influenced by neoclassical thoughts of French. In new French law, principle of personalization of penalties entered under article 132-24 and judge's authorities were developed in response to this principle. Personalization of penalty, not only is presented as the power and authority of the judge, but also it is a duty to determine appropriate punishment according to the status of the accused.

Article 132-24 the French Penal Code stipulates that the court determines the penalty and punishment of persons guilty of the offense and system determines the penalty by considering the circumstances of the crime and offender's personality and if the court sentence become fine, the amount of fine is determined in accordance with the offender's income and costs.

According to the Islamic Penal Code bill that is located in approval stage of Guardian Council, the issue of evaluating the placement of circumstantiality mitigation that is important for the criminal justice system of Iran should be assessed. Because this bill, in contrast with legislators procedure with the apparent rotation in regulatory strategies, expands the domain of circumstantiality mitigation in relation to children and young people and in contrast, has limited the scope and authorities of judges in applying of circumstantiality mitigation in adult offenders at least in terms of the application rate of this circumstantiality.

Therefore, identification of circumstantiality mitigation in light of clinical criminology and current status of criminal justice of Iran in relation to the desired scientific criteria has particular importance.

In a way that the proximity or breaking among the approach taken in the criminal justice system of Iran be specified by such criteria and accordingly proposed strategies in order to improve the performance level of this system in relation to how to apply the circumstantiality mitigation.

### **First topic: Identifying the Concept and Theoretical Foundations**

Prior to considering the circumstantiality mitigation analysis in clinical criminology teaching, it is necessary that the concepts presented in this study are examined in detail. Moreover study of the theoretical foundations of each concept and intellectual contexts of emergence of these concepts are the necessary preparations for circumstantiality mitigation analysis in the clinical criminology approach. Therefore, in this regard the theoretical concepts and principles associated with "clinical criminology" and "circumstantiality mitigation" will be studied.

#### ***Clinical Criminology***

In definition of clinical criminology: criminology is the modification and treatment of dangerous offenders and the prevention of repeat offenses (Babai, 2011, p. 13). In fact, clinical criminology has two broad and narrow concepts. In its broad concept, the individual phenomenon in front of crime with the help of social criminology is studied. From this point of view this science is a part of theoretical criminology. But in narrow concept, this sci-

ence deals with the multi branches study of personal state of guilty person in order to prevent the future crimes. In contrast, narrow meaning (application) refers to multidimensional study of crime and criminal in order to prevent repeat offenses. In this concept, the clinical criminology means applied criminology and application of findings of theoretical criminology about the offense and offender. In this respect, this science is a branch of applied criminology. In the criminal investigation by Clinical Criminology, the following steps are followed: 1. Medical and psychological evaluation. 2. Social Survey. 3. Diagnosis illness and pretreatment; by recognition of dangerous condition and exogenous and endogenous factors of constructor of dangerous condition. 4. Classify individuals. 5. Treatment (Nourbaha, 2001, p. 80).

So it could be said that clinical criminology is a scientific- synthetic knowledge that by using of general and specific Criminology Science studies' results investigate the individual and his characteristics by awareness of the dangerousness degree and adaptation power and coordinate him with social criteria and standards, provides essential treatments and pursue the goal of keeping offenders away from crime repetition. In other words, one of the main tasks or activities of clinical criminology should be known as determining and providing ways for treatment of offenders based on their mental and spiritual characteristics and degree of their involvement to the crime disease and other social criteria. Apart from the criminal investigation and providing therapy methods to prevent repeat offense, criminology clinical also try to investigate the crime prevention methods and care and maintains of offenders (Najafi Tavana, 2012, p. 114).

Clinical criminology from its beginning to penetrate in criminal laws passed in four stages. First, it was noticed by scientists that are called scientific course. In the second stage, the relevant authorities are expected that the prison be appropriate place for reform offenders and a proximal for his return to social life. In the third stage reformist hoped to the judges. Finally, through legislation, clinical criminology opened its way in criminal system of developed countries (Ki nia, 1968, p. 26).

The founder of clinical criminology "Caesar Lomboruzu" is the first person who insisted on necessity of medical and psychological tests from offenders and confirmed its necessity by giving a report to the International Congress of prison guards of St. Petersburg in 1980. He states his idea in this

way that "In the old Azmaneh thought that instead of examining the patient, the disease must be checked and still a group thinks that instead of studying offender, the offense must be investigated." Then he added that this procedure is very harmful because a crime may have occurred because of lust or the extraordinary delusions or due to congenital defects. We know that depending on the circumstances, treatment of such person will be different. Futility of way of common struggle is very clear and worse than that, this way of straggle against crime is very expensive and repeated the crime is increasing day by day. Whether all this is not the result of our mistakes? He added: regardless of this fault, to follow the old proverb about the Bureau of prisons, criminals should be treated individually and be given special treatment based on the personal character. Otherwise, should not be expected any satisfactory result. Clinical criminology through scientific and sound management of prisons first was realized in Latin America and then in Europe and in Anglo-Saxon countries. In Latin America, the leader of clinical criminology was an Argentine scientist, Anzhnirous that his recommendations has been received and imitated in Brazil and Chile.

Clinical criminology after becoming a part of prison labor's principle in implementation stage of criminal sentences has begun its penetration in jurisdiction. Proponents of this view argue that the precautionary prison should be so equipped that could exactly examine accused before his hearing and the judge before the trial, must be informed of the character of suspect and completely knows him. Thus the psychiatric sectors gradually become the basic enclosures of observation and examination centers. Belgium at the International Congress that was formed in London in 1925, Vrovaek about the affairs of prison stated that medical examination of the prisoners is a megatrend and experiments revealed that  $\frac{3}{4}$  of the prisoners were patient particularly suffering from manner and intelligence deficit disorder that their diseases had not been realized before the convictions.

In 1951 the United Nations established the Brussels European Council and after a thorough review was recommended to all the Member States of the organization that provide the medical, psychology and social test of defendants in their Procedures Code Rules. This decision of United Nations was not unprecedented and sudden because the International Congress about the affairs of prison was established in 1920, in Hague Internation-

al Congresses of criminology in 1938 in Rome and in 1950 in Paris the International Congresses of the social defense that was established in 1947 in Sen Rimo and in 1949 in Liege had so much demanded to test the defendants before trial. The studies that were performed in Brussels could determine the subject, purpose and methods of medical, social and psychology tests and in this way, even adjust the technical and administrative organization and how members act. Brussels council reviews another opportunity which refers to appeal of the local Medico social (nasal health counseling and assistance positions) or private social service institutions. Provided that these institutions have had the trained social assistants (Ki Niya, *ibid*, p. 40).

### *Circumstantiality Mitigation*

Circumstantiality mitigation refers to circumstances that their concomitant with the crime leads to discount or exemption in penalty (Article 34 of the General Penal Code). Some also said: circumstantiality mitigation are circumstances like excuses that reduce the punishment with this difference when their existence become apparent to the judge, he is empowered to grant relief “(Ardabil, 2003, p. 207). There are some circumstances in criminal law if the offense be committed in those circumstances, this would cause a reduction or waiver of the penalty. The mentioned circumstances are in two kinds: the first kind, they are introduced to the letter of the law and in idiom are called legal excuses. Legal excuses may lead to exemption or rebate of punishment. The second type, those that were not situated in the letter of the law and judges can decrease the punishment rate to some extent if they know those circumstances pertinent to take discounts and in idiom this part is called legal excuses. Legal circumstantiality mitigation (or legal excuses) has two parts: A. General excuses which is not assigned to a particular crime but is found in various crimes, such as minor age. B. Dedicated excuses that are allocated to the certain crimes such as barbarian killing by a husband who has seen his wife with him in bed. So in definition of circumstantiality can be said: circumstantiality is phases that mitigate criminal penalties and reduce the severity of punishment (Haeri, 1951, p.134). Circumstantiality mitigation types of punishment according to the cases contained in the law 1370 and 1392 are as follows:

1. Remission of plaintiff or private claimant.
2. Effective statements and guidance of offender in identifying partners and deputies of a crime.

3. Particular circumstances of the crime committed such as provocative behavior and speech of victim or existence of honest motivation in committing an offense.

4. Announcement of accused before the prosecution or his profession in the research phase which is effective in crime detection.

5. Certain status (social position) of accused or his good experience.

6. Remedial actions of accused.

7. Remorse, the defendant's good reputation or certain conditions such as aging or illness.

8. Slight losses incurred to the victim or harmful results of crime.

### **Second debate - applicable measurements as circumstantiality mitigation in the clinical approach**

After reviewing the conceptual and theoretical framework governing clinical criminology and circumstantiality mitigation, considering the criteria and characteristics of circumstantiality mitigation actualizing in legislative and judicial discourse with emphasizing on the Islamic Penal Code in 2013, are the objectives of this research. Therefore, in this section we will try in addition to represent these measures, analyze them in context of clinical criminology approach free from the crime committed. Desired characteristics of this debate by referring to the available legal texts and doctrines governing clinical criminology includes the criteria monitoring crime and victim that will be discussed below.

#### *Physical - Mental condition*

About the physical condition of the accused can be invoked to the last part of “c” in Article 38 of the Islamic Penal Code that in this context, stipulates “... Specific condition of accused such as aging or disease” in fact, according to the conditions and circumstances of the crime committed, judge can observe the mitigating directions in his sentencing according to the conditions that the offender has been or is. However, about the physical structure as one of the circumstantiality mitigation should be said that criminal investigation in terms of physical structure initially examined in realization school. In this school which is known as the realized, positivity, demonstrability and Italian school which includes three approaches, Biological, (physical structure), sociological (social structure) and psychological (mental structures) and each of these

approaches studies the offender in circumstances beyond his will and in order to understand this school's principals, each of these approaches should be explained, expressed, reported and described according to the opinions. After opinions of "Lamarck" and "Darwin" the new efforts began for understanding human life between 1840-1860 years. Especially Darwin's theory of heredity, were initiated the new developments in biology. Also criminal law on this date despite the heaviness of classical school thought could not stay away from the influence of modern science, especially ideas that were important in the inheritance, or under the influence of "Kent" thought considered the recognizing society seriously (Norbaha, 2001, p. 130).

At the same time the criminal man book was published in 1876 by Lomboruzu, has been considered by scholars of his day. Lomboruzu believes that crime prior to being specifically a human phenomenon, in nature also is equally seen as it is widespread among human being. Indeed, penal offense is an animal practice and its appearance in human behavior indicates a signal from rebel and return to the primary instinct. This vital instinct is seen in insectivorous plants for survival and among animals to protect themselves and keep their superiority in group in the form of pugnacity and even competed in love (Ardabil, 2003, p.95). He in his other book, "Crime, its causes and treatment," writes, "Statistics and anthropological survey shows that crime is a natural and necessary phenomenon, such as the phenomenon of birth and death" (Ardabil, *ibid*, p. 95).

Physical structure (biologic) which was the origin of this approach and as well as the origin of realization school was formed by opinions of Lomboruzu Caesar. He was a military doctor, Professor of Forensic Medicine and Psychoanalysis at the University of Thorne and Paris, inspired by the ideas of Lamarck and Mendel and started his research on offenders and Italian soldiers. He studied over 3830 cranial of offenders and soldiers and 5907 body sizes of offenders in prison and after his investigation, found special physical characteristics of offenders that they often have a short stature, mired forehead, arch brow bulge, wide temporal, growth of the lower jaw which come out of inheritance and like early humans who lived in caves, their evolution has not ended which this abortion is the agent of criminal act. Lomboruzu believed crime of these individuals refer to rebellion and return to the basic instincts that today can be seen among animals and like death and destruction is perfectly normal. He

considered these criminal actions outside of the individual's will and a type of disease that the series of reactions should be done for treatment and recovery. If this improvement dose not achieved, they must be eliminated. Because their presence in the community, Causing harm to others. realization school names the innate or congenital criminals and knows them the "wild and violent" or "cagey and lazy" (Mohseni, 1996, p. 224). These offenders are born to commit the crime and their antisocial propensity caused by inevitable effects of genetic influences which are transferred to them from generation to generation (Shambiyati, 2004, p. 175).

Also, he states that congenital criminals have small limbs and hairy, short forehead, small skull, thin lips, big jaw, long ears, less beard and pale face also they don't have sensitivity and feel less pain and have tattooed bodies. However, nowadays it is quite doubtful or is not perfectly accepted and many criticisms have been made. Also, in Islamic point of view the effects of different physical, mental and social factors in committing crime are acceptable. Human beings is not merely physical and absolute submissive of environment and social factors, but he is two-dimensional entity (earthly and heavenly) with abilities that by them and by assistance of reason and science, faith, gnosis can resist against the crime and destruction as far as the human evolution is possible from this path.

Such person is not an absolute follower of external factors and is able to pave the environment for their activities. The Qur'an also mentions stories of those who have acted contrary to their natural environment and growth. Pharaoh's wife, Asiya, and the son of Noah, were those people that the first was in unhealthy environment and the next in healthy environment but inverse, the first became salvation and the latter became guilty. Thus, according to Islam human beings are located between algebra and authority in carrying out his criminal and normalcy acts and by following his divine aspects and its prosperity and by strengthen his will and decision making can overcome difficulties (Walidi, 2009, p. 112). But in Iranian penal code the physical structure of criminals as a component of mitigating or aggravating punishment is neglected and the law is quiet on this issue even in the earlier legislation and vote of judicial procedure this component is not considered too.

The effect of mental - psychological status of committed as a mitigation of punishment is another part of studies on this topic. Psychological factors

refer to mental and cognitive attributes of individuals which lead to crime and psychologists take it as an important factor in understanding and controlling behavior. These factors include sensitivity, hate, fear, horror, anxiety, low intelligence, imagination, aggression and jealousy and mental illness.

Trying to find the fixed pattern for a murderer, rapist or anti society is in vain work. Psychologists who work in forensic centers rely more on individuals' personality variables and consider it as the best factor in clinical judgment or psychiatrists believe the unconscious mind of people should be explored to find the subconscious causes of criminal behavior. In this regard, there is an orientation in Psychological Science called "criminal psychology", criminal psychology refers to the science of study the criminal personality and recognizing the causes and motives of criminals and socialization practices and experiences of his childhood and living environment and its unconscious effect in committing crime. In other words, criminal psychology could be defined as "scientific study of criminal behavior" and the mental processes that are involved in committing a crime. The behaviors that are opposite to conventional rules of society are called criminal behavior. The criminal behavior that is also synonymous with crime and misdemeanor refers to a voluntary act of a human that he does because he was in a position that allowed him to commit that, but his acts is contrary to the prevailing norms and values of society. Individual's personality, both physically and mentally, innate and acquired has impact on formation and stimulating of his feelings and behavior and this state in criminology is called 'willingness to commit crimes ". Individual's readiness amount for committing a crime is different so that show different reactions in front of one event and different people.

For centuries, the classical school proposed the freedom theory which means that the free will of offender caused to the anti-social behavior, so the offender commits the crime because his own will force him to commit the crime. This belief forces people to physical retaliation and revenge and imposing heavy penalties. Adherents of the classical school exempt people with dementia and children who will have no responsibility and will from punishment, but completely ignore the character of the offender and didn't put no difference between patients and healthy individual until the late 18th century, a man named Caesar Bekariya strongly criticized against the cruel and inhumane pun-

ishments imposed on offenders. Islam in the sixth century AD, take into consideration the offender's responsibility with condition of wisdom, maturity, and authority they have to. In every society there are people who unexpectedly can not cope with social norms. Their performance is harmful for them and society and these people are the greatest criminals of society. In Islamic Penal Code, insanity refers to the existence of some severe mental disorder that offender at the time of the crime has not complete will on his actions and has been unaware of their results. Schizophrenia and bipolar disorder are cases that cause insanity. Research has shown that other types of mental disorders can also be seen in some criminals which can be pointed to personality disorders, depression, bipolar disorder, impulsive behavior, anger and emotion management disorder and, sexual sadism and ... F. Kiai doctor, psychiatrist, says, " Development of psychology and psychiatry science caused the types of psychiatric and personality disorders were diagnosed. Researchers of these sciences understand crime as a result of imbalance in criminal character which arises from the interaction of biological and psychological factors and according to psychologists mental imbalance caused to individuals' personality disorders and leads them to commit unlawful acts. " Because of conflict of intellect and behavior the psychological state created in individual which makes problems in his individual and social life that finally person is suffering from personality disorders as far as the possibility of his disconnection with the outside world as well that criminologists know them with the names of people with antisocial disorders or *Pesikopatha* and .... In 1392 Islamic Penal Code and the Penal Code of 1370 in mitigation of punishment, these disorders and psychological problems as mitigating the quality has not been named independently. However, these disorders can be considered a kind of disease and attributed it to certain status of offender and his disease backgrounds and so he was deserve to application of mitigation.

### *Socioeconomic status*

Those factors which have root in society circumstance of offenders are called punishment agencies of extrinsic penalty. Scholars of criminology know family disorder, parental conflict, divorce, non-maternal behavioral abuse, without supervision, parental criminal history, characteristics and shortcomings of housing, living quarters, rotten retainers, no good way to spend leisure time, immi-

gration, diversity of children in family, ... and such factors that each of them has its roots in community and are causing delinquency. In this section because of detailed study of the influence of socioeconomic status as circumstantiality mitigation at the penalty determining phase, the economic and social situation will be reviewed individually.

### The first article: Economic Status

Some of the economic factors that cause crime include poverty, unemployment, illiteracy, ignorance and poor economic conditions. In many cultures, poverty has been defined as inadequacy of adequate necessities of life. Generally, such a definition is not accurate and comprehensive because the life necessities of every community have various dimensions and forms across time and location and can be transformed from one community to other community. Therefore, determining a scientific definition to "poverty" that be true for every time and place is not possible (Sotoudeh, 2010, p. 65). Researchers have determined certain criteria such as per capita income, daily calorie intake, per capita housing area, the per capita consumption of food and clothing, the benefit rate of education and healthcare, treatment and even fun and based on that specified the poverty line as well and among the studied variables in economic status and its impact on crime can be named the poverty variables. To illustrate the impact of poverty on committing crime and prove the existence of correlation between these two phenomena, the correlation between the economical fluctuations and changes in the criminality must be examined in order to specify that whether positive or negative correlation is established between these two or not. There is no doubt about the existence of a positive correlation between economic crisis and enhancement of some types of crime, particularly theft and statistics has often confirmed it. Economic crisis through impact on changes of consumption materials and primary necessities, changes in purchasing power and rising unemployment increase the crime and delinquency. This correlation is easily justified. Economic crises suddenly make a number of individuals deprive of economic independence and poverty and make them dependent and poverty. The number of these people is dependent on the severity of the crisis. As the crisis has intensified, an increasing number of people are suffering from such problems. Among them some people because of improper training in

the religious and social are weak enough against the temptations of Satan that they could not resist in front of them and can not adapt themselves with their new circumstances that have arisen for them and lose their power and as an alternative do theft, fraud, betrayal of trust, vagrancy, and so on. On the other hand famine and hunger, uncertain future lead people to desperation and accordingly perform riots, assaults and insults towards the public authority representatives and discipline guardians such as the economic discipline (Kinia, former Source, p. 187). For these reasons, sociologists, criminologists have considered the criminal factors causing crime, poverty, and economic factors and some of them know the poverty as direct factor of crime and some other believe the indirect influence of economic factors in committing crime and in any case, in formulating the criminal policies to fight crime think to the fight poverty, as well and it is very obvious that as long as the poverty, unemployment and other economic, social and cultural conditions which causes crime have not gone away, the reaction in front of crime was not very effective.

First, poverty can be appeared as the causing factor of crime and so either the poverty must be eliminated or appropriate penal policy must be implemented in order to block the influence of this drawback. Second, although the impact of poverty on committing robbery is more, but this is a direct effect of poverty, poverty also has an indirect effect (Kinia, a former source, p. 189) that some of them can include violent crimes such as robbery, armed robbery and so on. English writer and scholar Thomas Morris, in this regard, in the book *Utopia*, knows the poverty as the major factor of riots and violation of the laws and regulations and has advised the economic condition recovery, moderate wealth, elimination of class differences, employment of unemployment and offenders to prevent the crime. There is any thing about the poverty in the context of factors or directions of mitigating the punishment. Even in legal doctrine and religious views, poverty as mitigating the punishment factor is not as an argument. But in the field interpretation of the rules, particularly with reference to paragraph » article 38 Gh.M.A which says that, "... the specific condition such as aging or disease," can be said that although this paragraph of article 38 mentions aging and disease as the specific condition of accused, but in fact, has expressed it as evidence of example because here it points to " such as aging or disease " while the circumstances of accused could be much

more than aging and disease. But ultimately the decision is up to the judge whether poverty can be seen as a factor or an aspect of mitigating direction according to the crime situation or not? Of course author's view is that poverty can be seen as one of the circumstances of the defendant status.

Other variables that affect the economic situation of crime is unemployment. Veksard believes that vagrancy is a phenomenon that creates crime that is considered as the most important factor. Vagrancy certainly will lead the child to the delinquency. Fluorine and Kavajiri have studied the connection between vagrancy and the delinquency and came to the conclusion that if the delinquency is the result of the indirect reflection of the social circumstance and particularly the economic situation, vagrancy is the urgent reflection of this circumstance (Mazlouman, 1976, p. 95). In fact, unemployment or inadequate employment opportunities is well known as one of the main causes of delinquency and crime for years. However, during this period, the authorities made efforts to create jobs, but criminal statistics show that in order to reach the desired place, we are still far away. Unemployment is the background of many social deviance, individuals with previous history and to earn more money begin to steal, because individuals due to the lack of a job and steady income to cover their living expenses shall be forced by any means possible supply their own life. In terms of such person, crime is seemingly the most sensible and best way. The conducted researches also indicate a decisive impact of unemployment and poverty on enhancement of the delinquency (Najafi Abaranad Abadi, 2001, p. 225). Whether unemployment can be considered as one of the possible ways of mitigating the punishment or not, the legal doctrine, jurisprudents and law in this area don't mention anything although criminologists and jurisprudents have mentioned poverty as the root of many crimes. But poverty may also be seen as the certain situation of accused. As mentioned in the discussion of poverty also author recognizes this unemployment among the certain situations of defendant because it can be subsumed as the particular circumstances of accused and considers it as the circumstantiality mitigation.

### The second article: Social Status

Social factors are those factors that are rooted in a society of actors. DR. Kinyia in fundamentals of criminology said that family disorder, parental

conflict, divorce, non-maternal behavioral abuse, parental criminal history, characteristics and shortcomings of housing, living location, rotten retainers, no good way to spend leisure time, immigration, diversity of children in family are those factors that each of them has rooted in community and leads to the offense. Perhaps the most important effective variables on crime is family, which will be mentioned below. Family environment, an environment where a person was born, and his life go on. Researchers believe that the individual is severely affected by parents and other family members so his family situation has a direct relation in committing crimes and dangerous behavior. This effect on the formation of individual character, and consequently, their future behavior have been considered by most thinkers. Dougrof about it wrote: "The effects of life years on the formation and evolution of individuals' personality is so clear and if family acts to its parenting duties and if the relationship between parent and child be normal and if in the environment atmosphere the affective, friendship and compassion are dominated and finally, if all natural needs will be met, the child easily become social and also in family relationships and out of it will have the natural and moderate behavior. But if the conditions be in other form i.e., families have shortcomings in their parenting, and if the child suffers from a severe lack of emotion and If the parents divorced, it is obvious that its detrimental results sooner or later will be seen in child. Family plays a decisive and convincing role in identifying the motivation of committing crime in youth". Dougrof in addition to emphasizing the role of mentioned factors added that: "Character and behavior of offenders in the community, largely originated due to the characteristics of the family environment" (Najafiye Tavana, previous resource, p.204-205). Reston wrote in this regard: "Family situation certainly has a criminal effect on individuals." He to prove his point, after conducting studies says in this regard: "Three quarters of offenders belong to families with abnormal circumstance and violate atmosphere" (Najafiye Tavana earlier source, p.205). Thus, in the study of how family environment influence on its members, the family's situation and the relationship between individuals and the place of child must be considered.

Also, the media as other important factor involved in committing crime. The mass communication device refers to the devices that are used to express ideas and convey messages and thoughts to

others in a society. Considering the effects of these devices is one of the most complex issues of social pathology. For this reason, many sociologists indicate suspicion about the accuracy of research results. Today, the expansion and development of media is to the extent that the current eras are called "era of communication". McLuhan know world with the concept of "global village" and says the mass communication device have such power that can create a new generation in human history, a generation that is very different from previous generations (Sotoudeh, former Source, p. 58).

The negative effects of mass devices refer to addiction in general sense of the word. In many cases, people are so addicted to media and trust them that require them in certain time. Delay or loss provides causes of the loss of their balance, and when they arrive to them (e.g., achievement) to the favorite newspaper, the power of thought is taken from them. They accepted the writing or doctrine without any doubt or thought. Without a doubt, this process which is heterogeneous with the special nature of the thinker human, causing the mind to suffer from numbness and individual in flow of events such as chaff raged floods, unwanted and without will be drawn to this side and that.

Despite the direct and undeniable impact of social factors such as poverty, unemployment, family status, and the media in the Penal Code of 1370 and 1392 and in expression of the circumstantiality mitigation of offense, there is no direct reference to the influence of these variables on punishment mitigation. However, these components can be interpreted under the topic of certain circumstances of committed and in this way involve they in punishment phase.

## Discussion and conclusions

Clinical criminology by using the findings of other sciences, comprehensively study the accused from the psychological, physical, social aspects, and by measuring his corrigibility power or his deviation and dangerousness degree, the prescriptions containing required drugs, are prescribed to treat the patient so, aside from the "incentive finding" it has two most important tasks of "treatment the incentive of dangerous status" and "Clinical treatment of dangerous statuses". In relation to incentive finding, noting that this science predict and prescribe a suitable and certain drug for each disease. Therefore, clinical criminology deals with a thorough re-

view of psychology and character of accused person, behavioral characteristics, life circumstances, past and present situation and all the factors that ultimately may affect their criminal behavior. Some of the obtained results of all the cases examined in the study are as follows.

In definition of clinical criminology can be said: it is a scientific-synthetic knowledge that through the results of general and specific study of criminology considers the individual and his characteristics and with awareness of his dangerousness degree and adaptation power and harmonize him with social standards, provide necessary treatment and aims to make offender away from repeating the offense. In other words, one of the most significant tasks or activities of clinical criminology science must be known in determining and providing techniques for treatment of offenders based on the psychological and spiritual characteristics and how much they are addicted to criminal and other social criteria. In relation to clinical criminology and circumstantiality mitigation should be said: punishment mitigation is a conditional right to offender that with presence of established conditions and lack of barriers, court can implement it based on the generosity namely may on the civic and social good and bad and considering the total circumstances, conditions governing the case. Adjustment of punishment with personality of accused in addition to empowered the magistrate, also considers his past history and mentality and with adherence to the circumstantiality mitigation can place the justice in the development and progress route as it is required by public conscience without legislative involvement. Regardless of the committed crime, some criteria governing offender and victim include: physical and psychological status, economic and social situation. Each of these criteria have been investigated in relation to circumstantiality mitigation.

A) In the area of physical condition which itself is presented in two categories of the physical structure and physical status, in Iran's panel code, the physical structure of offenders is not considered as a factor for mitigating or aggravating of penalties and the law is silent on this issue, even in the earlier legislation and decisions of judicial procedure this component has not been studied.

B) In the area of offender's mental state at the time of the crime committed several articles are provided that all of them implies acceptance of offenders' irresponsibility which don't have will during the offense committing.

c) The economic situation: With reference to paragraph» » article 38 Gh.M.A, "... the specific condition of offender such as aging or disease," can be said that although this paragraph of article 38 names aging and disease as the specific condition of offender, in virtue, has expressed it as an example because here points to " such as aging or disease " while the circumstances of accused could be much more than aging and disease.

D) Social Status: about this issue which is considered in investigation on family relations and mass communication devices. However, these factors and circumstances aren't mentioned in law for implementing circumstantiality mitigation, the legal doctrine has not accepted this idea except about child offenders that law in this regard viewed with tolerance and partially has accepted the observance of circumstantiality mitigation.

## References

- Ardabil, M.A. (2003). *Public criminal Law*, Vol 2, Ch VI, Tehran, Mizan publication.
- Ardabil, M.A. (2005). *Public criminal law*, (c) the first, Mizan publication, Tehran, Eighth Edition
- Bolak, B. (2008). *Penology* (A.H. Najafi Abarnad Abadi, Trans.), Fifth Edition, Eighth version, Tehran, Scientific and Cultural Complex Majd Press.
- Danesh, T.Z. (1987). *Who is offender and what is criminology?*, First Edition, Keyhan institution press.
- Haeri, M. (1951). Circumstantiality mitigation, *Journal of Law*, 299.
- Kiniya, M. (1968). *Principles of Criminology*, Volume I, Seventh Printing, publishing and printing Institute of Tehran University.
- Kiniya, M. (1968). Clinical Criminology rights, *Monthly Justice*, 33.
- Najafi Abaranad Abadi, A.H. (1991). Offense and economic status, *Legal Investigation Magazine*, 9.
- Najafi Tavana, A. (2012). *Criminology*, fifteen edition, Tehran, Education and Measurement Press.
- Peynatl, J. (1966). *Criminology*, Translation: Oulomi, R. sciences, Eighth Edition, Tehran, Amir Kabir Publications.
- Sotudeh, H.A. (2010). *Social pathology* (Sociology deviations), Avaye Nour Publications, third edition.
- Validi, S. (2009). *Principles of Public Criminal Law*, First edition, Tehran, Jungle Publication.