



Model of Response to Juvenile Delinquency in the Afghan Criminal Justice System

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<http://dx.doi.org/10.18415/ijmmu.v11i10.6667>

Abstract

The way of responding to and dealing with juvenile delinquency has engaged criminal justice systems and policymakers for at least a century. On the one hand, the psychological sensitivities of children and, on the other hand, the defense of social order and addressing unlawful behaviors have made defining and establishing a response system to juvenile delinquency significantly important and sensitive. The multiplicity and diversity of response models to juvenile delinquency indicate the significance of this issue. The prevailing models in juvenile justice systems can be divided into at least five categories: restorative justice model, criminal justice model, minimal intervention model, risk management model, and welfare model. This research aims to provide a brief overview of the aforementioned models while detailing and analyzing the response model of the Afghan criminal justice system to juvenile delinquency. An examination of Afghan criminal laws that refer to juvenile offenses, especially the Law on the Handling of Juvenile Offenders and the Penal Code of 1396 Afghanistan, indicates that while the Afghan criminal justice system pays attention to the restorative justice model in some cases, it primarily relies on the minimal intervention model. Therefore, criminal intervention and the use of punitive measures in the Afghan criminal justice system concerning delinquent children are considered the last resort, applied only in the most critical cases that necessitate it.

Keywords: *Children; Juvenile Criminal Justice; Minimal Intervention Model; Juvenile Delinquency; Response to Juvenile Delinquency; Afghanistan*

Introduction

"Today's children are society's future capital." This perspective has led to growing concerns about juvenile delinquency since the second half of the 19th century, prompting criminal justice systems to address how to effectively manage this issue. Lawmakers and social policymakers have proposed various models to respond to children's crimes and violations, taking into account the mental fragility and sensitivity of childhood.

These models can be categorized into several approaches: the welfare model, restorative justice, criminal justice, minimal intervention, and risk management. Each of these approaches prescribes different conditions and mechanisms for addressing behavior in relation to children's legal issues.

Undoubtedly, the emergence of different patterns in responding to the crimes of children and adolescents across various periods reflects the specific conditions governing each society. Factors such as politics, economics, culture, and social dynamics significantly influence these responses. Afghanistan, with its traditional, tribe-oriented cultural foundations and over fourteen decades of war, insecurity, and social crises, is no exception. However, during the twenty years of the republic, the country has seen a serious transformation. The establishment of numerous laws and measures, particularly with the enactment of the Juvenile Delinquency Law in 1384 and the Penal Code in 1396, incorporated modern criminal justice principles to address the offenses committed by children and adolescents.

In the past, responses to offenders adhered to specific rules: first, the procedures for handling delinquency and accusations against children were subject to general regulations; second, the hearing authority consisted of public officials, and judges dealing with children's charges were drawn from the regular judicial system; third, the prevailing atmosphere and conditions surrounding criminal policy were primarily focused on criminalization and punishment. Consequently, the same social reactions directed at adult crimes were also imposed on children.

Therefore, a typological approach to the changes in responding to crimes and violations committed by children and adolescents is essential for achieving a correct understanding of the models and patterns that govern the juvenile criminal justice system. This national system addresses crimes and violations involving children and adolescents. The main questions of this article are as follows: What models and patterns have been implemented so far to respond to offenses committed by children and teenagers? What frameworks govern child and juvenile crime in Afghan law? In other words, which common patterns has the Afghan legislator followed to develop a response system to juvenile delinquency? While examining these models, this research analyzes and explains an Afghan approach to addressing the delinquency of children and adolescents, focusing on the proposed questions.

1. Concepts

A proper understanding of the research content is only possible when a clear impression of its main concepts is conveyed. This enables the perspective and intellectual framework guiding the text to be shaped by the meanings of the keywords. It is essential that, before delving into the examination and analysis of the patterns governing the response system to children's delinquency, we first clarify the meanings and purposes of these concepts.

1-1. The Concept of a Child

From a lexical perspective, the term "child" is interpreted as small or minor, referring to a young human being. In this context, a minor is the opposite of an adult and signifies a child (Moin, 2013; 2147). Ragheb states that a child, characterized by a soft body, is defined as "every small thing," emphasizing that the term refers to both boys and girls (Danesh, 1378; 226). In jurisprudence, a person who has not reached puberty is recognized as a child, with maturity being defined as the understanding and attainment of a certain stage of physical and mental development (Jabri-Arab Lou, 1362; 61).

From a legal perspective, "a child or minor is someone who has not reached the physical and mental development necessary for social life in terms of age" (Abadi, 2015; 5). The age at which a child reaches this stage of physical and mental development varies according to the laws of each country. In Afghanistan, the legislation states that in the fourth month of the Law on Dealing with Children's Violations and Article 95 of the K.J. that, according to paragraph 1 of Article 3 of the Law on the Protection of Children's Rights, "a child is considered a person who has not completed the age of 18." Thus, although jurists define a child as a person who has not yet reached the stage of maturity, the determination of this stage, as well as the parameters of growth associated with maturity, remains a subject of debate, and consensus is not universally agreed upon.

From the perspective of the International Convention on the Rights of the Child (1989), "a child means any human being under the age of 18 unless a lower legal age has been determined according to the law applicable to the child." This definition implies that a child is someone under 18 years of age, while "delinquent children" are those who have violated the law. However, due to the negative implications of being labeled a criminal, terms such as "children against the law" or "criminals" are often applied to these individuals. In Afghanistan, legislators have named the relevant legislation the "Law on Juvenile Violations," which addresses how to manage the offenses committed by children and adolescents. This law takes into account their unique needs and mental and psychological conditions, emphasizing the importance of support and understanding of their backgrounds. Ultimately, the reform aims to promote social rehabilitation while upholding the dignity of children and teenagers.

1-2. The Concept of Juvenile Delinquency

Juvenile delinquency is a complex concept influenced by various criteria, including age, sex, race, and the nature of the crime. Broadly defined, it encompasses behaviors of non-adults that violate formal norms. In a narrower sense, juvenile delinquency refers specifically to actions committed by individuals under the age of majority that fall within the jurisdiction of juvenile courts. Consequently, a person is not considered a delinquent child unless they have been officially convicted as such (Vazifeh, 2013, 19). Delinquency is a form of deviant behavior that exceeds the traditional definition of crime (ibid.). According to international documents and laws, the term "delinquency" is associated with behavioral abnormalities and deviations among children. The plight of children, particularly those at risk of delinquency, has garnered significant attention in United Nations gatherings focused on crime prevention and the management of delinquents (Taha, 1391, 155). Criminologists assert that delinquency encompasses all public offenses committed by individuals between the ages of 12 and 20 (Mozaami, 2013, 67).

Delinquency often parallels crime, particularly in reference to offenses committed by children and adolescents. In its common non-legal sense, it encompasses behaviors such as truancy and running away from home, which would not typically be classified as criminal if committed by adults (Najafi, 2013, 2019). Within the field of scientific criminology, delinquency is examined in relation to the causes of crime and the treatment of offenders, where the presence of dangerous behaviors is viewed as indicative of anti-social tendencies (Abachi, 1390, 5).

One significant issue that has captured the attention of criminal law scholars and criminologists is the increasing statistics related to delinquency and recidivism among children and adolescents. In response, criminologists have spent years developing theories to address juvenile delinquency, exploring this phenomenon from various perspectives to find effective solutions. However, it is important to note that each criminologist tends to focus on a single dimension of this complex issue. Consequently, these one-dimensional viewpoints have led to the emergence of numerous theories, some of which may conflict with one another.

1-3. Concept of Response Patterns

A pattern or model refers to a set of rules that can be applied to produce a complete item or a component of something (Sarukhani, 1377, 458). In the context of children's delinquency, a response pattern consists of the rules and laws shaped by the specific conditions of a given society, which organize social reactions to juvenile delinquency. For nearly a century, the issue of children's delinquency and appropriate responses has captivated the attention of criminal law scholars. Criminal justice systems have developed at least five distinct response patterns, influenced by the political, social, cultural, and economic conditions within their societies. This article will examine these response patterns and specifically analyze the patterns observed in Afghanistan.

A) Restorative Justice Model

In the public's perception, punishment is often viewed as the primary judicial response to criminal behavior. However, reformists have conducted extensive research to identify approaches that mitigate the negative effects of crime while being more effective in addressing its root causes. The culmination of this research is the concept of restorative justice. According to Johnstone (2002, 1), "Restorative justice is a process in which all parties involved in a particular crime come together to collectively resolve how to deal with its consequences for the future."

Proponents of restorative justice argue that when confronting crime, our primary focus should not be on punishing the perpetrator. Instead, the first step should involve identifying the needs of the crime victim. Subsequently, it is essential to ensure that the perpetrator fully comprehends the harm caused by their actions and commits to making amends. Achieving these goals necessitates approaches beyond formal criminal trials and the imposition of judicial punishment (Johnstone, 2002, 1).

The concept of restorative justice becomes clearer when contrasted with traditional criminal justice. Howard Zehr highlights a fundamental difference between these two systems in how they understand crime, leading to distinct patterns of response. He states, "Criminal justice focuses on the violation of laws, while restorative justice focuses on the violation of people's relationships. Criminal justice seeks the protection of the law in determining and implementing punishment, whereas restorative justice aims to support victims by acknowledging their harm and creating obligations for those responsible to restore the situation. Furthermore, while criminal justice involves the government and the offender in a formal judicial process, restorative justice includes the victim, the perpetrator, and community members in finding a resolution to the case" (Zehr, 1990, 181).

The basic principles of restorative justice can be classified into five categories:

First, restorative justice encourages the participation of all parties and aims for consensus. This means that, in addition to the offenders and victims, it invites anyone who feels affected by the crime—such as neighbors—to voluntarily participate in the problem-solving process.

Second, restorative justice focuses on healing and repairing what has been broken. A central question in any restorative process is: "What does the victim need to heal and regain a sense of security?" Offenders may also require healing, such as relief from guilt or fear, resolution of underlying conflicts that contributed to the crime, and an opportunity to make amends.

Third, restorative justice emphasizes full and direct accountability. This means that offenders must not only recognize that they have broken the law but also confront the people they have harmed and understand the impact of their actions. They are expected to explain their behavior in a manner that victims and the community can comprehend and to take responsibility for the damage they have caused.

Fourth, restorative justice aims to reintegrate what has been broken and fragmented. Crime creates divisions between individuals and within communities, leading to significant harm. Restorative processes focus on reconciling the victim and the offender while facilitating the reintegration of both parties into society.

Fifth, restorative justice seeks to strengthen society to prevent further harm. While crime causes immediate damage, it can also reveal underlying injustices that contribute to long-term divisions between the "offender" and the "victim." These injustices can include systemic issues such as racial and economic disparities. Although these factors do not excuse the offender's behavior, they must be acknowledged and addressed. By doing so, restorative justice aims to strengthen communities and create a more equitable and safer environment for everyone.

Article 21 of the Law on Dealing with Violations in Afghanistan emphasizes the importance of conciliation. The law encourages the engagement of governors to invite representatives from children's

correction and education centers, as well as special social service institutions, to act on behalf of the legal representatives of the child and the victim. It advocates for reconciliation as long as the child has not committed a misdemeanor or a crime.

Additionally, paragraph 3 of Article 40 grants the court the authority to impose additional obligations in its judgment aimed at correcting the consequences of the crime and promoting reconciliation with the victim.

From this legislative framework, several points can be inferred:

1. In cases of juvenile delinquency, compromise between the parties is only permitted if the act committed is not categorized as a misdemeanor or a crime. In such cases, the legal process must proceed normally, without room for compromise.
2. The court is empowered to specify additional obligations in its judgments to prevent reoffending and to correct the repercussions of the crime. This includes encouraging reconciliation with the victims.

B) Criminal Justice Models

Criminal justice refers to the administration of justice for individuals who have engaged in criminal behavior. The criminal justice system is composed of government organizations or agencies that aim to identify and apprehend individuals who violate the law, imposing punishment and deterrence accordingly.

The goals of criminal justice include the rehabilitation of offenders, the prevention of future crimes, and the moral and legal protection of victims. In essence, criminal justice encompasses individuals, groups, and organizations that possess the authority to respond to crime in various ways, including the power to compel individuals to comply with laws or refrain from illegal activities (Cross: 2010, 8).

King (1981: 31-32) outlines several key theoretical approaches regarding the purpose of criminal justice, each producing distinct features when applied. These models include:

- **Due Process Model:** This model emphasizes equality between the defense and the prosecution. It incorporates rules designed to protect the accused from wrongful actions or abuses of power, with a fundamental presumption of innocence until proven guilty.
- **Crime Control Model:** Characterized by minimal legal constraints, this model operates under the belief in the high probability of crime. It prioritizes police enforcement and aims for high conviction rates to ensure public safety (Packer 1968).
- **Medical Model:** This approach focuses on individualized responses to criminal behavior, tailoring interventions based on the specific needs and circumstances of each offender. Rather than punitive measures, it seeks to address the social causes of delinquency, allowing for the discretion of expert decision-makers (Garland 1985).
- **Bureaucratic Model:** This model emphasizes the promotion of speed and efficiency within the criminal justice system. It seeks to minimize conflicts among criminal justice agents, reduce costs, and underscore the importance of accurately maintaining records throughout the process.
- **Passing the Situation Model:** This pattern is characterized by the public's tendency to blame the accused, reflecting societal values in trial proceedings. It highlights the influence of societal perceptions on the behavior of criminal justice officers during legal proceedings.
- **Power Model:** This model illustrates how class values are reinforced through the workings of the criminal justice system. It involves the deliberate suppression of the accused, encompasses paradoxes and contradictions between the stated principles of justice and their actual

implementation, and reflects a lack of awareness regarding the social harms arising from societal inequalities (Sim et al. 1987).

In addition to these six models, Davies et al. (2005: 27) introduced two further concepts:

- **Deserved Justice Model:** This model emphasizes punishment for criminals based on their degree of guilt and the harmfulness of their actions. It recognizes the basic human rights of offenders and asserts the necessity of proving an individual's blameworthiness prior to punishment. Additionally, it acknowledges society's right to impose punishment on those who commit crimes (Cross 2010: 12).
- **Risk Management Model:** This model focuses on monitoring and controlling offenders according to the level of danger they pose to society and their criminal history. It aims to reduce crime and alter offender behavior through supervision and the imposition of longer sentences, particularly for dangerous individuals (Kemshall 2003: 45).

C) Minimal Intervention Model

The minimal intervention approach, also known by various titles such as "criminal law as a last resort," "principle of criminal saving," "principle of complementarity," and "subordination of criminal law," serves as a foundational concept in criminal law. This principle underpins the emergence of what is referred to as a minimal or reductionist model in criminal policy (Gholami, 2012: 97).

Minimal Intervention Indicators

1. **Non-Punitive Response to Freedom:** This indicator emphasizes using responses and punishments that do not involve detention in a correctional facility. In cases where imprisonment is warranted, the focus should be on determining the shortest possible duration of confinement. If detention is unavoidable, the minimum time should be chosen from the stipulated minimum and maximum sentences (M.Q.R.T.A.).
2. **Minimum Fine Determination:** This principal advocates for setting a minimum fine that must be imposed as a penalty, considering both minimum and maximum limits established for various offenses.
3. **Postponement and Suspension:** Under this indicator, all offences committed by children and adolescents can be subject to postponement or suspension of sentencing. When appropriate, and at the judge's discretion, these options can be utilized based on specific conditions.
4. **Utilization of Environmental Capacities:** This indicator highlights the importance of utilizing environments other than correctional facilities to address delinquency among children and adolescents. Options may include educational and vocational classes, counseling services, and periods of postponement or suspension of care. These alternatives aim to promote rehabilitation and support rather than punishment.

D) Welfare Model

The welfare model, also known as the social service model, is rooted in the principle that social services are provided to promote the welfare of children and adolescents, with no criminal proceedings involved. The welfare perspective for juvenile justice is based on four fundamental principles:

1. **Lack of Responsibility or Inability to Commit a Crime:** Recognizing that many young individuals may not fully comprehend their actions or the implications.

2. **Determinism:** Understanding that various factors influence behavior, including social and environmental conditions.
3. **Informal Proceedings:** Advocating for less formal and more flexible processes in addressing juvenile offenses.
4. **Prioritizing the Best Interests of the Child:** Ensuring that actions taken are centered around what is best for the child's development and well-being (Muncie, 1999: 266).

Countries like Germany exemplify the welfare model in both law and practice. In Germany, the philosophy is that "both punishment and education should be appropriate within the framework of youth justice." While youth court law operates within the broader criminal justice system, the German juvenile justice system emphasizes social integration and rehabilitation through welfare interventions.

E) The Risk Management Model

Crime-oriented risk management refers to a set of crime control plans focused on assessing risk and responding based on crime risk (Cherchian Biyabani, 2014, p. 10). This model targets high-risk criminals who are not deterred by societal monitoring through criminal measures, while other perpetrators are managed with non-criminal methods to prevent crime (Ibid., p. 12).

The primary goal of this model is to optimize the use of material and human resources. Given the constraints of judicial budgets and resources, this approach aims to address both high-risk and low-risk groups effectively. Risk management in this context evaluates criminals and situations based on their likelihood and severity of crime, rather than decision outcomes (Pak Nihad, 2018, p. 28). It focuses on reducing uncertainties and adverse events through systematic decision-making.

Effective risk management involves identifying, measuring, and managing risks to minimize their probability or impact. This process includes choosing and implementing cost-effective techniques to reduce risks (Pak Nihad, 2018, p. 38). The ultimate goal is to lower risks to the most acceptable level rather than eliminating them entirely.

Choosing the best risk management technique involves complex decision-making and systematic planning. Risk identification uses tools like checklists and questionnaires, while risk analysis examines intrinsic risk factors. These phases are collectively known as risk assessment (Ibid., p. 41). In the final stage, monitoring and updating methods ensure effective management of both identified and new risks (Hatfi, 2016, p. 7).

1. A Responsive Model of Criminal Justice in Afghanistan

In Afghanistan, the criminal justice system's response to juvenile delinquency combines elements of restorative justice and a minimal intervention model. Afghan laws on juvenile delinquency reflect an approach that emphasizes decriminalization and avoiding formal criminal proceedings for juveniles. Restorative justice focuses on non-judicial resolutions, reconciliation, and dialogue to address the causes of delinquency, prevent vindictive behavior, and avoid damaging the future social integration of delinquent children.

The Afghan legislature's approach aligns with the minimal intervention model, which advocates for non-criminal methods and institutions for socializing and normalizing children. This model suggests that minor offenses should not be treated as criminal and that criminal charges should be minimal. Prosecuting bodies, including police, governors, and courts, are encouraged to exercise discretion and avoid prosecution where possible, with the option to suspend or modify sentences as needed. Informal

institutions like families and schools are also integral to the rehabilitation of delinquent children. This section examines how the minimal intervention model influences laws and measures related to juvenile offenses.

1-1. Minimum Punishment for Delinquent Children

Under this approach, the Afghan Penal Code establishes both minimum and maximum punishment ranges for juvenile delinquency, allowing judges to impose lighter sentences based on the child's circumstances and the goals of punishment. Articles 97 and 98 of the Penal Code stipulate that juveniles aged 12 to 16 and 16 to 18 should receive penalties no greater than a quarter and a third, respectively, of the maximum punishment for adults committing the same crime. This reflects a decriminalization approach and emphasizes minimal criminal response for juveniles. Additionally, any time spent in a correctional center before trial is deducted from the final sentence (M. 100 KJ), further illustrating the minimal intervention approach.

1-2. No Imprisonment Provision

The Afghan Penal Code also demonstrates flexibility by using terms like "detention" instead of "imprisonment," aiming to avoid adverse effects on the child's emotional well-being and future. For minor crimes, detention in correctional centers is not mandatory; alternative measures are preferred. This approach aligns with the minimal intervention model, as both the Penal Code and the Law on Handling Juvenile Violations consider detention as the most severe response for juvenile delinquents. Article 90, K.J. explicitly prohibits imprisonment for juveniles, as it is deemed punitive and harmful to the child's psychological development rather than rehabilitative.

1-3. Failure to Predict Fines for Delinquent Children

Despite being a milder form of punishment compared to imprisonment, monetary fines are avoided for juvenile offenders in Afghanistan due to the financial burden they impose. Fines are seen as punitive, and the focus for children is on social reform and rehabilitation rather than financial penalties. By prohibiting both imprisonment and fines, Afghan legislators aim to limit corrective measures to detention and minimize psychological harm, focusing on supportive policies for juvenile offenders.

2. The Punishment Field

In the realm of punishment and judicial proceedings, Afghanistan's approach to juvenile offenses, guided by the minimal intervention model, unfolds in three stages: discovery and investigation, judicial proceedings, and decision-making. According to experts, Afghanistan's criminal law is progressive, incorporating both national and international experiences to address juvenile behavioral issues (Gholami, 733)). This section outlines key aspects of the minimal intervention model within the legal framework for juvenile violations, offering insights into its application and impact.

2-1. Detection of Juvenile Crimes

Under Article 134 of the Constitution, the police handle crime detection, investigation, and filing lawsuits, with oversight from the Attorney General. Although the law on juvenile violations does not establish a specialized children's police force, criminologists and child criminal psychologists advocate for such specialization. Currently, the police, supervised by the Special Directorate for Children, investigate juvenile crimes with specific powers and duties:

A) Arresting the Child

According to Article 10 of the law on dealing with children's violations, police may arrest a child under the following conditions, provided there is evidence indicating the commission of a misdemeanor or crime:

1. Risk of the child fleeing.
2. Risk of losing documents and evidence.
3. Risk of the child committing another crime.

Arresting a child should be a last resort and for the shortest necessary period. When a child is arrested, the police must:

1. Keep detained children separate from adults.
2. Notify the child's legal representative and social services within 24 hours of the arrest.
3. Review and respond to any release requests from the child's legal representative within 24 hours.
4. Forward all related documents and information to the Children's Special Directorate within 24 hours.

If additional time is needed for investigation, the police can request an extension from the Special Directorate for Children. The governor may grant an additional 48 hours or release the child to their legal representative (Article 13, paragraph 2).

2-2. Juvenile Crime Investigation

From Articles 10 to 13 of the Law on Handling Juvenile Violations, it is evident that the Afghan legislator has deliberately restricted police involvement to the minimum necessary to prevent labeling children as criminals, reflecting a protective stance in Afghan criminal policy. This approach aligns with the principle of minimal intervention by Afghan criminal justice agents.

Special Directorate for Children

Article 9, Paragraph 1 of the Law on Handling Juvenile Violations establishes a specialized office for children in provincial centers to prosecute and investigate juvenile crimes. This agency is designed to offer specialized and professional attention to delinquent children, addressing their unique needs.

According to Paragraph 4 of Article 9, the Special Directorate for Children cannot initiate legal actions against children unless prompted by a written complaint from a person or authority. The Special Directorate has several key duties and powers:

1. **Determining Trial Necessity:** Deciding whether there are sufficient grounds to prosecute the child.
2. **Submitting Lawsuits:** Bringing cases to court if prosecution is warranted.
3. **Character Cases:** Filing cases related to the child's personality, known as "accused's character cases," alongside criminal cases related to the offense.
4. **Handling Children Under 12:** Releasing children under 12 to their relatives or legal representatives.

Additionally, the Special Directorate for Children has the following powers (Article 2 of the Law on Juvenile Violations):

1. **Court Permission for Release:** Obtaining court approval to release a child aged 12 to 18 who has committed a misdemeanor to their legal representatives or relatives under certain guarantees.
2. **Educational and Correctional Institutions:** Referring children to educational or correctional institutions if no legal representative or relative is available.
3. **Proposed Detention:** Requesting court permission to detain a child aged 12 to 18 who has committed a crime.
4. **Mediation:** Facilitating reconciliation between the child, their legal representative, and the crime victim. If an agreement is reached, the prosecutor may choose not to proceed with the case in court (M.21. Q.R.T.A.).

Judicial Proceedings and Decision-Making

Article 26 of the Law on Juvenile Violations and Article 44 of the Law on the Organization and Jurisdiction of the Courts of the Afghan Judiciary establish special primary courts for children in provincial centers. These courts are specialized and composed of a president and four expert members. This structure highlights the importance of tailored judicial treatment for juvenile crimes and violations. Such specialization aims to reduce judicial errors and, according to Article 27 of the Law on Dealing with Juvenile Violations, provides a multi-stage process (primary, appeal, and Farjam) to ensure justice aligned with the psychological and social needs of children.

The judicial proceedings and decision-making process reflect the minimal intervention model of criminal justice. Afghanistan's legislation emphasizes that criminalization should be a last resort and underscores the role of informal institutions—such as families, schools, social institutions, and correctional centers—in addressing juvenile offenses. This model marks a significant shift in the role of the courts, focusing on both the needs of the victim and the juvenile offender (Hoshang and Shaibani, 1401, 118).

The jurisdiction of special children's courts covers actions and behaviors by children over 12 years old that are considered criminal or involve abnormal behavior not correctable by guardians or educational measures. Article 29 of the Law on Dealing with Juvenile Violations states that many of these behaviors can be managed through family support and awareness rather than formal trials. Thus, the courts should be a "last resort." Additionally, cases involving children at risk and in need of care and support are also handled by these specialized courts.

2-3-1. Judicial Proceedings

In judicial proceedings involving juvenile offenders, special courts for children are guided by principles that align with the model of minimal intervention in criminal justice. These principles are essential for ensuring that the proceedings are conducted in a manner that respects the unique needs of children:

- a) **Non-Publicity:** Proceedings should be conducted in private, and any information related to the case or trial should not be disclosed to the public. This confidentiality helps protect the child's privacy and reduces the potential for stigma.
- b) **Expert Opinions:** To make a decision that is appropriate to the child's specific circumstances, the court should consider the opinions of specialists and experts. This includes evaluating the child's defense, witness statements, and expert assessments to ensure a comprehensive understanding of the child's situation.

- c) **Protection from Psychological Harm:** If the trial process or its discussions are likely to cause psychological harm to the child, the court should remove the child from the session and provide them with a summary of the proceedings later. The court can also exclude the child's legal representative from the proceedings if their presence is deemed contrary to the child's best interests.
- d) **Presence of the Child:** The verdict must be announced in the presence of the child, ensuring that the child is directly informed of the court's decision.
- e) **Comprehensive Decision-Making:** The court's decision should be based on a thorough consideration of all case-related information, including the specifics of the committed act and the child's personal circumstances, as stipulated in Articles 17 and 36 of the Criminal Code.

2-3-2 Determination of the Delinquent Child

To avoid labeling juvenile offenders as criminals, the legislation refers to court outcomes as "decisions" rather than "judgments" or "opinions." This terminology has both legal and criminological implications. Legally, using the term "decision" allows the court to review and amend its rulings more flexibly compared to formal judgments. Criminologically, this approach helps prevent stigma and avoids branding the child and their family as criminals.

A) Types of Court Decisions Involving Delinquent Children

Decisions made by special children's courts can be categorized into criminal and non-criminal decisions:

1. Non-Criminal Decisions

Non-criminal decisions do not involve punishment and are intended to be a last resort. These decisions prioritize rehabilitative and preventive measures. Examples include:

- **Social Services:** Requiring the child to perform community service, such as work for districts, schools, or public hospitals, as determined by judges in consultation with child experts (Article 35).
- **Specialized Institutions:** Referring the child to institutions for professional or educational development (Paragraph 1 of Article 40).
- **Issuing Notices:** Drawing the child's attention to the consequences of reoffending, including potential future detention (Paragraph 2 of Article 40).
- **Postponement of Trial:** Delaying prosecution with a warning that any future offences will be addressed. This approach aligns with the minimal intervention model, aiming to reduce formal criminal proceedings and their negative impact. The maximum delay is three years for crimes and one year for misdemeanors (Paragraph 3 of Article 40).
- **Conditional Suspension of Punishment:** Suspending punishment if it is deemed unnecessary, provided the child understands the consequences of their actions (Paragraph 2 of Article 40).
- **Home Detention:** Keeping the child at home under parental supervision to avoid the harmful effects and costs of incarceration (Article 40).
- **Guardianship:** Placing the child in the care of a parent or guardian who is responsible for implementing court orders (Article 37).
- **Correctional and Educational Centers:** Referring the child to such centers only if other non-criminal measures are deemed inadequate.

If a child has mental or intellectual health issues, the court or the Children's Directorate may also refer them to mental health institutions. Although Article 38 of the Juvenile Violations Law uses "can," such referrals are considered necessary.

2.2. Criminal Decisions

Criminal decisions are measures taken by the court against a child who violates the law. According to the minimal intervention model, these decisions should be applied with great precision and only in the most necessary cases. Reflecting this approach, the Afghan legislator replaced the terms "punishment" and "penalty" with "retention" in Article 39 of the Law on Dealing with Juvenile Offenses to mitigate psychological and social harm. Examples of such decisions are outlined in Articles 97 and 98 of the Penal Code:

1. **Detention of Children Aged 12 to 16:** For children aged 12 to 16, the detention period for a crime should not exceed one-quarter of the maximum sentence applicable to adults for the same offense.
2. **Detention of Children Aged 16 to 18:** For children aged 16 to 18, the detention period should not exceed one-third of the maximum sentence applicable to adults for the same crime.
3. **Restrictions on Severe Sentences:** Children cannot be sentenced to death, imprisonment, or fines.

Article 39 of the Law on Juvenile Violations specifies that time spent in detention will be deducted from the total detention period of an adult convicted for the same crime. If the detention period is less than two years, the child may serve this time in social service institutions. According to Paragraph 3 of Article 40, detention exceeding two to three years may be suspended. Correctional and educational centers, as specialized institutions, play a crucial role in implementing these decisions, with oversight from the governor and the court.

Conclusion

Among the five common models of criminal justice responses to juvenile delinquency, Afghanistan's system stands out for its adherence to restorative justice principles and its model of minimal intervention. This approach prioritizes non-criminal mechanisms over punitive measures. In addressing juvenile delinquency, the Afghan criminal justice system treats criminal responses as a last resort, employing them only in the most necessary and limited cases.

The Law on Dealing with Children's Offenses and the Penal Code emphasizes the need for specialized criminal justice institutions and tailored legal proceedings. They prioritize the mental health and social well-being of children, aiming to avoid decisions that could harm these aspects. The system enforces minimal intervention by relevant authorities during discovery, investigation, and judicial proceedings, aligning actions with both the interests of children and society.

The choice of terminology—such as "detention" instead of "imprisonment," "decision" rather than "judgment," and "juvenile offenses" rather than "crimes"—reflects a sensitive and protective approach towards delinquent children. This approach is evident in the judicial process, where corrective and non-criminal measures are preferred before, during, and after trials. Emphasis is placed on the constructive roles of parents, legal representatives, guardians, social institutions, and correctional centers, highlighting their importance in the social rehabilitation of children over the implementation of punitive measures.

Resources

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