



Restorative Justice and Juveniles in Afghan Law

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Abstract

Methods for the resolution of disputes and offenses in Afghanistan have a long history. Although this field of study is considered modern in the contemporary era, informal methods continue to resolve the majority of cases to this day. An examination of the substantive and procedural laws of Afghanistan in light of restorative thinking reveals that Afghan legislators, by instituting necessary reforms within local councils, have sought to recognize *Jirgas* and reform councils, thereby facilitating the resolution of minor disputes through them. Consequently, this approach is most frequently utilized in matters concerning juvenile delinquency. The distinctive characteristics of children, such as their lower levels of discernment, understanding, and capacity for self-defense, necessitate enhanced protections compared to those afforded to adults. To prevent the labeling, victimization, and criminalization of children and adolescents, justice must be applied in a manner that better implements this differential system of justice. Restorative justice programs, by strengthening the sense of responsibility and the feeling of shame in the juvenile offender, facilitate reintegration into society and prevent their harm within the criminal justice process. The origin and foundation of restoring the criminal incident stem from the traditions and indigenous customs of various tribes throughout the world. Indeed, restorative justice has been a prominent model of criminal justice throughout human history and for all peoples globally. The Afghan legal system, under Article 25 of the Law on the Treatment of Offenses Committed by Children, proposes the use of reconciliation with specific limitations, such as the consent of the parties. These limitations include the offender's apology, the victim's agreement, and compensation for damages... This present article is the first scholarly work concerning restorative justice and juveniles in Afghanistan. Utilizing a descriptive-analytical method, it concludes that many of these restrictions conflict with the restorative perspective in restorative programs for juvenile proceedings on one hand, and with practical procedures in the courts on the other. Consequently, it is imperative for the legislator to act in accordance with criminal justice when drafting restorative laws, issuing decisions appropriate to the restorative nature, and utilizing such justice, ensuring alignment with criminal justice.

Keywords: *Juveniles; Restorative Justice; Criminal Justice; Juvenile Justice Responses*

Introduction

In the laws of Afghanistan, restorative justice is emphasized as a comprehensive approach for resolving disputes and addressing social deviance. This approach, instead of focusing on punishing the offender, concentrates on redressing the harm caused to the victim and restoring social relationships. In practice, this principle is applied particularly in cases involving lesser offenses, such as quarrels, financial damages, or domestic violence. For instance, if an individual is suspected of a minor crime like theft, they may appear before their family or local community to compensate for the damage and restore relationships, rather than being directly referred to the court.

Restorative justice can also be implemented within formal courts as an alternative or complementary approach to the conventional adjudication system. In such cases, the court may, instead of punishing the accused, require them to compensate the victim for the damages or otherwise contribute to restoring relationships.

Overall, this approach, by emphasizing the deepening of human connections, strengthening social trust, and reducing social deviance, plays a significant role in promoting justice and social peace in Afghanistan.

Based on findings and studies in various fields of criminal sciences, including criminology, sociology, and criminal psychology, resorting to criminal proceedings for juvenile offenders paves the way for reinforcing negative self-perceptions, fostering anti-social and criminal personalities, and consequently, leading to recidivism among juvenile offenders [Farajiha 2016, 388]. Juvenile offenders are in a stage of development and personality formation. Therefore, the manner in which the criminal justice system interacts with this group and the nature of the policies/measures envisaged for them significantly impacts the future conduct of these citizens. Accordingly, juvenile criminal law, which concerns itself with both substantive and procedural aspects, as well as how to respond to these offenders and adjudicate their delinquency, must have a protective character. In reality, this branch should provide a foundation for the growth and development of the personality of juvenile offenders and the rehabilitation of their behavioral patterns.

Within the realm of criminal law, the protection of juvenile offenders has been subject to numerous fluctuations. It appears that restorative justice processes, wherein the parties to the dispute collectively or in groups make decisions and consult on resolving the offense and its potential consequences [Baccaria 2014, 43] – meaning restorative justice is shaped solely within the context of processes and the desires of the parties [Wright 2005, 13] – represent an evolution in perspective and a change in the method of resolving conflicts arising from crime, heralding an era where our understanding of concepts such as crime, criminal, and punishment is gradually transforming. Restorative justice seeks to create a balance between the concerns of the victim and the local community.

The theory of restorative justice was initially introduced in the domain of juveniles and was subsequently extended to adults as well. Indeed, this approach provides more appropriate responses to juvenile delinquency. The findings of this research indicate that group conferences and mediation are among the beneficial restorative justice methods for juveniles.

Furthermore, in light of this approach, the identified responses for juvenile offenders are predominantly protective; for example, entrusting the juvenile offender to their family, although deprivatory measures are sometimes used appropriately. This practice of entrusting is very common in restorative justice. Restorative justice is like a triangle whose sides are the victim, the offender, and the local community.

Restorative justice can be utilized at various levels, which include:

- Disputes resolved through mediation without invoking criminal law.
- Minor offenses addressed through warnings.

Regarding penal mediation, the method of operation is quite straightforward: instead of prosecuting and punishing the offender, efforts are made to establish a form of reconciliation and compromise between the offender and the victim, bringing their perspectives closer. Therefore, mediation is a method for decriminalization, because if the mechanism or institution of mediation between the offender and the victim operates successfully, then criminal prosecution is suspended or eliminated [Marty 1997, 185].

- Relatively serious crimes that are diverted from the adjudication process through prosecutorial discretion before entering the trial stage.
- Very serious crimes that must be brought before a court; however, mediation or dialogue sessions may still be used for the purpose of restoration and the active participation of the offender in remedying the consequences of the crime, as well as for their rehabilitation and treatment.

Finally, utilizing restorative justice programs, databases can perform the following roles:

- Implementing agreements reached between the offender and the victim.
- Imposing restrictions on or depriving the liberty of the offender.
- Handling cases where the offender denies their guilt in committing the crime.
- Supervising the adjudication process to ensure it remains restorative.

However, the other party, the community, must not be forgotten. It must be recognized that the local community's response to crime is not focused solely on the offender or the victim. Rather, it also focuses on the participation of the entire community, whereby the community responds to the inflicted harms and seeks to implement methods to reduce the infliction of such harms in the future – even if this community action means changing its structure. We must seek methods that enable the people of our society to live under more favorable conditions, and restorative justice is one of the methods through which we can raise awareness about curbing the spread of offenses in society and improving the conditions needed by its members, and utilize it.

Glossary

A. Definition of Restorative Justice

The term "justice" has been used in various meanings. However, Plato believed justice lay in everything being in its proper place [Katouzian 2008, 65]. Here, it means equality, derived from the root "'Adl", and "'Adl" means fairness [Motahari 1998, 305]. Likewise, there is corrective justice which rectifies relationships between individuals, whether these relationships are voluntary or involuntary [Aristotle 2007, 177].

In terminology, "Restorative justice is a process through which parties collectively resolve how to deal with the aftermath of a specific offense."

According to the English scholar Martin Wright, restorative justice is "a form of justice which endeavors to create a balance between the interests of the victim, the community, and the need for the offender's social reintegration. It seeks to restore and improve the situation of the victim as far as possible and, in this path, calls upon all persons who have some interest in the criminal incident (such as the victim, the offender, and their dependents), community representatives, and criminal justice authorities to actively and constructively participate in achieving such a balance." [Majid 2013, 2]

According to Mohammad Farajiha, restorative justice is a comprehensive approach towards crime and its prevention. Unlike traditional criminal justice methods which focus on establishing criminal liability and suppressing offenders, restorative justice claims to address underlying factors and criminal disputes. He states that the goals of restorative justice are to create a balance between the concerns of the offender, the victim, and all individuals affected by the crime. He emphasizes that restorative justice pursues the prevention of recidivism and victimization by achieving a deep understanding of the roots of crime and conflict, engaging community participation in dispute resolution, and emphasizing cultural values based on peace and reconciliation.

B. Definition of Criminal Justice

"Jazā" (punishment) in lexicon means reward for good and punishment for sin [Nazir 2012, 40]. However, criminal justice refers to the system through which the state exercises social control, enforces criminal laws, and administers justice [Farajiha 2008: 43]. It is also known as retributive justice: a model or form of justice that is formed by focusing on the offender's past behavior and deems them deserving of punishment. According to this view, the offender must receive their due penalty. This model is a retaliatory, vengeful model based on 'an eye for an eye' [Shiri 2006, 217].

C. Definition of Intersystemic Justice

In the author's view, Intersystemic Justice is derived from both criminal and restorative justice. It is formed by utilizing the coercive power of judicial and legal institutions for compensation on one hand, and by employing local Jirgas within judicial and legal capacities on the other, combining the provisions of both justices to create a new justice "where the parties are also permitted to participate in this process." [Gholami 2014, 8] This is referred to as Intersystemic Justice.

D. Child

According to Jurisprudence (Fiqh), a "child" refers to persons from the time of birth until puberty. According to the Civil Law, a "minor" (ṣaghīr) is from birth until reaching 18 years of age [Mo'in 1990, 893]. However, in secular criminal law and Islamic law, children and adolescents lack criminal responsibility in case of committing a crime. Nonetheless, the necessity of achieving the supreme goals of education and upbringing, personality rehabilitation, character reform, prevention of their recidivism, ensuring judicial security, and compensating victims requires that the judicial systems of countries pursue the fact of the crime and adopt penal responses based on scientific principles to achieve these objectives.

Special juvenile justice refers to a coherent set of rules that must be observed from the initial contact of the child or adolescent with the authorities of penal and judicial institutions due to committing acts contrary to the law until the conclusion of the proceedings on their accusation, aiming to achieve the noble human goal of preserving the best interests of children and adolescents. [Danesh 2007, 43]

What is examined in this section is the age at which the criminal responsibility of children begins. Therefore, juvenile criminal law in penal sciences is formed from procedural and substantive regulations specific to child and adolescent suspects and offenders. The main indicator in this specific branch of

criminal law is, in fact, age [Mehra 2011, 10]. Children and adolescents worldwide are divided into two categories: those with criminal responsibility and those without criminal responsibility [Mami 2010, 19].

However, the two perspectives defined in law are problematic in practice and theory. In practice, if an incorrect age is determined for a child (compared to an adult) and they wish to dispute it, this indicates they possess legal agency and resources to challenge it. Furthermore, age limits determined through medical examination in acute and urgent circumstances lead to disputes, whereas legal age has no relation to physical maturity. Although the Juvenile Law emphasizes the importance of physical appearance in determining age, the foundation of the principle of juvenile justice is that children require special protection and care because they are not yet physically, psychologically, and morally mature. Therefore, in judicial systems where the concept of the age of criminal responsibility for juveniles is recognized, the commencement of this age will not be set at a very low age level, considering the realities of emotional, psychological, and intellectual maturity.

In the Afghan Law on Handling Juvenile Offenses, the age of criminal responsibility in the Afghan judicial system is thus set at 12 years. They only bear civil liability if they cause harm [Noorbaha 2012, 303]. One of our references for requesting the application of alternative punishments for children is the Convention on the Rights of the Child and the age of criminal responsibility.

Legal scholars state under the word "Ṣaghīr" (minor): A boy or girl who has not reached legal puberty is among the legally incapacitated. Their incapacity is removed immediately upon reaching puberty, without the need for a ruling from a religious judge. If before puberty they reach a level of discernment, they are called a "discernant minor" (ṣaghīr mumayyiz) [Langarudi 2002, 3253]. In case of committing a crime, no punishment is applied to them [Zera'at 2013, 229].

Challenges in Implementing Restorative Justice in Afghan Laws

Several challenges may exist in implementing restorative justice in Afghan laws:

1. Cultural: Local culture and traditions may conflict with the concept of restorative justice. Some individuals may focus on punishment and retribution rather than focusing on restoring relationships and ensuring social validation and acceptance.
2. Need for Training: Successful implementation of restorative justice requires training and awareness-raising for society and judicial and social institutions. This entails a time-consuming and continuous process for educating judges, lawyers, social workers, and the local community.
3. Requirement for Support: The success of restorative justice requires strong support from the governmental level and policymakers. This includes allocating appropriate financial and human resources, developing and implementing effective laws and policies, and establishing suitable structures and mechanisms for implementing restorative justice.
4. Evaluation and Monitoring: To ensure the effectiveness of restorative justice, robust evaluation and monitoring systems are needed to guarantee that this approach is implemented correctly and its objectives are properly pursued.

Nevertheless, given the importance and benefits of restorative justice, these challenges can be addressed to strengthen this approach as an effective tool for promoting justice and social peace in Afghanistan.

Strengths of Afghan Laws for Implementing Restorative Justice

The strengths of Afghan laws for implementing restorative justice include the following:

1. **Emphasis on the Concept of Restorative Justice:** Afghan laws explicitly refer to the concept and importance of restorative justice, endorsing this approach as an effective solution for resolving disputes and addressing social deviance.
2. **Existence of Clear and Explicit Provisions:** Certain Afghan laws, particularly in areas such as human rights and children's rights, provide clear regulations that support the restorative justice approach.
3. **Attention to the Importance of the Local Community:** Afghan laws emphasize the significance of the local community's role in the restorative justice process and the rebuilding of social relationships, highlighting this as one of the fundamental principles of this approach.
4. **Focus on Victims' Rights:** Afghan laws pay attention to victims' rights, presenting these rights as one of the priorities in implementing restorative justice.
5. **Interaction between the Judicial System and Local Communities:** Afghan laws encourage interaction between the judicial system and local communities so that the restorative justice process is conducted based on local culture and traditions.

These strengths can serve as effective foundations for the successful implementation of restorative justice in Afghanistan.

Effectiveness of Afghan Laws Regarding Restorative Justice for Juvenile Offenses

The effectiveness of Afghan laws concerning restorative justice for juvenile offenses can depend on the following factors:

1. **Attention to the Concept of Restorative Justice:** If Afghan laws clearly emphasize the concept and importance of restorative justice and introduce this approach as one of the primary methods for resolving juvenile offenses, it can lead to greater effectiveness.
2. **Training and Awareness-Raising:** Appropriate information dissemination and training on restorative justice for judicial officials, social workers, and the local community can contribute to greater effectiveness in implementing this approach.
3. **Financial and Human Resources:** Allocating sufficient resources to the restorative justice system, including establishing and strengthening specialized teams in this field, can aid in the effective execution of this approach.
4. **Governmental Support:** Direct support from the governmental level and policymakers for promoting and implementing restorative justice for juvenile offenses can enhance the effectiveness of this approach.
5. **Identification and Support for Victims:** Laws that guarantee and support victims' rights can increase the effectiveness of restorative justice by building victims' trust in the restorative justice process.

If these factors are adequately incorporated into the Afghan legal system and laws, they can lead to higher effectiveness in implementing restorative justice for juvenile offenses, helping to reduce recidivism and nurture children as constructive members of society.

The Perspective of Afghan Laws on Restorative Justice

The perspective of Afghan laws towards restorative justice is generally positive, endorsing it as an effective tool for resolving disputes and addressing social deviance. Some legal perspectives in Afghanistan regarding restorative justice include:

1. **Legal Endorsement:** Certain Afghan laws explicitly refer to the concept and importance of restorative justice, introducing it as an effective solution for dispute resolution.
2. **Emphasis on Process:** Afghan laws emphasize that restorative justice is not only effective in achieving justice but is also a process that contributes to rebuilding social relationships and ensuring social validation.
3. **Centrality of Victims' Rights:** Afghan laws value the emphasis on victims' rights and their protection, presenting restorative justice as a suitable solution for securing these rights.
4. **Engagement with Local Communities:** Afghan laws encourage interaction and cooperation with local communities so that the restorative justice process is carried out based on local culture and traditions.

Overall, the perspective of Afghan laws towards restorative justice is positive, and this approach has been endorsed as an effective tool for promoting justice and social peace.

Adjudication of Criminal Cases Using Restorative Justice under Afghan Law

The adjudication of criminal cases using restorative justice under Afghan law generally follows these steps:

1. **Identification of Cases Suitable for Restorative Justice:** Initially, cases where a crime has been committed and there is potential for applying restorative justice are identified. This may include crimes such as theft, domestic violence, quarrels, etc.
2. **Assessment and Decision-Making:** After identifying suitable cases, the court or relevant judicial authorities assess the cases and decide whether the respective case is eligible for resolution through restorative justice.
3. **Identification of Participants:** Upon deciding to implement restorative justice, the participants in the process are identified, including the accused, the victim, families, social institutions, and local authorities.
4. **Determination of Process Conditions and Details:** The conditions and details of the restorative justice process are determined, including matters such as compensation for damages, admission of wrongdoing, commitment to behavioral change, and defining the obligations of the participants.
5. **Implementation of the Restorative Justice Process:** The restorative justice process is implemented, which may involve advisory sessions, negotiations between the parties, compensation for damages, and commitments to behavioral change.
6. **Conclusion and Consolidation of the Process:** After the implementation of the restorative justice process and reaching agreements, the case is concluded. However, this process may continue to deepen social connections and prevent the recurrence of offenses.

Nonetheless, this process may face challenges and obstacles in some instances that require resolution.

The Criminal Policy of Afghanistan Regarding Restorative Justice

Afghanistan's criminal policy regarding restorative justice has garnered attention in recent years following political and social changes. This criminal policy encompasses measures and efforts implemented to promote and execute restorative justice within the process of adjudicating crimes and offenses. The most crucial elements and characteristics of Afghanistan's criminal policy in relation to restorative justice are as follows:

1. **Attention to Victims' Rights:** Afghanistan's criminal policy emphasizes the protection of victims' rights and promotes restorative justice as a solution for compensating damages and enhancing victims' rights.
2. **Emphasis on Agreement and Satisfaction:** Afghanistan's criminal policy focuses on promoting a process that addresses offenses and crimes through agreement and satisfaction of the parties, thereby resolving disputes between them.
3. **Attention to Local Culture and Traditions:** Afghanistan's criminal policy pays particular attention to local culture and traditions and actively utilizes these factors to implement restorative justice in the process of handling crimes and offenses.
4. **Focus on Social Education:** Afghanistan's criminal policy values social education and the promotion of societal morals, introducing restorative justice as a tool for teaching and enhancing social connections. This criminal policy emphasizes promoting restorative justice and reducing recidivism in Afghan society, striving to provide enhanced social peace and security through this approach.

As a supplement, the following points can be added:

5. **Development of Related Laws and Policies:** Afghanistan's criminal policy emphasizes the development and improvement of laws and policies related to restorative justice to establish a practical and effective executive process in this field.
6. **Attention to Problems and Challenges:** Afghanistan's criminal policy addresses identifying and resolving problems and challenges related to implementing restorative justice, including issues such as conflicts between civil and traditional laws and the need for training and awareness-raising regarding this approach.
7. **Cooperation with Relevant Organizations:** Afghanistan's criminal policy promotes cooperation with relevant domestic and international organizations, including the United Nations, for the more effective implementation of restorative justice.
8. **Monitoring and Performance Evaluation:** Afghanistan's criminal policy places importance on monitoring and evaluating the performance of restorative justice implementation by judicial authorities and related executive bodies to identify weaknesses and address them.

Overall, Afghanistan's criminal policy regarding restorative justice seeks to promote this approach as an effective tool for resolving disputes and addressing social deviance. It strives to contribute to enhancing security and social peace in the country by creating suitable conditions for the more effective implementation of this approach.

The Performance of the Afghan Judicial System Regarding the Implementation of Restorative Justice

The performance of the Afghan judicial system regarding the implementation of restorative justice can vary and differ from case to case. However, overall, it can be said that the Afghan judicial system has faced challenges and obstacles in implementing restorative justice, which can affect its impact on the process of handling cases and offenses. Some factors that may influence the performance of the Afghan judicial system in implementing restorative justice include:

1. **Security Situation:** Security problems and instability in some regions can negatively impact the performance of the judicial system and disrupt the implementation of restorative justice.
2. **Human Resource Capacity:** A shortage of specialized and skilled human resources in the field of restorative justice can impair the performance of the Afghan judicial system in this area.
3. **Deficiencies in Infrastructure and Resources:** Deficiencies in financial and technical infrastructure and resources can cause delays in the implementation of restorative justice and reduce the quality of this process.
4. **Culture and Awareness:** A lack of awareness within society and among judicial officials about the concept and importance of restorative justice can lead to decreased trust in this approach and reduced demand for it.

Nevertheless, the Afghan judicial system has also had successes in implementing restorative justice in some instances, which can help increase societal trust in this approach. This includes successful experiences in cases involving juvenile offenses and minor crimes, the use of consultative and negotiation methods in the case adjudication process, and the development of infrastructure and resources related to restorative justice.

For further elaboration, the following points can be noted:

5. **Successful Experiences:** In some cases, the Afghan judicial system has managed to resolve instances of offenses and crimes using restorative justice approaches where it seemed unlikely. These successful experiences can serve as inspiring examples to increase trust in this approach in the future.
6. **Training and Awareness-Raising:** Educational programs and awareness-raising projects in the field of restorative justice can help increase public understanding and comprehension of this approach and prepare individuals for more active and effective participation in this process.
7. **Strengthening Infrastructure and Resources:** Providing sufficient financial and technical resources and strengthening infrastructure related to restorative justice can facilitate improved performance of the judicial system in this field and guarantee more effective implementation of this approach.
8. **Developing Cooperation and Coordination:** Enhancing cooperation and coordination among various judicial, executive, and social institutions can help create an effective foundation for implementing restorative justice and overcome existing obstacles.

Overall, considering the challenges and obstacles present in implementing restorative justice within the Afghan judicial system, but also acknowledging the successful experiences and practices achieved in this field, gradual but significant improvements in the performance of this system can be anticipated.

Perspectives on Response by Administrators of Justice

A study of the historical evolution of the concepts of crime and punishment shows that these two phenomena have always been closely correlated and aligned with public expectations [Sanei 2002, 106]. Criminal justice is the process or outcome of a penal justice proceeding, and this resultant stems from the interaction of various economic, political, cultural, and social spheres, along with their sub-disciplines and related fields. Therefore, juvenile criminal justice is not merely a pure, theoretical philosophical concept; rather, the manner of responding to juvenile offenders, considering different political, economic, cultural, and social approaches, has given rise to different methods or types of it. This situation can be examined and traced both at the national level and in the international arena. [Gholami 2006, 91]

Undoubtedly, various and diverse factors influence responses to juvenile delinquency (the offender should be responded to differentially) [Niazpour 2014, 17], the examination of whose role and share is not the subject of this writing. The fundamental point is that, considering the types of reactions to juvenile delinquency, they can be examined within specific methods or models, meaning the right to litigation is placed against individual transgressions [Ghasemzadeh 2011, 253].

Undoubtedly, the emergence and manifestation of different methods of responding to juvenile delinquency in different political, economic, and social periods within a specific society, regardless of the differences in the nature, components, and elements of juvenile delinquency in those periods, is influenced by those overarching political, economic, and other conditions. Therefore, a typological perspective on the evolution of responses to juvenile delinquency not only provides the basis for understanding the model governing the national criminal justice system in this regard but also makes it possible to contemplate and reflect on the social circumstances affecting the emergence and application of that type of response. This situation holds true for many systems of responding to delinquency in general and responding to juvenile delinquency in particular. However, the noteworthy point in this regard is that within juvenile criminal justice systems, a specific method or custom of response has always been dominant and prevalent over other methods, and perhaps in exceptional cases, other methods and types of response are resorted to.

A model-oriented approach to juvenile criminal justice also examines its relationship with response methods to other types of delinquency and offenders. [Gholami 2013, 91] Both perspectives are divided into four categories:

- A. Retributive Perspective
- B. Legalistic Perspective
- C. Restorative Perspective
- D. Protective Perspective

A. Protective Perspective

This perspective is derived from research conducted with administrators of judicial and penal institutions, indicating that these administrators use a protective, support-oriented, and nurturing approach—protection—more frequently in cases. Therefore, the main approach of the protective method is embedded in these findings. According to this method, offending in general, and juvenile delinquency in particular, is influenced by external conditions. In other words, the lack of access to necessary and essential means for achieving success and excellence, proper socialization, education, and generally the existence of structural obstacles, provide the grounds for the violation of social norms and values by a group of individuals in society, including juvenile offenders.

Inspiring the protective perspective for justice in penal matters has led to the emergence of the welfare model of criminal justice or penal welfarism. Penal welfarism has an etiological approach towards the offender and offending. In this approach, delinquency results from various social, economic, cultural, etc., factors which the individual has no choice in facing, and therefore cannot be solely responsible for its adverse and unpleasant consequences, including delinquency. In this approach, vulnerable groups in society, especially children, should receive special protection not only against criminogenic factors but even as a result of delinquency, to prevent their further victimization within society or the criminal justice system, because they have little opportunity to fulfill their responsibilities [Zahr 2009, 47].

Consequently, the primary duty of the juvenile criminal justice system is to attend to their needs and best interests, not merely to execute punishment and provide a legal response to the criminal act. Thus, the protective perspective offers a different place and definition for criminal justice, its institutions, and its administrators. Criminal justice in this approach is more protective and rehabilitative than punitive and retributive. Precisely for this reason, considering the best interests of juvenile offenders and the necessity of the protective nature of criminal justice institutions' actions in this regard, courts, judges, and formal criminal proceedings are considered among the last and most unavoidable options for expressing a reaction to juvenile delinquency.

One of the outcomes of the protective perspective method is early or pre-delinquency interventions, which essentially pertain to the dire or adverse conditions of children and pay attention to those warning behaviors that may increase the likelihood of future juvenile delinquency. As a result of this approach, intervention to prevent juvenile delinquency may lead to the level of preventing their victimization or harm. Of course, the intervening institutions are not necessarily among the control-penal/judicial authorities, and it may well be that various social service institutions, including social work, etc., undertake this task.

Another result of the protective-oriented perspective in juvenile criminal justice is the comprehensive examination of the causes of the child's delinquency and the avoidance of a purely legal-judicial focus. Therefore, the child's delinquency and violation of penal norms are merely a sign and result of the existence of risk and warning factors, the prevention or elimination of which can also bring about the child's non-delinquency. Specialized perspectives should be part of the program for responding to the child's committed offense within the framework of various corrective-educational measures.

The protective perspective on juvenile criminal justice leads to the individualization of responses, their diversity or indeterminacy, and their so-called spectrumization, and also provides the grounds for increasing the possibility of judicial or non-judicial interventions and considerations in decision-making regarding the juvenile offender. In this perspective, support is also provided for the methods that should be used in the investigations of penal justice institutions. For instance, if informal investigation and handling outside the criminal trial process and the formal judicial system for children in conflict with the law are not possible, the process of investigation, preliminary inquiries, and trial must be organized in such a way that their private sphere is completely concealed, whereas compensation is a substitute for the original right [Katouzian 2008, 324].

B. Retributive Perspective or Criminal Justice

Based on the data findings from conducted interviews and the examination of criminal case files, it can be inferred that administrators of criminal justice predominantly apply the laws of penal justice in criminal matters, meaning that in one way or another, offenders should know that their illegal act is punishable and prosecutable. Meanwhile, prosecutors state that the outcome desired by the victim is not felt from punishing offenders; meaning, primarily, the inflicted damage must be compensated [Marshall 2005, 111]. From the data found in this research, it can be said that judges are more punishment-oriented compared to prosecutors. Also, younger prosecutors are more restorative-oriented

than older prosecutors. Administrators of penal justice point out that overall, the entire system or apparatus of criminal justice is punishment-centric.

While the protective perspective in criminal matters emphasizes the necessity of rehabilitating offenders and, prior to that, adopting supportive approaches towards vulnerable and at-risk groups, the criminal justice method, influenced by the traditional doctrines of the philosophy of penal law, emphasizes the necessity of a penal reaction towards offenders, even children. But this right belongs to the benevolent, well-wishing, happiness of the people [Beccaria 2004, 87]. In this method, considering the free will of offenders, which is assumed and taken for granted therein, and their penal accountability, resorting to penal responses, and particularly punishment, for children after reaching a specific age—which generally lacks any specific psychological or sociological criteria—is considered not only just but also deterrent. This approach relies on the necessity of the deterrent effect of punishment and sometimes the proportionality of the maximum crime and punishment. Therefore, the criminal justice method, in seeking justice, is sometimes influenced by the concept of utility and consequentialism and sometimes by the concept of desert and merit. However, both different spectra of the mentioned approach lead to the imposition of punishment and its use for deterrence or achieving the desired justice.

The criminal justice method, while emphasizing the necessity of prosecuting children within the primary criminal procedure designed mainly for adult offenders, overlooks the psychological, sociological, and biological differences between children and adults and, by focusing on the concept of criminal responsibility and its elements, justifies strict penal reactions towards juvenile offenders. The criminal justice approach faced a new interpretation from the 1970s onwards, referred to as 'just deserts.' In this new interpretation, the necessity of using fixed and proportionate punishments is emphasized more than ever. Additionally, lowering the age of criminal responsibility and reducing the role of non-judicial authorities in the decision-making system regarding juvenile offenders are among other effects of the criminal justice model in the realm of juvenile criminal justice. Undoubtedly, the adoption of penal policies based on zero-tolerance and the imposition of control-oriented penal policies, which primarily resulted from policymakers distancing themselves from welfarist approaches and resorting more to retributive approaches, have been effective in popularizing the criminal justice method and resorting to it for responding to juvenile delinquency. Nevertheless, in most countries, the criminal justice model is not considered the dominant pattern for responding to juvenile offenders, and in most cases, a limited number of restorative types relate to offenders. [White 2014, 548] Whereas the process of restorative justice programs for juveniles emphasizes the welfare of the juvenile and ensures that any reaction towards juvenile offenders is always proportionate to the circumstances of the offenders as well as the type of offense.

C. Restorative Perspective

Criminalization, penalization, criminal proceedings, and the execution of penal sentences are among the most important types or methods of penal intervention. If used contrary to the fundamental principles of citizens' rights and penal law, they cause the expansion of the penal domain and the infringement of the realm of individual rights and freedoms. The core principle of the restorative perspective entails resorting to penal law as a last resort and in the minimum necessary cases. Non-observance of the provisions of this principle leads to penal inflation in the dimensions of criminalization and penalization. Based on the labeling theory in criminology, the expansion of the realm of criminal justice leads to accusations being brought against many citizens, and gradually, ordinary society turns into a 'society of the condemned.' Based on criminological findings, one of the most important factors for the persistence in delinquency and its transition to committing crimes in adulthood will be greater. This issue can be studied and examined considering the adverse effects of the penal environment, including prison, and the phenomenon of prisonization. In contrast, observing the principle of minimal penal law will provide the grounds for resorting to other corrective-educational institutions and other tools for socializing citizens. Because not only do non-penal socializing skills serve as more suitable replacements

for penal control tools, but the possibility of using them in a non-penal space will be accompanied by more success.

Adherence to the principle of minimal penal law strengthens the system of informal social control because the state's non-intervention through penal means leads to greater attention to proactive measures on one hand and increases the legitimacy of public participation and mutual citizen monitoring on the other. Commitment to the core principle of the restorative perspective, especially in the realm of juvenile criminal justice, entails the following important consequences [Gholami 2014, 87]:

- Reduced resort to criminalization, especially concerning acts that lack sufficient value for criminalization and entail minor penalties.
- Minimal resort to punishment, especially towards juvenile offenders, and substituting penal responses with restorative, civil, administrative, etc., responses with the aim of reducing the penal involvement of perpetrators of illegal acts with penal authorities.
- Expanding the scope of alternatives to criminal prosecution and increasing the discretionary powers of relevant authorities, including the police and the public prosecutor's office.
- Avoiding resort to liberty-depriving measures, both at the stage pre-trial and pre-conviction, and after establishing guilt and selecting a penal response.
- Utilizing the maximum social capacities in responding to the offense committed by children, including using community-based responses, without the social living space turning into a penal living space.
- Developing the possibility of informal interventions and proceedings, making appropriate use of social institutions such as family, schools, religious authorities, educational, recreational, sports institutions, etc.

One of the important teachings of the restorative perspective approach is that although it is not successful with unjustifiable penal interventions, such disapproval does not mean paving the way for other types of control interventions that might also be in the form of welfarist or preventive teachings. On this basis, even preventive interventions, because they restrict the realm of individual rights and freedoms, will be justifiable only when they are fair and equitable [Najafi Abrandabadi 2011, 320]. In different countries, various strategies have been used to implement the minimal intervention model: developing the jurisdiction of non-penal authorities like schools in dealing with minor offenses of children and adolescents, increasing the possibility of family participation in the form of family group conferences, expanding the possibility for the police and public prosecutor's office to exercise discretion in not referring some cases related to juvenile delinquency to court are among the measures related to implementing the minimal intervention model. Therefore, in this response by administrators of justice, restorative justice is a process that, through the development and implementation of programs that can reduce juvenile recidivism rates, is important. However, political challenges exist against moving towards a restorative approach for juvenile crimes and offenses. The use of restorative justice planning in the United States and other countries is increasing in response to every level; in some cases, more serious types of juvenile crime and adult offenses are usually based on an unrealistic interaction between victims, offenders, and others affected by criminal acts to repair the harm caused by the crime and encourage offender accountability [Najafi Abrandabadi 2011, 321].

D. Legalistic Perspective

Although the legalistic perspective shares some characteristics with the criminal justice model, it is different from it. The criminal justice method protects the offender, who is endowed with various rights, against the unauthorized and disproportionate use of formal power under the title of punishment, but the legalistic perspective emphasizes the duties and responsibilities of juvenile offenders and even their parents towards others, including the victim, society, and the government. On the other hand, while the criminal justice method emphasizes the necessity of using proportionate punishment more than reducing the crime rate, and does not pursue punishment as atonement or satisfaction of vengeance but rather has a calming effect [Pradel 2015, 128], the legalistic perspective focuses on controlling crime and offenders with the aim of increasing the efficiency of the criminal justice system. Therefore, in the legalistic perspective, neutral prevention of juvenile delinquency takes priority over other objectives of the criminal justice system. Consequently, compensating the victim and other actions and obligations of the offender can only be important insofar as they lead to a reduction in the rate of crime commission and its recidivism.

Among other objectives of the legalistic perspective is increasing the efficiency of the juvenile criminal justice system through developing and strengthening coordination among different criminal justice institutions by using methods such as enhancing speed in the process of dealing with offenses within the criminal justice system and also increasing the efficiency of its institutions by enabling greater intervention in the affairs of children and adolescents. The theoretical basis of the legalistic perspective is the 'law and order' ideology, which emphasizes increasing the efficiency and impact of the criminal justice system through the application and implementation of a strict penal policy. The legalistic perspective, aiming at the preventive penal management of child and adolescent delinquency, pays attention to preemptive and early intervention to 'nip delinquency in the bud.' For this reason, the scope of intervention of the mentioned method will include not only the criminal behaviors of children but also their undesirable and anti-social behaviors. Therefore, the concept of 'risk acceptance and its management' extends the scope of intervention of the criminal justice system to before the individual's birth, the period of growth, family management, school attendance, etc. [Gholami 2013, 7].

For this purpose, instead of responding to the offense and adjudicating it, protecting social security and public order forms the theoretical basis for the preemptive intervention of the criminal justice system. Undoubtedly, adopting strategies based on early intervention or early prevention, as well as the legalistic perspective, are among the effects of such an approach. It is precisely for this reason that in some countries, there is a relatively strong incentive for early and preemptive intervention through the use of non-penal tools to manage citizens' undesirable behaviors. The truth is that it provides the grounds for deepening the intervention of formal authorities and increasing the possibility of controlling the sphere of citizens' free behavior. Perhaps in this regard, the control/preventive tools are non-penal and generally of an administrative-disciplinary nature, but they undou.

Benefits of Restorative Justice for the Parties Involved

Through the process of diversion, the prosecutor, using tools at their disposal such as suspended prosecution and penal mediation, can prevent an individual from entering the criminal process and stop the case at the prosecution stage itself. The result of this is the prevention of recidivism or secondary deviance due to the non-attachment of a criminal label to the individual and their non-entry into the formal state penal system. In this matter, the scope of intervention by formal criminal justice institutions decreases in favor of informal and non-governmental organizations, the effects of labeling are reduced, and the conditions for the accused's reintegration into society are established sooner. [Jafari Bojnourdi 2015, 84]

The benefit for society and the parties involved is secured through alternatives to prosecution. Among the positive effects of diversion related to society and the criminal justice system, the following

can be mentioned: reduction of economic and social costs, speeding up the criminal process, reduction of the prison population, deflation of criminal case backlogs, increased precision in handling more important cases, judicial decentralization, and the enhanced role of the people and non-governmental organizations in the criminal process. The benefit for the accused also lies in the non-prosecution, as they do not enter the criminal process, and by granting them an opportunity through alternatives to prosecution, the conditions for their return to society are provided. If the accused acts in accordance with the obligations outlined in the contract concluded between them and the prosecutor, it significantly aids in their reform and rehabilitation by preventing the attachment of a criminal label. If the accused fulfills the obligations required by the prosecutor, no criminal record is registered for them either.

The benefit for the victim also lies in diversion because, on one hand, the harm inflicted upon them is compensated sooner. A victim who, in traditional criminal prosecution or restorative justice, must wait for the court's final judgment to determine the status of their compensation, in the diversion process at the pre-trial stage, the inflicted harm is compensated, and they do not have to wait for a long time for the compensation to be paid in case of the accused's conviction. Whereas the role of victims in juvenile courts is completely different in any case, it should be significantly integrated into the programs for the principles of restorative justice, and juvenile court policies and procedures concerning victim crimes must be revised and changed in many programs of judicial and legal institutions. [Ibid, Jafari Bojnourdi, p. 84]

Meanwhile, conducted research and studies indicate that when the offender is sentenced to punishment, there is no news of compensation for damages, whereas if the victim seeks compensation, they must reach an agreement before going to court. Research shows that most victims seek compensation, and one of the main conditions for applying prosecutorial alternatives is the compensation of the victim's loss or at least an agreement between the accused and the victim on the method of payment. As in the legal provisions related to children, penal mediation, the use of Article 21 of the Law on Handling Juvenile Offenses, suspended prosecution, and archiving the case are accepted. On the other hand, the resulting agreement can also include the victim's satisfaction.

Conclusion

The Afghan judicial system generally holds a positive view towards restorative justice and endorses this approach as an effective tool for resolving disputes and addressing social deviance. This perspective is applied in various ways, both within and outside the judicial context:

1. **Laws and Regulations:** Some Afghan laws and regulations explicitly refer to restorative justice and confirm the use of this approach as a possible solution in cases of juvenile offenses and minor crimes.
2. **Politicians and Officials:** Some Afghan politicians and officials have shown significant support for the implementation of restorative justice and have endorsed this approach as an effective tool for promoting justice and social peace.
3. **Practical Implementation:** In some instances, the Afghan judicial system has implemented restorative justice practices in cases of juvenile offenses and minor crimes, particularly at the local level. These implementations may be considered successful examples of the impact of restorative justice in society.

Overall, due to facing numerous challenges such as security instability and political problems, the Afghan judicial system is not yet sufficiently prepared for the full implementation of restorative justice. However, the system generally holds a positive view towards restorative justice, and it is likely that with the development and improvement of infrastructure, this approach will be used more extensively in the future.

To conclude regarding the compatibility of restorative justice with Afghan laws and its capability for properly resolving juvenile offenses, the following methods can be used:

- **Study and Analysis of Relevant Laws:** A meticulous review of laws related to children's rights and judicial processes can reveal in which cases restorative justice is explicitly supported by these laws.
- **Evaluation of Restorative Justice Processes:** Examining and evaluating the restorative justice processes endorsed by Afghan laws can indicate whether these processes are implementable and effective or require improvement.
- **Community Participation:** The participation and opinions of local community members, including parents, educators, and cultural figures, can demonstrate whether restorative justice has the potential for acceptance and implementation within the cultural and social environment of Afghanistan.
- **Study of International Experiences:** Reviewing the experiences of other countries in using restorative justice to resolve juvenile offenses and assessing their effectiveness can provide insights for evaluating and strengthening restorative justice in Afghanistan.

Through these methods and by providing evidence-based analysis, it can be concluded whether restorative justice is compatible with Afghan laws and has the ability to properly resolve juvenile offenses.

In Afghanistan, restorative justice is also widely used to resolve juvenile offenses. This approach is considered a comprehensive and effective solution for managing undesirable behaviors of children. Instead of focusing on punishing children, restorative justice is employed to rebuild relationships and resolve conflicts with an emphasis on educational processes and social connections. For example, if a child or adolescent commits an offense, instead of referring them to the conventional judicial system, a restorative justice process such as advisory sessions involving family members, school teachers, and other members of the community may be held. These sessions can aim to restore relationships, develop communication skills, and emphasize accountability from the children.

This approach plays an effective role in reducing recidivism, nurturing children as constructive members of society, and promoting social justice, and it is widely used in the context of education and the broader Afghan society.

The primary beneficiaries of this writing are, first and foremost, the legislators, for the purpose of developing comprehensive laws to recognize and provide appropriate guarantees consistent with the nature of restorative justice and its use in judicial and legal institutions, particularly within the adjudication system for juvenile offenses and related crimes. In specific cases—such as the gender of the juvenile offender, the gender of the judges, the educational level and familiarity of judges with restorative justice, the type of offense committed (e.g., minor crimes), the educational level of the family, the remorse of the juvenile offender themselves, compensation for damages by the child's family, the victim's unwillingness to go through the formal justice system—in these instances, judges and prosecutors utilize restorative justice programs, employing this indigenous method.

Contrary to the initial perception that the judiciary might be the best entity to succeed in observing the fundamental rights of children and protecting them, this has not yielded a reasonable result. On the contrary, children in courts faced neglect, lack of psychological and physical assurance from the court, being forced to bear financial costs indirectly, etc. Judicial institutions were less able to effectively utilize the measures envisaged in the penal procedural law in this regard. The fundamental and strategic

duties of competent and judicial authorities in special juvenile proceedings—diversion or avoiding the entry of children and adolescents into the sphere of formal criminal proceedings, or avoiding formal investigations and trials, or, if their entry into the formal criminal proceedings process is necessary, minimizing contact with children and adolescents—are seen in only a handful of cases. Therefore, we answer the research questions in a few instances.

In the Law on Handling Juvenile Offenses, restorative capacities such as encouraging reconciliation, entrusting children to parents, suspended prosecution, maintaining records subject to victim consent, and the lesser importance of the crime in the juvenile offenses law can be considered as restorative capacities.

The courts handling juvenile offenses emphasize the use of restorative mechanisms based on conditions such as: consent of the parties, the judge being female, remorse, compensation for damages, and lack of criminal and penal record. The courts handling juvenile offenses, if the parties declare readiness for restorative justice, do not remove the case from the judicial sphere but resolve it locally through the agreement of the prosecutor and the respected judges.

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