Comparative Study of the Criminal Procedure for Crimes Committed by Juvenile in Iran and United Kingdom

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ABSTRACT: Protection of juvenile in procedural and substantive criminal law is an objective on the top of a criminal policy directives in modern criminal justice systems. In addition to the requirements of substantive criminal law for juvenile, applying a protection -based and differentiated policy in criminal proceedings is a necessity in a modern protective system. Therefore, the study of leading countries’ law in this regard and comparing the existent institutions on the one hand, and establishment of similar institutions and protective mechanisms on the other hand, should be considered as an outcome of the study. This article reviews and criticizes juvenile proceeding in Iranian and UK law, and provides proposals for a desirable system of justice in this context.

Key words: proceeding, juvenile, UK legal system, Iranian legal system, the differentiated protection

INTRODUCTION

Protection of fundamental values in any society is assigned to a variety of formal and informal, political, legal, social and cultural institutions. For some values, there is a unity between human societies and cultures and ideologies. Therefore, the main challenge is not about common and non-conflicting values, but the problem arises when in the first place, values are different, and then, there is no consensus about the tools to protect values. Many of the values of the society require Science of Law to be protected.

Compared to other people, juvenile need a safe and healthy environment to develop their talent more than others, and should be in a situation where the necessary support and assistance is provided. Therefore, according to international documents and domestic law of countries, it is necessary to improve the physical and mental condition of juvenile. In UK domestic law system, there has been no comprehensive studies and research on the situation of juvenile in recent years, and protection studies are not adequate.

One of the main issues related to juvenile criminal law is the criminal procedure. Today, the criminal justice systems in different countries have moved toward humanity, and emphasis on differentiated proceedings rooted in differentiated criminal policy is increasingly important. The requirements such as closed hearing, presence of a counsel in the cases, determining an age limit for juvenile victims and offenders, and emphasis on children's rights in the proceedings special victims have caused different countries to establish specific systems for juvenile criminal proceeding. Provisions such as what stated above is anticipated in UK Criminal Procedure Code. This study tries to review the requirements for just proceedings in Iranian and UK rules.

Allocated proceeding of juvenile crimes in Iranian law

Given the importance of juvenile issues, and considering that adult perpetrators are actually the previous juvenile offenders, their issues should be carefully considered. One of these issues is their criminal treatment that should develop according to process and cultural development of the societies.

Generally avoiding labeling the juveniles in proceedings includes two different processes. Before the trial, employment of judges specialized in juvenile crimes who are familiar with the spirit and personality of children and have passed necessary training and expertise is essential. The judge awareness about the social, cultural and psychological issues related to juveniles is an initial condition for selection of juvenile judges. This has always been considered in international documents and domestic laws.

Then, closed proceeding should be considered. Article 9 of Juvenile Courts Establishment Act enacted in 1959 requires that juvenile crimes proceeding should be taken place in confidence. Thus, in order to avoid
encouraging other criminals and the adverse impact of juvenile trial in their future, ordinary people do not have the right to enter the proceedings, and only certain people including prosecutors, defense attorneys, witnesses, the parents or legal guardians of the child, and the informants and representatives of the Center for Correction and Training can hold the court, if considered necessary by the court. Article 225 of the Criminal Procedure Act ratified in 2013 repeats the same provisions of Article 9 of the former act, and simply replaces the “secret” with “closed” word, and under article 648 of the Islamic Penal Code, determines the penalty for issuing a part or whole of proceedings, the same with penalty assigned for disclosure of secrets.

Also Article 10 states that in order to avoid psychological reflection and labeling the child, the legislator allows the judge to handle the case even in the absence of the absent child, if it is deemed appropriate.

Obviously, all the measures taken by the legislator are considered to achieve a major goal during the child's proceeding that is to avoid labeling juveniles.

In the past, the dominant idea was that involvement in the proceeding of juvenile offenders may cause damage to them, since involving a child in the proceeding actions may lead to a prolonged trial, and delay their access to the court. On the other hand, involving a child in the proceeding process ignores the vulnerable psychological and mental situation of juvenile. That is why the 1959 Juvenile Courts Establishment Act did not anticipate involvement in the proceeding of juvenile offenders.

Also, the Code of Criminal Procedure, adopted in October 1999, despite the powers of attorney granted by law to the head of justice administration, their intervene in the prosecution of crimes conducted by juvenile is not predicted, and this task is assigned to the interrogator.

However, with regard to developments in the field of social reaction to the delinquent juvenile and Beijing rules and recommendations on diversion, today the idea that provided their familiarity with the characteristics juvenile delinquency, leading criminal justice institutions can select and apply appropriate responses to juvenile delinquency. This prevents the child from the harmful consequences such as labeling.

The 1959 Juvenile Courts Establishment Act predicted establishment of juvenile courts in the center of each city. The judge is selected among ones whose competence were confirmed with respect to their age and experience for this service. In addition, the Act stipulated that if a child is charged to the felony, the Court should consist of a president and two counselors elected among employee or retired judicial or administrative staff, teachers, or local dignitaries interested and informed in these issues.

About the current state of juvenile's offenses proceedings, as previously mentioned, according to Article 219 of the Code of Criminal Procedure, we cannot speak of juvenile court in its specific terms, since the Court provided for in this article is considered a branch of public courts. The absence of juvenile courts in the current law situation in Iran is one of the main reasons for drafting bills on establishing juvenile courts and juvenile criminal procedure. Articles 5, 6, and 7 of Juvenile Criminal Procedure Bill provides that:

"Juvenile court consists of a judge and two counselors." The judge is selected among ones whose competence were confirmed with respect to their age and other conditions (such as being married and preferably having children and passing juvenile training courses), who has at least 5 years of judicial experience. Counselors are also elected among employee or retired judicial or administrative staff, teachers, or local dignitaries interested and informed in these issues by the Head of Justice Administration at provincial level.

**Appeals Court allocated in the Iranian legal system**

Another institution considered in the bills proposed by juvenile crimes and criminal procedure is assigning a number of appeal branches to appealing juvenile’s judgments and decisions.

The underlying idea of forecasting such branches is that appeals court judges have the same differentiated view in juvenile delinquency, and do not appeal the decisions by juvenile courts in a purely legal term.

In this regard, Article 11 of the Juvenile Criminal Procedure Bill and Article 444 of the Criminal Procedure Act provides that the authority to deal with request for appealing juvenile court judgments and decisions is a division of Provincial Court of Appeals determined by notification of the Head of the Judiciary.

**Diversion trend and restorative justice in the Iranian legal system in proceeding crimes conducted by juveniles**

Diversion program in the criminal system is a program planned by police, courts, district attorney's office or an entity outside the judicial system to protect defendants in criminal law from criminal charges and bad record. In Iranian bill of diversion and removing some of the criminal titles from the law defines diversion as follows:

"Diversion means limiting or removing the jurisdiction of courts in criminal litigation or legal proceedings and assigning them to other institutions or non-judicial procedures such as administrative system, aimed to reduce the scope of criminal interventions and limiting it to a major emergency involving violation of a fundamental value of
society, and also to strengthen non-criminal control systems and encourage executive bodies through non-judicial mechanisms to deal with problems and inappropriate behaviors.”

Unlike previous diversion methods that only intended to avoid entering the criminal justice system without an alternative proposal, modern diversion methods intend not only to prevent entering judicial system, but to provide social approaches to solve social problems caused by the offense or to repair social relationships. In summary, it can be said that the current approach follow restorative justice practices. Diversion approaches in the bill are discussed in three axes described below.

Mediation
Generally, mediating is recognized as an exposure program that mediates between the victim and delinquent.

This solution is provided in article 16 of the Juvenile Criminal Procedure Bill and articles 66, 82, 83 and 84 of the Criminal Procedure Act. Referring parties to conciliation councils, social worker or other competent person by the court is possible in the enforcement stage.

Remissibility of juvenile crime
Remission in remissible crimes is a traditional way of diversion used both in adults and juvenile proceedings. Remission system for juvenile crimes is predicted in article 30 of the Juvenile Criminal Procedure Bill. Based on this article, all crimes with judge-based punishments committed by juvenile can be remitted, and over the plaintiff’s remission, investigation, prosecution, and even enforcement of these crimes stops.

Prosecution suspension
According to article 15 of the Juvenile Criminal Procedure Bill, “In crimes with punishment of less than 3 years in prison or any other judge-based punishment, either alone or in combination with other penalties, considering the character, manners, social and educational status of the accused and the circumstances of the crime, in case of no private plaintiff, the court can stop or suspend the punishment from one to three years. (see article 45 of Juvenile Court Establishment Bill and articles 79, 80, and 81 of the Criminal Procedure Code on suspension of prosecution and punishment).

Predicting prosecution suspension is a restorative solution since it prevents child from the harmful consequences of the introduction to meander system of criminal procedure. However, in conditional prosecution suspension, some educational activities are also considered.

Maintenance of the child
Entrusting child to a guardian
According to Article 49 of the Islamic Penal Code, “If juvenile conduct a crime, they will be excluded from the criminal liability and their training is assigned to his/her guardian.”

This suggests that first, entrusting the child to a guardian is just for his/her training, and second, this training is a normal duty and cannot be considered a court decision.

Maintenance of juvenile in Correction and Training Center
The latter part of Article 49 of the Islamic Penal Code states that If juvenile conduct a crime, they will be excluded from the criminal liability and according to court decision, their training is assigned to their guardian, or when appropriate, Juvenile Correction and Training Center. This article suffers from some ambiguities. Firstly, it is unclear that juvenile training by a Correction and Training Center is conducted under what title? And how it can be applied? In the next step, it is important that assigning training of delinquent juvenile to an institution should be based on a set of basic principles, that unfortunately is not considered.

Juvenile Correction and Training Center is an institution that is responsible for training, improvement and education of juvenile according to its provisions and is a security institution. In organizational terms, the Juvenile Correction and Training Center consists of three distinct sections:
Temporary maintenance section
Correction and training section
Prison
The temporary maintenance section keeps the juvenile whom there is no decision made in their cases. In the section, social and family background of children is collected by social workers to be later considered by the authorities.
The correction and training section keeps juvenile sent by court or transferred by a second order to this section. This section holds various job training and vocational education and training courses, and mental and social experts have a significant role in this section.

Prison section keeps 15-18 year old juveniles. Due to the particular circumstances, including disturbing the center order, juveniles in other sections can also be observed. Despite all the advantages and disadvantages, correction and training centers are not still pervasive in all parts of the country, and its impacts are limited in time and place. Therefore, it is necessary to find solutions to revitalize correction and training centers in an effective way to meet the minimum initial objectives.

**Sentences and punishments**

*Physical punishments and whipping*

According to Clause 2 of Article 49 of the Islamic Penal Code, "Whenever physical punishment is necessary for training juvenile offenders, it should be to the extent deemed necessary. It should be noted that in an era that restorative educational principles consider physical punishment an obsolete reaction and penalty, it cannot be tolerated that our legislature has expressly assigned it to the supervisor of juvenile correction and training center. So it should be considered that first, physical punishment is contrary to the principles and cannot be relied on, and secondly, its assignment to supervisor of juvenile correction and training center who is not a specialist is not appropriate and requires a revision.

**Vocational Training Provisions**

Considering that detention and criminal penalties has a negative impact on juvenile, and instead of correcting and training them, convert them to professional criminals, issuing vocational training sentences in juvenile correction and training centers, juvenile judges try to blossom their talent.

**Education sentence**

It is issued to enable juveniles continue their studies and find a suitable job and continues until their consent of social situation. This is now fulfilled with the establishment of several schools and high schools in the vicinity of juvenile correction and training centers.

**The usual procedure for proceeding crimes conducted by juvenile in United Kingdom**

In the UK criminal justice system, juvenile between 10 and 17 years old are tried by the Special Court of Juveniles composed of competent judges trained for this purpose. These courts have been established since October 1, 1992, and have been replaced former juvenile courts that proceeded offenses conducted by young delinquents up to 16 years. The court proceedings are primarily in closed manner and only the court members and staff and the litigants, witnesses and press representatives can attend the court. The press can report the proceedings to the public, but the child's identity should not be revealed.

When 14 year or older child commits a crime that is usually charged with at least 14 years imprisonment, if the Special Court for juvenile intends to sentence the juvenile to a punishment more than what is in its jurisdiction, the case for such a minor delinquents should be sent to a higher court, i.e. the Criminal Court. The new system implemented since October 1992 treats 17 years old like adults.

**Principles and rules governing the criminal prosecution of juvenile in the UK**

Juvenile and youth who are prosecuted under violation of social value as norm-breakers, are in fact under control of applicable law, courts and correction and correction institutions including juvenile criminal justice system. Under UK legal system, the 1991 Criminal Justice Law expanded punishment enforced in the society as alternatives penalties, and strengthened its foundations.

**Diversion trend and restorative justice in the UK legal system in proceeding crimes conducted by juveniles**

Reflecting on new developments, criminal prosecution of juvenile as perpetrators of criminal law tries to change the legislative approach from intimidation justice to restorative justice, so that the ruling authorities separate juvenile offenders from adults, and apply more flexible rules to them.

**The necessity of closed proceedings for juvenile crimes**

After a preliminary investigation and preparations by prosecutors and police, the case is sent to the court, that is necessarily held in closed and secret manner.
According to article 54 of the 1991 UK Criminal Justice Act, the session would be video recorded in the following cases. 
Sexual and violent crimes;
Crimes proceeded in the juvenile courts;
Crimes proceeded in the juvenile courts.

Therefore, the public may not participate in these proceedings. However, often a number of people, including juvenile court judges and receptionists, parents, juvenile lawyers, police officers, representatives of local education center, and probation officer. In addition, a representative of the press has the right to participate in the court. However, the press rarely sent their representative, since name, address, school or any information that would identify the accused juvenile cannot be published.

**The use of childish expressions**

To reduce child fear of litigation, the child is often called by his/her first name or "Christian name", and instead of asking him/her to confess his/her crime and or deny it, the child is asked whether he/she admits and accepts his/her wrongdoing or not. In terms of witnesses, instead of swearing, they just promise to tell the truth. Moreover, juveniles are not said to be convicted or punished, but, with euphemisms, it is said that the actions are considered about them.

If the child is found guilty, both the parents and the juvenile are given the opportunity to make statements to judges. Then, district court judges review the case and determine the sentence.

**Decision-making process and the importance of social reports**

In case of a 16 year old offender, who is charged for a crime that if committed by an adult would be punishable by imprisonment, the court can charge the juvenile for free social work. Offender's consent is necessary, and such contracts include at least 40 and at most 240 hours of work for 12 months. The specified work is performed under the Special Agent. If the contract is cancelled the offender may be sentenced for the first offense.

In decision-making process, judges are highly influenced by social reports. If social reports on home environment were not ready to by social workers, the judge can postpone the trial and juvenile can be released on bail or guarantee. Certain conditions, such as prohibition of going to special places or curfew order are applicable by judges. From 1982 onwards, the parents may be deemed delinquent by a court. Thus, the court can give parents an abuse reprimanded. In the UK criminal justice system, delinquent juvenile's parents are required to attend the court proceeded their children cases. Therefore, parents are required to care for their children for the prevention of their abusive and inappropriate behaviors. If the child commits any misconduct in violation of public order during the specified period, parents are required to pay a suspended fine.

If the court releases the child on bail or guarantee, he/she must be monitored by the local department of social services. However, a child may exceptionally be detained in a detention center. If a child is under 13, the reports are prepared and reported by local authorities. If the child is over 13, reports are normally prepared and reported by the department of monitoring prisoners' behavior or probation, or by social workers. Typically, home environment reports include the details of the family structure, condition of the home and level of family life. In addition, a report by local cultural officials can be added as an supplementary report.

A new set was provided in England and Wales law in October 1992 that combined all elements of public works and surveillance or care order. This may be applied against offenders who are 16 years or older. The maximum term of the contract is three years and its minimum is 12 months. When the combined contract is issued, care order continues at least until the public work is well done. The minimum hour for public work is 40 to 100 hours.

**Appeals of decisions relating to juvenile delinquents in the UK legal system**

Due to the wide range of decisions and judgments relating to juvenile offenders in England, it should be pointed out that some of these decisions considered final awards. However, generally decisions made by the juvenile criminal courts that have penal application such as imprisonment, fines and compensation, etc., if protested, will be proceeded by crown court. And decision made by the crown court, if protested, will be proceeded by appeal court. However, since the juvenile court requires specialized staff, the UK legislator should consider a special authority to appeal juvenile cases.
Special decisions and measures in the UK law

The decisions and measures on children requires a certain elegance and perspicuity. The circumstances of the offense and its severity and violation of social beliefs and values can all affect the quality and type of decisions taken by the authority of juvenile criminal proceedings. Therefore, for the appropriateness of punishment and decisions to circumstances of the offense, consistency with obscenity of the crime, and consider the interests of children and society, the decision making authority should have a number of optional decisions.

After investigating the case and hearing the social reports and defense of children, parents, and attorneys, using advisory opinion of its members, the Juvenile Court takes appropriate decisions regarding the act committed by juveniles. However, due to circumstances of the child, the committed crime, and severity of its consequences, the decision can be penal, social, or non-custodial.

Non-custodial penalties

According to the definitions of punishment, such penalties cannot have much of a criminal nature, and based on their nature, criminal measures will be ineffective.

Discharge

This sentence can be either absolute or conditional. Absolute discharge measure can be used when the juvenile court does not feel the need to punishment. This reflects non-severity of the crime, so that the nature of the crime is not indicative of prosecution. However, this discharge occurs when the court does not impose a penalty immediately, and conditions the penalty to commission of another criminal action during a given period shall not exceed three years.

Binding over

The court bind over the offender with or without a security award, so that the offender pledges to have good behavior and maintain community peace, and if he/she is unable to fulfill its obligations, the security award will be seized. Also, if the offender is under 18 years old, his/her parents will be required to provide the security award, and parental consent is the basic requirement of this sentence.

Compensations

This order may be issued when a crime causes defect or damage to another person. Therefore, the juvenile court obligated the child to pay compensation. If the offender is under 16 years, parents are required to pay the compensation, and if he/she is 16 to 18 years, the court can oblige either the child or his/her parents.

It should be noted that the court should regard different capabilities and assets (of the child or parents) in determining the amount of compensation.

Fines

The offender can be fined for commission of any crime other than murder. If the offender is under 16 years, parents are required to pay the fine. If a child is under 14, the maximum penalty is one hundred pounds, and if above 14, four hundred pounds.

Fines is often sentenced along with compensation, and if the offender is not financially capable to pay the fine, he/she will be only sentenced to pay the compensation. It should be noted that if the child is under the care of local authorities, the authorities may be required to pay the fine.

Community sentences

When the crime is not severe enough to be sentenced to custodial penalties, or not so that the offender can be discharged, the community sentences will be used for punishment, so that the order should be commensurate with the severity of the offense and have the most suitable and highest retribution for the offender.

The 1991 Act introduces 6 types of community sentences as follows.

CONCLUSIONS AND RECOMMENDATIONS

The origin of compliance with laws in any legal system, including the Iranian and UK legal systems, is compliance with procedural and substantive principles. The Juvenile Proceeding standards in these legal system are performed in different ways, and the results and effects are identified differently. In terms of procedures and
mechanisms to proceed juvenile crimes, the UK legal system seems to be more complicated than Iranian one, and its structure is based on a broader discipline and administrative bureaucracy. Special courts require a fundamental justification that indicates the necessity of different proceeding and differentiated protection in juvenile cases. There is such a foundation in juvenile cases. Finally, the requirement for establishment of a special court for juvenile in the Iranian legal system is increasingly felt for differentiated protection of children.

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