

Part II.

Detailed Report On The Latest Judicial Developments Concerning Women, Children and Juveniles' Rights And Amendments to the Relevant Laws

1- Judicial Bills

1-1- General Bills

A- Bill on the Law of Islamic Penalties

1- Levy maximum penalties for those who use juveniles as their accomplices. (Article 71);

2- Exclude juvenile delinquencies from the limitation concerning recidivism

3- Categorizing children and juveniles under 18 years old as follows:

a- Minor who can not discern right from wrong; children under 7 years old;

b- Minor who can discern right from wrong; children full 7 years old age who are not still adult;

c- Major; juveniles who have become adult but are under full 18 years old (Article 81)

4- Using the penalties provided in the Bill on Juvenile Delinquencies in the crimes which carry sentences of Had and Qesas (retribution) penalties when the juveniles and children do not understand the nature or consequence of their acts or when there is ambiguity in their full growth and mental maturity and using assistance of the forensic medical doctor in this respect (Article 84);

B- Bill on the Cyber Crimes

To levy maximum penalties for those who present pornographic materials to children and juveniles under 18 years old by using computer data or system or communication facilities or those who produce and present such materials, in any form of deal or transaction, or those who purchase and keep such materials. Also those who instigate, tempt, deceive or threaten children or juveniles under 18 years old with the purpose to facilitate the access of juveniles to pornographic materials or with the purpose to make them to commit any crime or those who facilitate or prepare the ground in order that children or juveniles to commit crime or train children or juveniles to do so shall be subject to penalties stipulated in the Article 640 of the Law of the Islamic Penalties.

C- Bill on the Civil Rights

Considering children and juveniles as citizens and defining their civil rights and freedom in this regard.

1-2- Special Bills

A- The Bill on Investigation of juveniles' delinquencies

- 1- Substantial Development in penal law concerning juveniles: Establishment of incremental criminal responsibility measures for juvenile delinquents;
- 2- Excising correctional measures as alternative punishment to relevant penalties (Article 23);
- 3- Providing the possibility to appeal the verdict issued by the relevant judge as well as change or mitigate the penalties (Articles 33 and 34);
- 4- Applying alternative punishments (Notes of Articles 33 and 34);
- 5- Establishment of special penal system as well as special organs as follows:
 - Juvenile prosecutor's office and court (Articles 1-5-3-10);
 - Correctional centers (Articles 48-49-50);
 - Specially trained children and juveniles' Police (Article 53);
 - Social worker Unit (Article 51 – 52);
- 6- Forbidding interference of judicial officers in preliminary investigation of minor crimes (Article 14);
- 7- Exercising judicial strategies towards decriminalization like reference of the case to relevant parties for mediation and concession (Articles 16-17);
- 8- Providing the possibility to forgive or appeal all juvenile delinquencies (Articles 27-30)
- 9- Providing opportunity for parents or legal guardians of juveniles to play effective role in the relevant legal proceedings (Articles 18-19-20);
- 10- Considering the role of mechanisms for adjourning the pursuit of the of the Juvenile delinquents and adjourning the issuance of the verdict by the court (Article 25)and adjourning execution of the verdicts with respect to all types of crimes (Article 41 and 42);
- 11- Taking measures for limiting cases of detention and considering alternative measures for detention (Article 18);
- 12- Adopting additional measures at the investigation level like the need for presence of the legal advisor (lawyer) in all judicial proceedings relating to juvenile delinquents and prohibiting dissemination of information on the proceedings and exempting children and juveniles to attend the relevant hearings (Note 1,2 of Article 19 and Articles 20 to 24);
- 13- Providing the possibility to repeatedly appeal against the verdicts and decisions of the court;
- 14- No further penal implications with respect to the verdicts issued against juvenile delinquents for preparing the ground to support them with the purpose to promote their psychological and mental rehabilitation process;
- 15- Eliminating death sentence for juveniles and having judges visit the juvenile detention centers and prisons.

B- The Bill to Support Juveniles

The Bill to Support Juveniles was adopted in 2002 in nine Articles. Articles 3 and 6 include important points on juveniles. Article 5 considers the juvenile delinquencies as general crimes which do not need to have a private petitioner. Article 6 has made all people and centers in charge of keeping and protecting juveniles report cases of children abuse. Based on the same Article lack of such report when the relevant cases tantamount to violation of law and violators shall be legally dealt with. Though, the bill to Support juveniles adopted in 2002, and is considered as a step forward in supporting the juvenile delinquents, was suffering from some gaps such as lack of attention to the judicial proceedings for juvenile delinquents, lack of institutionalized supportive measures for juveniles and lack of relevant bodies as well as required supportive measures for juveniles against possible danger. Therefore it was needed to adopt a comprehensive law as well as rules and regulations for those juveniles exposes to harms and harassments aiming at:

- 1- Removing shortcomings of the Law to Support Juveniles; adopted in 2002;
- 2- Procedural finalization and due ratification of the supportive rules and regulations for juveniles;
- 3- Extending comprehensive support for juveniles through adoption of social and judicial measures;
- 4- Defining the concept and clarifying examples of the risky situations for juveniles;
- 5- Defining concepts like ill-treatment, ill-attention, economic abuse, sexual abuse, trafficking children and juveniles;
- 6- Providing the possibility to treat juvenile delinquents in special manner by establishing specialized court and the relevant prosecutor's office;
- 7- Establishing supportive organs like the supportive center and the supportive fund for delinquent juveniles or children those exposed to risky situation;
- 8- Using supportive measures in supporting juveniles with in their families and not separating them from their families and eliminating imprisonment of juveniles especially when delinquents themselves are legal parents or guardians;
- 9- Projecting supportive measures aiming at decreasing and curbing possible risky situations;
- 10- Preparing the required ground for juveniles in order for them to optimum use the legal advisors as well as social workers assistance;
- 11- Taking required measures for correcting juveniles' behavior and for rehabilitating juvenile delinquents;

C- The Bill to Support Children and Juveniles with No Guardian

- 1- Increase the age of adoption up to 18 years old;
- 2- Facilitate the required conditions for adopting children in order to increase the number of legal guardians;
- 3- Secure prime interests of children and juveniles with respect to their protection, education, alimony, properties, birth certificate, possible annul relevant guardianship;
- 4- Extend required conditions for taking guardianship from citizenship to citizenship and residence.

2- Reforming Procedures and Strategies

2-1- Establishment of centers to support women, children and juveniles

Given the sensitivity of the issues relating to women, children and juveniles status and with the purpose to secure their further rights, Head of the Judiciary of the Islamic Republic of Iran issued the circular ordered establishment of the center to support women, children and juveniles' rights. The circular reads as follows:

“In view of the need to promote quality of investigation procedures of the delinquent juveniles and children and extend the support for child and juvenile victims and regarding the necessity to support women's rights, a decision was made for the establishment of a center within the judiciary with its offices in every province to support the rights of women, children and juveniles”.

These provincial offices shall render their responsibilities under supervision of the Director General of Justice Department in every province. The responsibilities and duties of these offices are as follow:

1- Monitoring the judicial procedures with respect to all cases relating to child, juvenile and female delinquents aiming to speed the relevant procedures, ensuring issuance of verdicts in proportion to the crimes, and promoting correctional and educational measures in their favor;

2- Supporting child, juvenile and female victims and

3- Promoting qualitative education of judges of the juvenile courts.

2-2- Rehabilitation of abused girls and women and secure their return to the society.

Issuance of the circular by Head of judiciary especial attention was given to the abused girls and women or those girls and women who are exposed to harm aiming at rehabilitating delivering them to relevant rehabilitation centers. In the light of demand of this center to the Judiciary for introducing these girls and women to the relevant correctional and rehabilitation centers, the Head of Judiciary, addressing the judicial authorities announced the following:

“In those cases that according to current rules and regulations introducing abused girls and women or those girls and women who are exposed to harm to prisons is deemed necessary, they shall be introduced and delivered to the rehabilitation centers instead of prisons”.

2-3- Establishment of especial branches for children and juveniles.

Head of the Judiciary of the Islamic Republic of Iran issued also the circular for observing the rights of children and juveniles and discern them from adults as well as introducing a number of public courts for exclusively investigate the juvenile delinquencies. The said circular note reads as follows:

“In the wake of circular No. 1174/3431 dated October 24, 1995 and with the propose to implement the provisions of Article 219 of the administrative bylaw of public and revolutionary courts in criminal affairs adopted on September 18,1999 and in case of the

need to the juvenile court ,the required arrangement shall be made, based on Article 231 of the said law, for selection of a branch or a number of branches of the public courts as responsible to investigate solely juvenile related delinquencies.

2-4- Addressing problems and conditions of children and Juveniles in prisons and correctional and rehabilitation centers.

According to another circular, Head of the Judiciary prevented the courts from transferring children who are more than 2 years old along with their criminal parents to prison; making the courts to introduce them to rehabilitation centers. The circular note reads as follows:

“...Given the sensitive situation of the children with respect to their age and their mental and psychological conditions and unpleasant impacts inside prisons, irreparable damages will be inflicted upon them. Therefore due to the importance of this issue and with the purpose to prevent such a loss in the future before introducing of the culprits to prisons it is necessary to introduce children of 2 years old to the relevant centers equipped with required facilities by the rehabilitation organization.

In another circular issued by Head of the Judiciary in the light of the reports of the prisons organization on the avoidance of some judges of the juvenile courts in transferring juvenile delinquents to the provincial correctional and rehabilitation centers as stipulated in the Note 2 of Article 224 of the administrative by law of public and revolutionary courts in criminal affairs, it reads:

“Since the relevant correctional and rehabilitation center for keeping, correcting, educating and edifying juvenile delinquents of less than 18 years old have already been established, therefore all relevant judges shall necessarily introduce the said children and juveniles to these centers or the similar centers which will be established in the future.”

2-5- Establishment of the Council for Settlement of Juveniles related Disputes

Circular No. 1/85/17992 dated January 5, 2006 issued by Head of the Judiciary to the heads of justice departments and Organization of Prisons and Security and Correctional Measures all over the country is considered as one of the circulars which include a number of categorizing and restorative measures towards juveniles and children as follows:

1- Formation of the Council for Settlement of Juveniles Related Disputes in the correctional and rehabilitation centers or another concerned body when no correctional center is available in the area;

2- Meeting 7 special conditions by members of the Council for Settlement of Juveniles Related Disputes as

- Being married
- Having children
- Being at least 40 years old
- Having academic education relating to psychology and social works studies.
- Having two years experience of work in the Council for Settlement of Juveniles Related Disputes;
- Enjoying ability and required skill to mediate between parties in disputes;

- Having passed the especial training courses;
- 3- The possibility to seek cooperation and assistance of other authorities and eligible and influential personalities who can play effective role in mediation efforts;
- 4- Appointing advisory judges with more than five years of judicial work experience in the family courts and the judicial branches which are responsible to investigate juvenile related cases as well as guardianship. (Adopting the measures which make resignation and dismissal of the said advisory judges impossible for at least two years);
- 5- Preparing suitable ground for cooperation between the Council for Settlement of the juveniles related disputes and the especial juvenile court, the relevant prosecutors office , correctional and rehabilitation center, the association to defend prisoners, blood money center (Setade Diyeh) rehabilitation organization and other supportive and social worker organizations and authorities;

2- Establishment and development of especial juveniles related bodies

2-1- The Department To Support Rights of Women, Children And Juveniles.

Responsibility of this Department has been stipulated in the circular note dated January 2002 of the Head of the Judiciary.

Objectives of the said Department are as follows:

- 1- Establishing and developing the women affairs centers in the provincial justice departments;
- 2- Promoting the level of advocacy for the rights of children and women within justice departments;
- 3- Promoting women's awareness toward cultural, social and legal rights;
- 4- Changing the view and promoting the trust of women towards the justice department;
- 5- Seeking participation of women and using cultural, social and scientific capacities of women in line with objectives of justice departments for protecting the rights of women and children;
- 6- Rearranging and optimizing services to be rendered by justice departments in favor of women, children and juveniles;
- 7- Creating suitable ground for preserving rights of women, children and juvenile in the society through justice departments.

Outline of measures and functions of the centers affiliated to the Department to support Rights of Women, Children and Juveniles within provincial capitals:

- 1- Establishing data bank of rights of women, children and juveniles in each province;
- 2- Establishing of continuous relations and interaction with relevant public centers as well as NGO's at provincial level for awareness making and utilizing their functions as well as obtaining new findings with the relevant areas;

- 3- Paying periodical visits and establishing constant relations with prisons, correctional and rehabilitation centers and other centers in charge of children with no or irresponsible parents within rehabilitation organization or other relevant bodies;
- 4- Paying periodical visits to women's prisons within each province and investigating and following up their problems, aiming at defending and protecting their legal rights;
- 5- Investigating especial and sensitive cases concerning women which may cause social sensitivity (by mass media and international bodies);
- 6- Investigating especial and sensitive cases concerning juveniles which may cause social sensitivity (by the mass media and international bodies); paying special attention to alternative punishment for imprisonment and presenting relevant practical strategies and moving in direction of total elimination of imprisonment for women, children and juveniles within every province;
- 7- Examining sex related issues such as AIDS and women and children related diseases in all provinces;
- 8- Preparing and presenting the report on monthly basis concerning the function of provincial offices to the Department to Support Women, Children and Juveniles (Tehran);
- 9- Preparing and reflecting the annual statistics report of the Department to Support Rights of Women, Children and Juveniles of each province with regard to the cooperation of the provincial unit with the Iranian Statistics Center;
- 10- Identifying juveniles and women related difficulties given the geographical and cultural values of each province. This program has been arranged with participation of people invited by the centers for women affairs and the relevant reports have prepared and published through the mass media thoroughly ;

2-2- Establishment of the Executive Committee to Support the Rights of Children and Juveniles

with the purpose to implement the circular No. 1/83/18421 of Head of Judiciary for the establishment of a center for protecting rights of women, children and juveniles within the Judiciary as well as establishment of relevant centers under supervision of heads of Justice department in each province. It is notified that the Executive Committee was established within the Justice Department in Tehran province and then in other provinces as well. Some of objectives of this committee are as follows:

- 1- To adopt uniform procedures in investigation of cases in the prosecutors office and the court and to treat juveniles in an appropriate manner;
- 2- To collect well-founded views and decisions and present them to judges for making proper decisions.
- 3- To identify child and juvenile-oriented judges for making proper decisions.
- 4- To establish effective and active relations among judges who are expert in juveniles related affairs in every province with the judges in capital;
- 5- To invite children and juveniles' rights related institutions and bodies (Rehabilitation Organization, Ministry of Education, Relief Committee, Municipality, ...)
- 6- To identify priorities in taking required actions vis-à-vis juvenile delinquents, juvenile victims and juveniles who are exposed to risky situation.

- 7- To prepare realistic statistics on the number of juvenile delinquents, juvenile victims as well as different types of offences committed by them.
- 8- To examine the function and results of the function of relevant Judges since establishment of the child and juveniles prosecutor's office;
- 9- To encourage active and efficient judges in supporting the rights of juveniles;
- 10- To invite relevant professors, judges and authorities to the committee's meetings in order to use their professional views and experiences;
- 11- To inform judges expert in children and juveniles related cases of the views of the executive committee (information);
- 12- To follow up latest status of the Bill on the Juvenile Court in the Islamic consultative Assembly;
- 13- To examine the problems related to the primary requirements and facilities of the Juvenile Court and Prosecutor's Office;
- 14- To encourage juveniles to take initiative in using formal and substantial rules and regulations;
- 15- To encourage judges to adopt suitable measures as alternative to imprisonment within prosecutor's office and the court and take other required measures;

2-3- Correctional and Rehabilitation (Education) Center

During the period of judicial development process valuable measures were taken with respect to correctional and rehabilitation centers such as follows:

- 1- Repair and reconstruction of old buildings.
- 2- Considering a separate space with all required facilities for minor children (non-adults) with the purpose to prevent the aftermath of keeping children in prisons along with adults;
- 3- Revival, reconstruction, and basic repair of buildings of the cultural sections, dormitories, kitchen, social working and psychological units, health care centers as well as meeting halls;
- 4- Constructing of multi purposes and fully equipped sports center and gyms;
- 5- Making more greenery;
- 6- Making an open space in system management to that extant that activities of all relevant NGO's and independent peoples' centers have become possible and taking effective measures towards promoting of inter-organizational cooperation in defending the afflicted children;
- 7- Establishing protecting centers named as "My House" in order to cover juvenile inmates with no or irresponsible parents after their release from prison;

Based on the statistics of 2003 around 40 different foreign delegations have visited the correctional and rehabilitation centers all of whom have expressed their satisfaction regarding the relevant activities and even have considered the Tehran Correctional and Rehabilitation Center over international standards.

Professor Paulo Sergio Pinheiro, the United Nations Secretary –General's assistant and Independent Expert on Violence against Children visited Tehran and launched his Study on Violence against Children On May 14, 2007. Professor Pinherio also visited the Juvenile Correction and Education Center, which he admired the professional services

being delivered there; moreover, he also believed that the said Center can be a base role and a role model for South- South Cooperation.

Madam Louise Arbour, the High Commissioner for Human Rights visited the same Center on September 3, 2007 as well and praised the taken measures.

On the statistics of the boys with non clean record or boys who returns to the center after their release we shall notify that the relevant figures has dropped %5 in 2003 as compared with the %18 in 1998.

Among other issues which are in direct link with the qualitative and quantitative growth of the relevant facilities, the physical space and the behavioral methods towards the juvenile inmates, it is the statistics on the number of those who act self harm which have decreased to 4 cases in 2001 and only one case in the first nine months in 2003 as compared with 184 cases in 1995 which in itself is indicative of an outstanding success in curbing the mental disorder of the juvenile inmates.

2-4- Court and the Prosecutor's Office

After adoption of the amendments to the law for establishment of the public and revolutionary courts on 19 October 2002, the Article 4 of its administrative by law which also was adopted on 28 January 2003 by Head of the Judiciary, prepared the ground for establishment of a branch for investigating the juvenile related cases within the public and criminal courts as well as public prosecutors' offices based on the proposal of the relevant provincial head of Justice department and approval of the Head of Judiciary.

The forgo move is in fact considered as on effective step towards establishment of a specialized court for children and juveniles. In this respect, in Tehran Shahid Fahmideh Judicial Complex(SFJC) which comprises of court and public prosecutors office is now rendering its services . Certain services of SFJC are as follows:

1. Issuance of the verdict for alternative punishments.
2. Issuance of the verdicts based on the UN Convention on Rights of the child.
3. Issuance of the verdict in favor of the children status or conditions in several cases which inter-alia include adjourning of the issuance of the verdict or receiving the written assurance from the delinquents for performing religious rituals and regulation which in most cases have led to further distance of the delinquents from illegal acts and further consolidation of their sound relations with the people and the society;
4. Taking correctional and rehabilitation measures with cooperation of the correctional and rehabilitation (Education) centers considering replacement of imprisonment verdicts with the verdicts to compel juvenile delinquents to carry out public services;
5. Continuous participation of judges of the Complex in relevant training courses;
6. Using well experienced judges;
7. Continuous cooperation with the Prisons Organization, the correctional and rehabilitation center as well as centers to protect women, children and juveniles' rights;
8. Employing specialized people for assisting children from legal point of view as well as employing lawyers who accompany children in different judicial procedures on voluntary basis;
9. Paying attention to use the paradigm of the restorative justice for juveniles;

2-6- The Council for Settlement of Disputes.

The Council for Settlement of Disputes is considered as an effective means to reduce the burden on the courts and investigate the cases of compromising and reconciliatory nature beyond the formal judicial system and procedures. The origin of this type of council lies in our rich Iranian and Islamic culture.

The administrative by law of the Article 189 of the Third Development Plan was prepared and communicated the circular for the establishment of the Council for Settlement of Disputes (CSD) being communicated by Head of the Judiciary to the relevant judicial authorities.

After formation of the relevant Council due to the significance of the nature and judicial sensitivity of the juvenile related cases, Head of Judiciary officially ordered establishment of the Council for Settlement of the Juvenile Related Disputes as well.

In an important circular, H.E. Ayatollah Shahroudi, Head of Judiciary, attached high significance to the establishment of the Council for Settlement of Disputes. Due to its compromising nature the Council for Settlement of Disputes enjoying a non governmental or semi governmental structure, is able to prepare a suitable basis for administer restorative justice especially in favor of juveniles with respect to those cases which these councils are entitled to investigate and issue verdict (whether public or private ones) they can play very effective role in promotion of concession; the role which may not be played by judge. Besides due to their reconciliatory natures, even with respect to those cases which these councils are not entitled the capacity to interfere, these councils may be used as means of mediation and they also may render their services to help and assist juveniles from material and spiritual point of view. To this end, CSD shall add their capacities towards administration of restorative justice.

3- Awareness raising of judges, disciplinary forces and social workers.

After appointment of H.E. Ayatollah Sharoudi as Head of the Judiciary, His Eminence paid special attention to the Awareness Razing of judges, disciplinary forces as well as social workers. To this end a number of training courses and programs have already been arranged some of which are as follows:

- 1- Holding more than 35 workshops for judges.
- 2- Holding 27 workshops for disciplinary forces.
- 3- Holding 2 workshops for social workers of the Rehabilitation Organization.
- 4- Holding 5 workshops for counselors of Tehran schools;
- 5- Arranging the visit of the students of law to the correctional and rehabilitation centers.
- 6- Arranging the visit of judges to the correctional and rehabilitation center.
- 7- Arranging the visit of the instructors of the juveniles' rights to the correctional and rehabilitation centers in 2006;
- 8- Establishing "the criminal law of the minors" at MA level in the University of Judicial Sciences.
- 9- Preparing National Pamphlet of the juveniles' rights for instructors and students;

4- Carrying out Research

With respect to the juveniles' rights so far more than 100 researches have been carried out within the judiciary. Some of which are as follows:

- Strategic principles for administering justice in favor of children and juveniles in the criminal justice system;
- Participation of delinquents in the relevant legal procedures leading to issuance of the verdict in criminal procedures;
- The framework of the strategy for prevention of crimes committed by juvenile delinquents aged between 12-18 years old;
- Examination of legal gaps for preventing delinquencies and juveniles' delinquency in Iran's legal system with regard to the UN documents;
- Analytic study of age and its pertinent legal impacts (in criminal responsibilities ,growth, marriage, termination of guardianship) in Fiqh (jurisprudence), national and international law;
- Strategies on the administration of justice in favor of juvenile victims and eye witnesses.