Membrane Technology
ISSN (online): 1873-4049

# Responding to Delinquent Children in Afghanistan's Criminal Policy

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**Abstract:**

There may be various methods and different criteria to deal with children's offending, which are defined based on the approaches of the criminal policy of the countries. This article aims to explain the approach of Afghanistan's penal policy towards the responding to delinquent children, which has been investigated using descriptive-analytical method. the legislators have mostly used protective and corrective actions and measures, considering the principle of minimum punishment, protecting the rights and interests of children, and also paying attention to the adverse effects of widespread criminalization and punishment. The measures foreseen in the criminal laws have been established by observing important criteria such as being corrective, dynamism and adaptability, and favorability to the accused, which are completely supportive. On the other hand, by using their legal powers, judicial officers can take into account the above criteria in determining the punishment and how to apply it to the accused and take appropriate actions according to the personal case of the accused. That Afghanistan's criminal policy against children's offending has a unified and moderate approach, and is more focused on rehabilitation of the offender, rather than merely punishing him/her.

**Keywords:** Children's Offending (Delinquency), Responding System, Judicial Responding, Afghanistan's Criminal Policy.

## INTRODUCTION

The children[1] and adolescents' offending and how to respond it appropriately and effectively is one of the important issues that have attracted the attention of the public and many scholars of criminal law and criminal science in recent decades. By carefully studying the children and adolescents' offending, and investigating the responding policy, we can help reduce the increasing statistics of these types of offending and delinquency. The criminal policy regarding children's offending is different from the criminal policy regarding adult crimes. The root of this distinction should also be sought in the difference in their personalities, and the type of their offending and delinquency. Responding and criminalization, in the sense of determining the punishment, protective and corrective measures and their application and implementation, is one of the obvious manifestations of the criminal policy, which is evolving according to the time requirements of the judicial system of the countries and social developments. Legislators in the position of responding through criminalization, and considering protective and corrective measures according to the severity and importance of each crime and delinquency, predict the appropriate response and punishment; its adaptation to specific cases, and its compliance with the personal circumstances of the perpetrator and each file (case) situations, is the responsibility of the judicial authority determining the responses, whether punishment or other protective measures. Punishment and enforcement of protective measures is one of the most significant steps in the criminal proceedings, which are applied to the criminal in the face of the criminal phenomenon. The stage of trial and sentencing or punishment, which actually deals with how to determine and implement the responses, is important, because the selection of the response or punishment and the method of its application is a part of the response or punishment itself and is effective in the matter of punishment. Punishment in line with specific goals can take different ways in determining the type and amount of punishment and its implementation. For example, punishment and its implementation with the aim of incapacitation and punishment will be different from punishment with the aim of rehabilitation and correction. If the aim of punishment is corrective, it leads to the uncertainty of the punishment system, but if the aim of punishment is punitive, it will lead to the intensification of punishment. Some have defined the judicial determination of punishment or sentencing as follows: "the authority of the court to change the legal punishment or change the status of its execution" (Tohidi Nafe and Hossein, 2016, p. 42).

The reaction that is carried out in the form of various punishments and preventive measures to deal with delinquency in a structural and legal way is actually imposed by the society on the criminal. These reactions are legitimate and acceptable if they are used within the framework of rational and legal principles and rules governing it, such as the principle of legality, the principle of proportionality, etc. A significant part of the delinquencies and illegal acts that occur in the society are the children's delinquency or offending, which in order to effectively respond to it, there is a strong need to define a single criminal policy, especially in the matter of punishment and the implementation of preventive measures. Children are more vulnerable to the criminal phenomenon in society in terms of age and personality. Investigating children's offending and responding appropriately to it is considered a necessary condition to reach an ideal society. On the other hand, in the present era, childhood and adolescence have changed somewhat. Today, children are not only the product of family and school education in terms of personality and behavior, but in the light of the changes we are witnessing in today's world, new mechanisms and institutions play an undeniable

[1]Article 93 of the Afghanistan Penal Code: "a child refers to a person who has not completed the age of eighteen".

role in the formation of children's personality and the process of their socialization, willingly or unwillingly. Therefore, a part of children's personality is a product of new technologies. The studies of criminologists since the end of the 20th century clearly show that besides the majority of delinquent children and adolescents, whose crime is a simple incident and an accident in the process of socialization and the formation of their personality (accidental delinquents), there are also children and adolescents who have a deep personality disorder and in terms of age, they engage in delinquency and illegal offenses earlier than the normal age (Rajabi, Farnaz and Nasrin Mehra, 2017: 86). Therefore, the discourse of traditional criminal policy towards children's offenses has relatively lost its relevance and justification, and we should look for a modern and appropriate policy that fits the changes of the times. Children offending and how to deal with it have become one of the most important concerns of the contemporary world. Therefore, it is thought that the children and adolescents' offending is an emerging phenomenon and unique to the present time, while this is not the case, but this issue has a long history among human societies (Shambayati, 1993, pp. 45-23). Regarding the different policies of the country (Afghanistan) regarding children's offending, and not achieving the desired result in the matter of correction and rehabilitation and reducing their delinquency, this article seeks to explain the approach of the penal system towards children's offending in Afghanistan's criminal policy. By analyzing the legal-judicial system of Afghanistan, it is possible to discover the criminal policy to deal with the children's delinquency or offending in general from the criminal laws (Penal Code, the Juvenile Code and the Criminal Procedures Law) and the judicial procedures of this country. The purpose of this article is not to deal with all the issues related to responding to the children and adolescents' offending, rather, it only deals with punishment (determination of punishment, preventive measures and methods and how to apply and implement them), which is an important part of responding. Since there is still no specific procedure regarding the punishment of delinquent children in Afghanistan, this article, in a descriptive-analytical way, seeks to explain the approach of the penal system towards children's offending in Afghanistan's criminal policy, and to provide effective solutions, so that they can be used in the future. By studying the Juvenile Code (The Law of Investigation On Children's Violations), as well as articles 93 to 112 of the Afghanistan penal code, we can see signs of the acceptance of the system of differential responding to children's offenses in criminal policy. By only criminalizing some acts and behavior of children, the aforementioned laws are in fact seeking to protect the rights and interests of delinquent children and to correct and re-educate them.[2] Therefore, it seems necessary to examine the approach of punishing delinquent children in Afghanistan's criminal laws, considering the fundamental criteria of punishment.

**Fundamental criteria for responding to delinquent children**

Responding or judicial determination of punishment and protective measures against children's delinquencies and offenses refers to any legal action or process that is applied by legal-judicial institutions such as judges and prosecutors according to the law. The phase of determining the punishment is generally a process through which the government reacts to the people who have violated the law and who's guilty has already been proven during the independent phase (Mehra, 2007, p. 65 quoted by: Mohseni and Rahimian, 2019, p. 65). Defining and identifying the rules for the legal-judicial institution will make it possible to avoid, in order to guarantee a fair trial, the imposition of baseless and arbitrary punishments, which are not proportional to the character of the criminal, and the legal-judicial institution should also be obliged to refer to these criteria and bases in the issued sentence and its implementation. The powers of legal-judicial institutions are understood either within the scope of legal punishment or outside the scope of law, which in fact, the determination of punishment and its implementation makes sense here and is separated from criminalization (Tohidi Nafe and Amirli, 2016, p. 44). Paying attention to the standards of fair trial and fair responding is nowadays considered obvious in the criminal responding process, and more than ever leads court judges to a differential responding system, which on the one hand ensures the implementation of social justice, and on the other hand provides the individual benefit of the accused and her correction and rehabilitation. Because today, legal-judicial institutions have broad legal powers, they are not only enforcers of the law, but also providers of justice, public interest and the benefit of the parties. It seems that the responding system in Afghanistan's criminal policy is forward-looking for the children's delinquencies and offenses, and is based on three criteria (being corrective, dynamism and adaptability, and favorability) of responses and measures, and their implementation, which are discussed below.

***Being corrective***

Responding in general and punishment in particular, in fact refers to the judicial determination of the type and amount of punishment and legal preventive measures by judges and the manner of its application and implementation by the prosecutor. Therefore, apart from what goals the legislator seeks in terms of criminalization, do they have punitive or corrective and rehabilitative goals? Criminal responding in the place of judgment and execution should also be done in such a way that its only purpose is to correct and rehabilitate delinquent children. This question may be raised that how can the legal-judicial institutions step beyond the framework of the law and legal responding that is within the scope of the criminal procedures law? However, it can be acknowledged in response that due to the powers and authorities that the law has given to court judges and prosecutors,

[2]Article 1 of the Juvenile Code (The Law of Investigation On Children's Violations): " This Code, in compliance with article 54 of constitution of Islamic Republic of Afghanistan and International Conventions Protecting Human Rights and in particular the interests of children, dictates provisions indicating measures and procedures applicable to children in conflict with the law, children at risk, and children in need of care and protection and safeguarding their rights during investigation and trial".

they dominate the legal punishment so much that in practice, it is implemented less than what the legislature has predicted. For example, judges in the position of responding and determining the punishment between the minimum and maximum, or choosing one of the preventive measures among the many actions and measures, have the legal authority to take the appropriate measures by observing the principle of individualizing the punishment and paying attention to the personality record of the delinquent child. Similarly, the prosecutor, as the authority of investigation and prosecution in the system of appropriate (optional) prosecution, can take the appropriate decision regarding the prosecution or release of the accused. According to paragraph 3 of Article 171 of the Criminal Procedures Law, one of the cases in which the prosecutor can issue an order stating that it is not necessary to file a criminal lawsuit is "insignificance of the agent's fault, the smallness of the result of the crime, and "lack of public interest in prosecuting the accused", which itself indicates the "due prosecution" approach. According to some legal scholars, judicial punishment has an independent identity from legal punishment, and it can even be said that the general rules of punishments become meaningful with the validity of judicial powers, otherwise the legal punishment does not have such a capacity that it can be called for those general rules of punishment that are mentioned in the general criminal laws of countries (Tohidi Nafe and Amirli, 2016, p. 40). On the other hand, the legislature cannot predict all the personal aspects and circumstances governing criminal situations in advance. That is why the criminal policy of countries regarding punishment is defined with an open approach and expansion of judicial powers. With this in mind, the Afghan legislature has also stated in various articles of the penal laws, regarding the observance of the interests of the child, the criminalization of some delinquent behaviors of children and the ways of responding to them in order to ensure the correction and rehabilitation of the child. One of the most important objectives of the Juvenile Code in its article 2 is "correction and rehabilitation of the child, compliance with the Convention on the Rights of the Child during the trial and protection of vulnerable children". Paragraphs 6 and 7 of Article 3 of the Afghanistan penal code also consider "rehabilitation and re-education of criminals and guaranteeing respect for human rights and fundamental freedoms of individuals" as one of its goals. Therefore, any treatment in the process of punishing delinquent children should be done within the framework of human rights and fundamental freedoms and in the direction of his/her correction and rehabilitation. In the process of responding, the arrest and detention of the suspect is one of the important steps in which the legislature has supported the interests of the accused and has emphasized on its training during the detention phase. Paragraph 3, Article 11 of the Criminal Procedures Law stipulates as follows: "The prosecutor and the judge can release the child on bail, without financial guarantee, unless his/her condition requires detention". Therefore, the prosecutor and the judge can issue an order for the child's release or detention according to the interests of the child, the type of offense and crime, and other circumstances. That is, the judge and the prosecutor, as judicial responding authorities, have such legal authority. Article 12 of the Criminal Procedures Law obliges the detaining department to provide access to social, educational, etc. services for the child under detention and stipulates as follows: "The arrested suspect child shall be temporarily detained in a special place. The detaining department is obliged to facilitate access to social, educational, professional, and spiritual and health services for the child under detention, taking into account the requirements of his/her age and gender". This article also emphasizes respecting the interests of the delinquent child and correcting and rehabilitating him/her through providing educational, professional, etc. services during detention. Also, in Article 32 of the Criminal Procedures Law,[3] the secrecy of dealing with the case of delinquent children is stated, which will be a form of attention to protect the interests of the child and prevent the consequences of labeling him/her. Of course, the notification of judgment is public in any case. Even in cases where the issues discussed during the trial have the possibility of emotional harm for the child, the trial must be held in the absence of the child according to the law. Paragraph 3 of Article 33 of the Criminal Procedures Law stipulates as follows: "Whenever the issues discussed during the trial cause the child to suffer mentally, the court can continue the trial session in the absence of the child, provided that the summary of the trial process is explained to him/her later". This article has a protective aspect, and the judge can hold the court *in absentia* based on his/her judgment about the circumstances of the accused; however, the principle of public trial is one of the basic principles, which is recognized both in the constitutions of countries[4] and in international documents as the most obvious indicators of fair trial standards, but in this particular case, which requires the benefit of the child, it should be ignored and acted against. The Penal Code has not considered any criminal responsibility for a child who has not completed the age of twelve.[5] In this sense, Afghanistan's criminal policy has not only not included any punishment for the offenses of children less than 12 years of age, but has considered this group of people to be basically not criminally responsible. But for children over 12 years old,

[3](1- Dealing with the children offending is done in secret and the notification of judgment is public in any. 2- It is not allowed to publish the documents of the trial sessions of children, including the testimony of witnesses and the opinion of experts, in the mass media. 3- Disclosure of information in the case of the child's personality or information that leads to the discovery of the child's identity is not allowed under any circumstances. 4- The report of the trial session is recorded and kept).

[4]Articles 165 and 166 of the Constitution of the Islamic Republic of Iran.

[5]Article 94 of the Penal Code: "A child who has not reached the age of 12 years is not criminally responsible and no criminal lawsuit can be filed against him/her".

articles 95 and 96 of the Penal Code have specified punishments in the form of "*Hajz* (confinement)"[6] as a punishment that can be sentenced. According to Article 97 of the Penal Code, children are not sentenced to imprisonment, execution and fine under any circumstances. Afghanistan's legislature has stated two types of detention measures for criminally responsible juvenile offenses. So that according to Article 95 of the Penal Code, "a child who has completed the age of 12 and not completed 16 years, in case of committing a crime, shall not be sentenced to more than a quarter of the maximum punishment for the same crime by persons older than 18 years of old", and according to Article 96, "a child who has completed the age of 16 and not completed 18 years, in case of committing a crime, shall not be sentenced to more than one-third of the maximum punishment for the same crime by persons older than 18 years of old". It should be noted that the above measures of *Hajz* (confinement) can only be applied to crimes committed by children, but other measures such as handing over to parents, house detention, and suspension of detention, sending to specialized service institutions and ... are applied, which are stated in Article 107 of the Criminal Procedures Law.

***Dynamism and adaptability***

Dynamics and changeability means that the responses and measures that are selected by the judge and implemented by the prosecutor are a dynamic, controllable and durable program that can be revised in order to ensure the interests of the accused and his correction and rehabilitation. It should be acknowledged that this does not mean a re-trial of the accused, and the judge can never comment on the case he/she has dealt with, or deal with a perpetrator under the same charge more than once. In other words, the dynamics and reproducibility of the conviction of a delinquent child means that with his/her good behavior and correctability, the convicted person can provide the basis for reducing the term of his/her conviction and removing it. In this sense, the judge can reconsider his/her previous judgment regarding the conviction of a delinquent child and reduce or cancel his/her punishment in case of good behavior of the convicted person and his/her correction. For example, Article 109 of the Criminal Procedures Law states: "(1) When a child who has not reached the age of 18, spends two-thirds of the sentence in a juvenile rehabilitation center, the court can, at the request of the child or one the parents or the person who has the right of guardianship over him/her, can issue a verdict for his/her release, provided that the good behavior of the child during the detention period is confirmed by the person in charge of the juvenile rehabilitation center and the prosecutor approves it. (2) If the child has reached the age of 18 and has spent two-thirds of the *Hajz*, his/her release will take place when he/she guarantee his/her future good behavior in writing". By studying the above articles, it is known that the judgments issued by the courts regarding the conviction of a delinquent child are changeable and can be changed or removed in proportion and in the case of correctability of the convicted person. Also, Paragraph 4 of Article 48 of the Criminal Procedures Law that states that "the specialized institution of social services can present to the court the necessary ideas and suggestions regarding minor adjustments in the court order that will be effective in the correctability and return of the child to the society", also rules on the renewal of judicial punishment. In the penal code of Afghanistan, the change of the court's judgment regarding the reduction of the sentence of the probation period is considered to be conditional on the correction of his/her behavior. So that Article 149 of the Penal Code states: "Whenever the condition of the convicted person shows that he/her has improved his/her behavior, the court can only for once reduce the probation period (period of supervision) by half of it or ignore some other issued orders".

The variability of punishment or responding does not only mean reducing or removing the punishment and preventive measures after its certainty, but it is also applied in the direction of intensifying and increasing the punishment by meeting the conditions provided by the law; because the purpose of variability of the punishment is actually in line with protecting the interests of the accused and his/her rehabilitation approach. Therefore, the punishment can be changed according to the situation of the accused. In the case of good behavior and correction, it will be reduced or removed, and in the case of non-correction, it will more severe. For example, the legislature of Afghanistan has made it available to the judges of the courts that in cases if the duration of confinement of the child is not more than two years, they can introduce him/her to one of the dedicated social service institutions in order to complete the detention period, and in case of incorrigibility, impose a more severe punishment on him/her (Paragraph 8, Clause 1, Article 4, Penal Code of Afghanistan). Also, in Article 148 of the Penal Code, the legislature has considered the non-observance of the court order by the convicted as the reason for increasing the period of his/her probation period, and in case of repetition, it has even predicted the cancellation of the probation period, and turning it into a prison sentence. Children and adolescents, due to their greater vulnerability and special situations, should be given more attention. Therefore, the approach of punishment and the way of execution of punishment on them should also be carried out in a precise and measured manner. It seems that due to the evolution of children's criminal and maladaptive behaviors and their vulnerability, there will be a need to define a more revolutionary punishment system that will keep pace with the requirements of the time. This matter has been respected to some extent in the system of punishing delinquent children, but it is not enough in any way.

***Favorability (being favorable) to the convicted***

The favorability of responding and criminal measures to the convicted as the third criterion means the attention of the judge in the position of selecting the punishment and protective measures and the prosecutor as its executor in order to help the convicted. In other words, it is assumed that the judicial powers in determining the responses, both criminal and non-criminal, are in line

[6]Paragraph 5, Article 4 of the Juvenile Code: "*Hajz* (confinement): is restricting freedom of accused child in the juvenile rehabilitation centers".

with helping and paying attention to the convicted, otherwise the legislature has applied the utmost strictness and equality in determining the punishment; therefore, in terms of intensifying the punishment, it is logically not an option for legal-judicial institutions, and everything that should be added to the legal amount of punishment is done by the legislature itself (Tohidi Nafe and Amirli, 2016, p. 43), but, they have some legal powers in order to reduce the punishment and change it in order to support the convicted as much as possible. One of the important issues in modern criminal policy is resorting to punishment as a last resort. Just as in order to deal with crime and reduce it to a minimum, the criminalization of behaviors is proposed as the last solution (Jareborg, 2005, p. 525), resorting to punishment should also be the last step. This means that if it is determined that none of the other legal actions and measures is favorable to the convicted person and have not provided the basis for his/her correction, punishment can be applied as a last resort. Especially in the case of children and adolescents, as it is known, responding to this vulnerable group should be done in a favorable context and through measured actions, because the nature, the type of responding and the way of its implementation affect the direction and future of their behavior (Rajabi and Mehra, 2017, p. 95). According to this issue, the Afghan legislature states in Article 8 of the Afghanistan Penal Code that "the detention of a child is considered as the last solution for his/her correction and upbringing. The court shall consider the minimum possible period of detention in accordance with the provisions of this law". Stratonovich states that punishment is actually the most severe type of government intrusion into the personal rights of a human being. It should be used only in cases where other measures, especially civil and administrative rights measures, are ineffective (Jareborg, 2005, p. 525). In order to ensure that the punishment is favorable to the accused, in the Article 106 of the Penal Code regarding the right of a delinquent child to benefit from a judicial procedure, it states as follows: "The court is obliged to take into account the minimum detention provided for in this law while determining the detention period for the child, in accordance with the provisions of articles 95, 96 and 97 of this law". On the other hand, children usually commit minor and insignificant offending and misdemeanors; there is a very small percentage of adolescents who commit dangerous crimes, therefore, the purpose of punishing and responding to them, in addition to maintaining public security, is always to correct and rehabilitate and allow them to return to society. Therefore, the judges of the courts, as the authorities of investigation and sentencing, have the discretion to consider the appropriate and favorable punishment for the convicted person, and issue a sentence according to the case file of the accused and other circumstances governing the nature of the crime. For example, Article 107 of the Penal Code states the following regarding delinquency committed by children: "When a child commits a misdemeanor, the court will adopt one of the following measures in his/her case: 1- surrender of child to parents; 2- confinement (periodical stay) at home; 3- postponement of the trial; 4- suspension of confinement; 5- introducing to dedicated social service institutions; 6- performance of specific tasks (and social services); 7- confinement in the open section of the juvenile rehabilitation center; 8- confinement in the closed section of the juvenile rehabilitation center". That is, the judge, in the position of issuing a sentence, can, among various legal measures, decide one of them that he/she considers more favorable to the accused. Of course, considering the principle of legality of crime and punishment, it is not possible to simply accept a "mechanical" view of judicial work, based on which the judge has a passive role and applies the previously approved law; because many works of sociology and psychology have shown that along with factors such as the fluid nature of judgment, the ineffectiveness of fixed legal solutions for specific and individual situations, the emergence of new forms of criminal behaviors, the inability of fixed criminal rules to deal with it, as well as unusual crimes or conventional crimes that are committed in exceptional circumstances and contexts (Robinson, 1998, pp. 394-395), due to the partial indeterminacy of law and legal propositions, the judge has some discretion to overcome the limitations of written and fixed rules (Mirmajidi, 2019, p. 124).

Therefore, it can be acknowledged that in order to realize the purposes and criteria such as being corrective, dynamism and favorable responses to children's offenses and delinquencies, there is a need for an approach in which more discretion is given to the legal-judicial institutions of the country so that they can use punishments and measures appropriate to the situation in the process of responding to the crime. This has been considered to some extent in the Afghanistan's Penal Code (2017) and Juvenile Code (Law of Investigation on Children's Violations) (2015), and relevant institutions should take it into account when responding.

**Responding approaches**

The process of creating a convict in the criminal justice system consists of three stages: criminalization (birth of criminal values), committing a crime (birth of a criminal) and responding (determining and applying responses, including punishment and preventive measures). In other words, the study of secondary criminalization means the determination of the fate of criminal laws in the implementation phase, and punishment at the level of legal-judicial institutions, especially courts, which leads to creating an official criminal, that is, a criminal convict (Mohseni and Rahimian, 2019, p. 59). This stage actually entails the official sentencing of the accused. Criminal justice process includes institutions such as bailiffs/judicial officers, prosecutor, courts, sentence enforcement department and executive authorities of parole and suspension of execution of punishment and is not limited to only judicial authorities. In this process, responding (determination of punishment and protective measures and how to implement them) is important; because adopting a targeted approach based on scientific principles actually shows the efficiency of the criminal justice system, and it will realize the purposes of punishment and protective measures in a fair and reasonable manner. The institutionalization of such approaches in the position of responding will increase citizens' trust in the judicial system, prevent the repetition of crimes and violations, better achieve the utilitarian purposes of punishment and preventive measures, promote legalism in society and... (Mohseni and Rahimian, 2019, p. 59). Therefore, the investigation of various approaches in the field of responding to crime, especially the punishment for children's offenses and how to implement it optimally, is not only of scientific importance, but its realization in practice will be considered as the success and efficiency of criminal policy system in this regard.

***Crime-oriented approach***

Crime-oriented approach to responding is based on the primary and classical schools of law and justice. In this approach, people have an equal status before the law and those who have committed similar crimes will deserve the same responses and punishment, and this is considered as pure justice. This approach is also known as the determinate sentencing system, in which the legal-judicial institutions are more focused on the crime, how it occurs and its intensity and extent, and responding is often criminal and organized based on it. Therefore, the basis of the performance of this type of responding is the old principle of proportionality of crime and punishment. The principle of proportionality of the punishment to the committed crime means that the punishment must be proportional to the committed behavior in terms of intensity, and this is one of the basic requirements of fairness. Traditionally, penal philosophy includes two traditions (Bentham's utilitarianism) and (Kant's punitive idealism), the first one ignores the requirements based on proportionality and the second one does not fully pay attention to the reason and purpose of punishment (Mehra, 2019, p. 67). However, the new criminal philosophers are concerned with the issue of proportionality and its logic, and even consider the border between quantitative and qualitative proportionality. In fact, the principle of proportionality is very simple and indisputable, because everyone knows that the punishment should be proportionate to the crime committed. The origin of the principle of proportionality of crime and punishment should be traced in the theory of retributive and distributive justice. The relationship between the intensity of the crime committed and the intensity of the punishment is the main focus of the debate on the model of determining punishment based on merit, which of course changed in the 1970s (Rahmdel, 2015, p. 66). Returning to specific and definite punishments, as well as ignoring institutions such as suspension of punishment and parole under the title of fair entitlement from the last few decades in the United States and some other countries is due to this thinking (Mohseni and Rahimian, 2019, p. 60). Therefore, the principle of proportionality of crime and punishment is observed not only in the criminalization stage, but also in the punishment and responding stage. An example of this type of populist (strict) criminal policy in the United States (1993) is the "three-strikes-and-you-are-out laws", and then, in Australia (1996), which was enacted in order to respond criminally to dangerous criminals. According to the three-strikes-law, which is also sometimes called the Law on Recidivists, if a person commits violent crimes or drug crimes twice and the punishment has been implemented in his/her case, if he/she commits any crime for the third time; he/she will be sentenced to life or long-term imprisonment. Therefore, the interesting point of the crime-oriented approach is that the greater the violence hidden in a criminal behavior, the more severe the punishment due to the greater blameworthiness of that behavior. However, how the concepts of harm and blameworthiness can be integrated with the principle of proportionality may differ in different criminal justice systems. Because the responding systems differ in various legal systems, and they use different abbreviating and aggravating factors (Mehra, 2019, p. 68). Determining the culpability is a complex issue that is meaningful according to the severity of the crime, the personal circumstances of the perpetrator and the victim. Determining the severity of the crime has the advantage that those determining the punishment should take into account a complex combination of various factors that should be added to other factors and reasons for committing the crime (Mehra, 2019, p. 69). The issue of blameworthiness is very important, especially in relation to juvenile delinquency. If the only criterion for blameworthiness is considered to be the behavior of the perpetrator and its consequences, in many cases, a child's criminal behavior may be more severe than that of an adult. In that case, can a punishment similar to that of an adult, or more severe, be considered for him/her? If the only criterion of blameworthiness is considered to be the behavior committed or the results obtained, it should be so. While this kind of judgment and responding will not be fair, because the most important element of the crime, which is the mental element (foreknowledge and free will), has been ignored here. While a person is criminally responsible when, in addition to the attribution of a crime to him/her, his/her deliberate commission and criminal capacity are also verified by the judge. Therefore, examining the criminal responsibility of children takes a special form by considering the mentioned elements. The elements of criminal responsibility are: criminal capacity and fault. Criminal capacity itself consists of two elements of perception and discretion (Jamshidi and Mozafari, 2018, p. 45). However, if the criminal is not competent and free, he/she is not criminally responsible. For this reason, determining the limits of criminal responsibility is controversial, and one of the important criteria of criminal responsibility is determining the age of the perpetrator, which is often predicted by the legislature. However, several criticisms can be raised against this approach; one of the criticisms is that in the crime-oriented approach, there is no place for knowing the criminal and his/her case file and rehabilitating the criminal, but the emphasis is more on intimidation through punishment. According to some researchers, with such a vision, "a human being is nothing more than a tool that is used, mutilated, trampled arbitrarily, without having the right to resist and complain" (Ardabili, 2013, p. 122 quoted by: Rostami and Salimi, 2015, p. 152). Furthermore, in the crime-oriented approach, one can also find a kind of ignoring the principle of individualization, because the principle of individualization involves the preparation of a case file for the criminal and the examination of his/her personality and criminal history, which will definitely lead to changes in the judges' judicial decisions, and the judges should issue a ruling not only considering the seriousness and severity of the crime committed, but also respecting the state of the criminal and his/her case file, which will be against the crime-oriented approach in the punishment policy. In some situations and cases, traces of this type of responding approach can also be found in the Afghanistan's Penal Code. However, the general approach of the responding system to delinquent children in Afghanistan's criminal policy is of the type of integrated approach, which has been examined in the following discussions. For example, one of the alternative punishments of imprisonment in the Afghanistan's Penal Code is "performing public services", which court judges can consider for some defendants. In paragraph 5 of Article 151 of the Penal Code, one of the factors considered to be effective in the duration and amount of "public service" is the degree of severity of the crime committed. That is, one of the reasons that causes the public service period to increase or decrease is the type of crime, not the personality characteristics of the criminal.

***Criminal-oriented approach***

The formation of the positivist school ideas in the late nineteenth century, under the influence of criminological studies, changed the approach of responding in general and punishment (retribution) in particular, and introduced the system of indeterminate sentencing as an alternative to determinate sentencing. In this approach, instead of focusing only on the type of crime and its seriousness, more attention is paid to the personal circumstances of the perpetrator and the case file of the accused. In this approach, the legal-judicial institutions determine the punishment and apply it at their own discretion and based on the case file of the accused (Mohseni, Farid and Reza Rahimian, 2019: 61). Therefore, it can be acknowledged that in this way, responding, both criminal and non-criminal, is done more intelligently. The effect of the character of the criminal on the amount of punishment is influenced by the effectiveness of criminology knowledge on criminal law, which was done by the writing of the book "The Criminal Man" by Lombrose in 1764. In addition to the effect that this factor has on criminalization, its effects have been crystallized not only in the need to pay attention to the commission of a crime, but also in terms of the need to pay attention to the extent of the criminal's guilt and finally, its effect on the amount of punishment, whether in terms of increasing or mitigating the punishment, which has made the preparation of a case file one of the primary necessities in the punishment process (Mehra, 2019, p. 72). In this approach, instead of talking about the principle of "proportionality of crime and punishment", we talk about the principle of "proportionality of crime and criminal". The principle of individualizing the punishment is also in line with focusing on the perpetrator of the criminal act, which does not contradict the principle of equality before the law. According to the advocates of radical justice, not only is there no conflict between the principle of individualizing punishment and the principle of equality before the law, but these two principles complement each other (Mohseni and Rahimian, 2019, p. 61). The blameworthiness in this approach can be measured by the different situations of the criminal. Because the way the crime was committed may have been affected by the different personal, physical, social, psychological and ... situations of the criminal. For example, if the criminal has more physical strength, or has abused his/her socio-political status and position, in such cases, due to the increased violence involved in committing the crime, it is considered an aggravating factor and the perpetrator deserves a more severe punishment. But sometimes it is the opposite, especially in relation to delinquency and violations of children, which benefit the mitigating factors, or may even benefit the excusatory factors. Therefore, it seems that the system of responding to children's delinquencies is more suitable in the framework of the criminal-oriented responding approach than the crime-oriented system. Examples of this approach can also be seen in the criminal laws of Afghanistan, which will show attention to the criminal's case file and how to take measures to rehabilitate him/her and return him/her to society. For example, Article 151 of the Penal Code, which considers "performing public services" as the punishment for some criminals, states: "... 2- The court obligates the perpetrator of the crime to perform public service, taking into account the type of crime, age, gender, physical or mental ability, occupation, skill, and economic and social status; 3- In determining the punishment for public service, obtaining the victim's consent is necessary; 4- A person under the age of 15 is not sentenced to perform public service". The responding approach in the mentioned article is criminal-oriented and according to the state and situation of the criminal, his/her case file and even his/her consent, it plays a decisive role in such a conviction.

***Integrated Approach***

This approach is the balance point between the two "crime-oriented and criminal-oriented" approaches, which actually seeks to provide a middle and logical solution in judicial determination of responses or punishments. Countries such as England and some American states such as Minnesota, seek to prevent the divergence of opinions and the significant difference between legal punishments in similar situations by defining another approach under the title "guidance-oriented approach", which is very similar to the integrating approach (Mohseni and Rahimian, 2019, p. 62). Minnesota legislature[7] approved the sentencing guidelines in 1980 and emphasized their application by court judges (Morley, 2014, p. 2). In Article 170 of the Criminal Justice Act of England approved in 2003, the Sentencing Guidelines Council has been introduced, the purpose of which is to create a single judicial precedent in the matter of responding. Among the important purposes of this approach are creating a balance between the punishment and the harmful result of the crime, creating a fairer system in terms of responding, reducing the severity of the punishments, limiting the use of prison sentences, reducing the judicial discretion in determining the punishment, determining special punishments for the accused who have committed a crime in exceptional circumstances, eliminating early release for convicts and participating in voluntary treatment and re-socialization of prisoners without affecting the length of their imprisonment (Champion, 2007, p. 8, quoted by: Mohseni and Rahimian, 2019, p. 63). In other words, the purpose of the punishment guidelines is to provide and define appropriate and logical criteria as a single judicial precedent in the penal system and guarantee the principle of proportionality of crime and punishment (Edbled, 2011, p. 1). However, in this article, the integrated approach is actually a combination of two approach (crime-oriented and criminal-oriented) which provided its effects and consequences, as well as the criminal's case file and how to rehabilitate him/her and prepare the ground for his/her return to society in a balanced way and in accordance with the conditions and circumstances governing the occurrence of the crime. In the criminal laws of Afghanistan, as mentioned before, examples of both approaches can be seen, which indicates the existence of an integrated approach. For example, paragraph 5 of Article 151 of the Penal Code considers the amount of public service as a punishment depending on the severity of the crime and the character of the perpetrator. In addition, Article 208 of the Penal Code obliges the judges to consider factors such as the motive and nature of the crime, the proportionality of the risk and social or individual harm arising from the crime committed, the personality, mental states and criminal records of the accused, abbreviating and aggravating factors. However, when it comes to making a decision by the courts about protective measures, the personal circumstances of the perpetrator are more important than the nature of the crime. But in relation to the crimes committed by

[7]Minnesota Sentencing Guidelines Commission

children and adolescents, it seems that the criminal-oriented aspect of the criminal policy in the responding system is more prominent than the crime-oriented one. Afghanistan's legislature has explicitly exempted this group from punishment (execution, imprisonment and fines) in the Penal Code (Article 97) and the Juvenile Code (Article 39), and instead has introduced the use of actions and measures depriving the child from his/her rights and freedoms under the title of "*Hajz* (confinement)".[8] In other words, if children commit any serious and dangerous crime, they cannot be sentenced to death, imprisonment or fine, but other measures are taken for it, which are determined by the law.

**Conclusion**

In order to provide and maintain order and security in the society and effectively fight against crime on the one hand, and protect the rights and freedoms of individuals on the other hand, it is necessary for criminal justice activists as the responding authorities to choose the best method. For this reason, the responding systems in the criminal policies of countries take different approaches according to their conditions and requirements. This article examines the position of Afghanistan's criminal policy regarding the system of responding to delinquent children, which includes all types of responding and protective measures to protect the interests of children, keeping in mind the spirit of correction and re-education of this vulnerable group. According to the principle of minimum punishment in criminal law and the case-by-case nature of responding to delinquent children, the Afghanistan's legislature has even abandoned the criminalization of the illegal behavior of this group and has used the phrase "children's offending" instead, which is important in itself. On the other hand, considering the sensitivity of the issue and the vulnerability of this group, and their strong need for family, social and legal support, as well as the consequences of their exclusion from the warm hearth of the family and other social institutions, the existence of a program-oriented and dynamic penal policy is a basic need. Afghanistan's criminal policy officials, understanding this issue, came up with appropriate criminalization and responding, and have specified corrective, dynamic and favorable actions and measures in the Juvenile Code (2015) and the Penal Code (2017), which guarantee the protection of the interests of delinquent children. Legal-judicial institutions can also in the various responding processes resort to actions and measures that are favorable to the conditions of the convicted and to correct and re-socialize him/her within the framework of the law and in accordance with the circumstances and the personality of the accused. Therefore, it should be acknowledged that the system of responding to delinquent children in Afghanistan's criminal policy has an integrated approach and is in line with protecting the interests of children. Legal-judicial institutions can maintain the principle of legality of crime and punishment in their decisions, and issue judgments by putting the child's interests at the forefront.

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