

## The Substantive Criminal Protection of the Juvenile Delinquent

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### ABSTRACT

**Objective:** This study examines juvenile delinquency as a complex social issue that poses significant risks to both individuals and society, focusing on the substantive criminal protection mechanisms established in Iraq and Lebanon. **Method:** The research adopts an analytical and comparative legal approach, reviewing legislative texts, judicial rulings, and doctrinal perspectives to assess the strengths and weaknesses of the two juvenile justice systems. **Results:** The findings reveal that while both countries have made progress in developing juvenile justice frameworks, substantial gaps remain, particularly in addressing recidivism, ensuring adequate rehabilitation, and incorporating preventive social protection mechanisms. These shortcomings limit the effectiveness of existing legislative measures and hinder the reintegration of juvenile offenders. **Novelty:** The study contributes by providing a cross-national comparative analysis that not only identifies legislative deficiencies but also proposes reform-oriented solutions aligned with international standards. This highlights the need for comprehensive policies that balance legal accountability, protection, and rehabilitation to strengthen juvenile justice systems in the region.

## INTRODUCTION

Juvenile delinquency is considered a form of criminality and a violation of the law that entails responsibility and punishment. Thus, delinquency among this category is viewed as no different from adult criminality, except for the mitigation of penalties, based on the perception that minors lack full freedom of will and choice. Relying on this reality, some legislations have pursued a policy of adopting the penalties and measures prescribed for juveniles within the Penal Code and the procedural rules in the Code of Criminal Procedure, considering that the provisions relating to juveniles are seldom subject to change except when included within broader amendments to the law as a whole. These provisions are regarded as special rules for a particular category of offenders, whose natural place is within the general law [1][2].

In contrast, the majority of legislations foremost among them the Iraqi and Lebanese legislations adopt the view that both substantive and procedural rules concerning juveniles should be incorporated into a special law. This is based on the understanding that juvenile delinquency is not a criminal phenomenon warranting suppression, but rather a social phenomenon requiring care. Accordingly, childhood must be addressed through comprehensive evaluation aimed at combating delinquency in all its forms [3][4].

In this regard, the legislations under study have followed this latter approach, influenced by the penal policies adopted in most contemporary legislations, and in

harmony with the provisions and principles of United Nations conventions on juveniles. These conventions have clarified the role of the judiciary in this field, granting it a preventive role in addressing juveniles at risk of delinquency, as well as a rehabilitative role in imposing appropriate measures and penalties on delinquent or law-breaking juveniles. These sanctions differ from those imposed on adults committing the same criminal act, reflecting the attempt by these states to improve the juvenile's condition and steer them away from the path of delinquency [5].

Juveniles also benefit from the general criminal protection afforded to every member of society, similar to adults. However, the legislator has recognized the inadequacy of this general protection in relation to juveniles, and thus provided them with special criminal protection to safeguard their rights. The justification for such protection lies in the unique circumstances of juveniles, including limited perception and discernment, inability to defend themselves, their property, or honor, and their vulnerability to temptation and deception [6].

This form of criminal protection is relied upon to safeguard the juvenile and their rights from aggression or threats, drawing upon the rules of substantive and procedural criminal law in their general sense, whether found in penal legislation or other laws [7]. Accordingly, the framework of criminal protection for juveniles consists of two aspects: substantive criminal protection and procedural criminal protection. Substantive criminal protection pertains to the rules of substantive criminal law, whether contained in the Penal Code or in any other special penal legislation. It is based on monitoring activities and behaviors related to the rights and interests of juveniles protected under criminal law, countering any act that constitutes an infringement upon such rights or interests through various methods [8].

### **Significance of the Research**

The importance of the subject lies in the danger of delinquency. Juvenile delinquency renders this group unproductive and inactive, turning them into a burden on society. Consequently, the loss is twofold: the harmful outcomes of criminality on the one hand, and the loss of constructive human potential on the other. Since the primary objective of punishment is reform rather than infliction of pain, this constitutes one of its essential features [9]. The significance of the research further emerges in its examination of the various forms of substantive criminal protection for delinquent juveniles and its analysis of the legislative interventions in criminalization designed to protect them. Moreover, the research acquires importance from the perspective of the specificities of criminal procedural treatment of delinquent juveniles and the extent to which the law provides them with rights and safeguards beyond those ordinarily available [10].

### **Research Problem**

Given that juvenile delinquency is a multifaceted issue, failure to confront it with effective solutions exposes this group of society to grave risks. The study of juvenile delinquency should not be limited to the material act attributed to the juvenile, without considering their personality and the circumstances surrounding the offense. Rather, it should provide judges with the means for individualized assessment and sentencing,

taking into account the relative weight of the objective circumstances of the crime, with the dual aim of protecting society and rehabilitating the offender. Accordingly, this research seeks to answer the following central question: *To what extent is the substantive protection established by Iraqi and Lebanese legislators effective in achieving juvenile criminal justice?*

### **Research Objectives**

The research aims to find practical solutions to the legislative shortcomings affecting the Iraqi and Lebanese legal systems in imposing substantive criminal protection for delinquent juveniles. This is achieved by identifying deficiencies in the legislation and determining the cases that require serious legislative intervention. The ultimate objective of this study is to work toward protecting Iraqi youth from drifting into criminal behavior [11].

## **RESEARCH METHOD**

To address the problem posed within the scope of this study, the analytical method has been adopted for examining the relevant legal texts in light of doctrinal theories and by reference to judicial rulings. Additionally, the comparative method has been employed to analyze the legal systems of Iraq and Lebanon, with the aim of highlighting similarities and differences between them and clarifying how each addresses the issue of substantive criminal protection for delinquent juveniles [12].

### **Research Structure**

In order to answer the stated problem, this study is divided into two chapters, each comprising two sections. The first chapter addresses the nature of criminal protection for delinquent juveniles, while the second chapter examines the scope of crimes committed by delinquent juveniles [13].

## **RESULTS AND DISCUSSION**

### **Chapter One**

#### **The Nature of Criminal Protection for the Delinquent Juvenile**

Juvenile delinquency is a complex social and legal phenomenon, given its negative impact on both the present and future of an entire generation of youth, and consequently on the stability of their society. Considering the young age of the delinquent juvenile, objective reasoning dictates viewing them as victims rather than criminals in the full sense of the term, which entails that they must not be treated in the same manner as adult offenders. With the rapid pace of modern civilizational and industrial development, this problem has become increasingly grave, requiring legal provisions to address the danger of criminality and to seek the rehabilitation of delinquent juveniles [14], [15].

In order to clarify the significance of this issue, this chapter is divided into two sections. The first section addresses the concept of criminal protection for the delinquent juvenile, while the second examines the criminal responsibility of the delinquent juvenile.

## Section One

### The Concept of Criminal Protection for the Delinquent Juvenile

Most legal systems worldwide agree that the juvenile can be in one of two situations: either in a state of moral danger meaning the juvenile is a victim of assaults or in a state of delinquency. This sensitive position illustrates the risk whereby a juvenile may shift from being a victim to becoming an offender, due to the traumatic and abusive experiences they undergo. Such circumstances often constitute a preliminary stage leading to delinquency [16].

To explore this subject in greater depth, this section is divided into two subsections. The first subsection addresses the definition of the delinquent juvenile, while the second examines the manifestations of substantive criminal protection for the delinquent juvenile [17].

#### Subsection One

##### Definition of the Delinquent Juvenile

In order to shed light on the definition of the delinquent juvenile in some detail, it is necessary to first address the definition of the *juvenile*, and then the definition of *delinquency*, as follows:

##### First: Definition of the Juvenile

The Iraqi legislator defined the juvenile in Article (3/Second) of the Juvenile Welfare Law No. 78 of 1983 (as amended and currently in force) as follows: *"A juvenile is any person who has completed nine years of age but has not yet reached eighteen years of age."* From this text, it is clear that a juvenile is every individual who has reached the age of nine but not yet eighteen. Accordingly, the Iraqi legislator established the age of criminal responsibility, such that criminal proceedings may not be initiated unless the juvenile has reached nine years of age [18]. The same article further specified that the juvenile is classified under two designations, depending on the age stage: *juvenile boy* and *juvenile youth*.

This is explicitly stated in Article (3/Third and Fourth) of the Iraqi Juvenile Welfare Law. Paragraph Third provides: *"A juvenile is considered a boy if he has completed nine years of age but has not yet completed fifteen years of age."* Paragraph Fourth states: *"A juvenile is considered a youth if he has completed fifteen years of age but has not yet completed eighteen years of age [19]."*

In contrast, Lebanese Law No. 422 of 2002 on the Protection of Juveniles in Conflict with the Law or at Risk of Delinquency defines juveniles in Article (1/First Part) as follows: *"A juvenile to whom this law applies is any person who has not yet completed eighteen years of age, if he commits an act punishable by law or is at risk under the conditions later specified in this law."*

It is noted that the Lebanese legislator, in its definition of the juvenile, did not specify the minimum age of criminal responsibility, unlike the Iraqi legislator, who set it at the completion of nine years of age [20]. However, the Lebanese legislator later defined the minimum age of criminal responsibility in Article (3) of the same law, which provides:

*"No person who has not yet completed seven years of age at the time of committing the offense shall be subject to criminal prosecution."*

### **Second: Definition of Delinquency**

Delinquency, in its legal sense, has been given several differing definitions. One of them states that it is *"any act or type of behavior that may bring the juvenile before the court and result in a judicial ruling against him."* Here, legal scholars regard delinquency as a crime that entails criminal responsibility based on a penal provision meaning that a legally prohibited act is committed by a juvenile who has reached the age of discernment (the age of criminal capacity) but has not yet attained full criminal maturity [21].

A modern approach has emerged rejecting this narrow conception of delinquency, emphasizing instead the dual aim of protecting the juvenile while also safeguarding society. This approach broadens the scope of juvenile delinquency to include not only juveniles who commit crimes punishable under the Penal Code, but also those at risk of delinquency who require protective measures to prevent them from falling into wrongdoing. In other words, the term *juvenile delinquency* encompasses both *actual delinquency* and *potential (or presumptive) delinquency*.

Initially, most penal legislations were influenced by the narrow concept of delinquency, with the principle of legality serving as the justification for limiting delinquency to a restricted and well-defined scope, measured strictly by reference to criminal acts. However, this perspective later changed, and the broader conception of delinquency became predominant, after the inadequacy of the traditional narrow concept had been demonstrated. The modern concept is grounded in the principle of the necessity of addressing deviant behavior at its earliest stage [22].

### **Subsection Two**

#### **Manifestations of Substantive Criminal Protection for the Delinquent Juvenile**

In this context, we shall highlight the most important manifestations of substantive criminal protection afforded to the delinquent juvenile, as follows:

#### **First: The Juvenile's Right to Establish Their Age**

A juvenile has the right to prove their age by means of an official document and in accordance with the Gregorian calendar. If this is not possible, the juvenile must be referred to a specialist physician to determine age through scientific methods. Article (4) of the Iraqi Juvenile Welfare Law currently in force provides: *"The age of the juvenile shall be established by an official document, and if such a document does not exist or if the age stated therein is inconsistent with apparent circumstances, the court shall refer the juvenile to medical examination to determine the age through scientific methods."* International and Arab conventions have also required the determination of the minimum age of criminal responsibility for children, in recognition of their limited capacity for discernment at an early age [23].

The determination of age is of great importance, as it defines the jurisdiction of the competent court to consider the case. For this reason, the Iraqi Federal Court of Cassation has ruled: *"The age of the juvenile must be proven by an official document; otherwise, the court's decision to refer the juvenile without regard to this requirement shall be subject to reversal."* The

importance of age determination becomes particularly evident at the time of the commission of the crime, since criminal responsibility is contingent upon the juvenile's legal age. For example, an individual who is actually an adult may claim that at the time of committing the crime they were a juvenile, thus seeking exemption from criminal responsibility [24].

The decisive factor in applying the Juvenile Welfare Law is the age of the offender at the time the crime was committed. If the juvenile was under eighteen years of age even by a single day at the time of committing the crime, the Juvenile Welfare Law applies [25].

### **Second: The Prohibition of the Death Penalty for Juveniles**

Juveniles may not be sentenced to the death penalty, as their young age has a direct effect on the treatment of such punishment. This matter is regulated in Articles 76 and 77 of the Iraqi Juvenile Welfare Law currently in force. Article 76/Second provides: *"If a boy commits a felony punishable by death, the Juvenile Court shall sentence him, instead of the penalty prescribed by law, to placement in a reformatory school for boys for a period not less than one year and not more than ten years."*

It is clear from this provision that individualized sentencing for juveniles is mandatory. Similarly, Article 77/Second of the same law provides: *"If a youth commits a felony punishable by death, the Juvenile Court shall sentence him, instead of the penalty prescribed by law, to placement in a reformatory school for youths for a period not less than five years and not more than fifteen years."*

The Lebanese Law No. 422 of 2002 on the Protection of Juveniles in Conflict with the Law or at Risk of Delinquency is consistent with the Iraqi Juvenile Welfare Law in requiring mitigation of punishment for juveniles if the crime committed carries the death penalty [26]. However, the Lebanese law provides for mitigation only in cases where the juvenile has reached fifteen years of age but has not yet reached eighteen. In contrast, the Iraqi law makes mitigation mandatory without distinction between the different age categories of juveniles (boys and youths) when they commit a felony punishable by death [27].

### **Third: Non-Applicability of Recidivism Provisions to Juveniles**

The provisions of recidivism do not apply to delinquent juveniles. Linguistically, *recidivism* means "return," and in this context, it refers to returning to the commission of crime. Many criminologists and sociologists define a recidivist as *"a person who has previously been convicted and who subsequently commits another crime, whether or not this new crime has been formally established."*

Neither the Iraqi Juvenile Welfare Law currently in force nor the Lebanese Law on the Protection of Juveniles in Conflict with the Law or at Risk of Delinquency expressly provides that the rules of recidivism do not apply to juveniles. However, the prevailing view in both legal doctrine and judicial practice is that the provisions of recidivism apply when the previous conviction involved a custodial sentence. The principle in applying recidivism is that it operates with respect to the new offense for which the trial is being

conducted, without necessarily requiring the existence of a prior judgment forming the basis of recidivism [28].

Nonetheless, it is hoped that the Iraqi and Lebanese legislators, in the framework of strengthening juvenile rights, will undertake legislative amendments to explicitly ensure that the provisions of recidivism do not apply to delinquent juveniles [29].

## **Section Two**

### **Criminal Responsibility of the Delinquent Juvenile**

Given the juvenile's age, and the fact that their physical and mental development is not yet complete, they must be treated in a special manner and not in the same way as adult offenders. A juvenile is unable to fully distinguish between what is harmful and what is beneficial, or between right and wrong. This faculty of discernment develops progressively throughout the stages of human life, from birth until the mind reaches maturity and perception becomes complete [30].

To elaborate further, this section is divided into two subsections. The first subsection examines the circumstances under which criminal responsibility arises for the juvenile, while the second subsection considers the cases in which criminal responsibility is excluded.

#### **Subsection One**

##### **Circumstances Giving Rise to Criminal Responsibility of the Juvenile**

The Iraqi legislator, in the Juvenile Welfare Law No. 76 of 1983, addressed the circumstances under which the delinquent juvenile is held criminally responsible. Article 3 of the law provides: *"This law applies to delinquent juveniles, young children, juveniles at risk of delinquency, and their guardians, according to the definitions set forth below for the purposes of this law."*

From this provision, it is clear that the Iraqi legislator adopted the principle of graduated responsibility for the delinquent juvenile according to their maturity. Awareness, will, and experience develop gradually in juveniles, and the law establishes a corresponding gradation of responsibility. The legislator divided juvenile responsibility into two stages:

1. **Stage One:** The *child stage*, encompassing those who have not completed nine years of age, during which criminal responsibility does not apply.
2. **Stage Two:** The *juvenile stage*, covering those who have completed nine years but have not yet reached eighteen years of age. This stage is further divided into two categories:
  - a. **Category One:** Juveniles who have completed nine years but not yet fifteen, referred to as *boys*.
  - b. **Category Two:** Juveniles who have completed fifteen years but not yet eighteen, referred to as *youths*.

A review of the Iraqi Juvenile Welfare Law shows that corporal punishment is excluded for delinquent juveniles, as such punishment involves intentional suffering that is unjustified given the juvenile's limited awareness and understanding. Moreover, imposing such punishment could negatively affect the juvenile's behavior or

psychological development. Instead, the law provides a series of judicial measures as alternatives to punishment, pursuant to Article 47/First of the Juvenile Welfare Law [31].

Accordingly, when a juvenile (*boy* or *youth*) commits a minor offense, the court may either issue a warning in session not to repeat the unlawful act or place the juvenile under the supervision of a guardian or relative with a financial guarantee to ensure proper upbringing and behavioral correction. Failure to observe this procedure renders the decision subject to annulment (Article 72).

In the case of a felony committed by a juvenile, the legislator has prescribed alternative measures to punishment. Article 73 of the Juvenile Welfare Law allows the court to decide either to place the juvenile under the custody of a guardian or relative, to put the juvenile under behavioral supervision, or to place them in a reformatory school *for boys in a boys' reformatory, and for youths in a youths' reformatory*. The duration of placement must not be less than three months and not exceed three years [32].

In cases where a boy commits a crime punishable by death, Article 76/First(c) of the law mandates that the court may only impose placement in a reformatory, with a minimum duration of one year and a maximum of ten years, instead of the death penalty [33].

From the foregoing, it is evident that the Iraqi legislator has imposed stricter measures on a *youth* who commits a felony punishable by life or fixed-term imprisonment, providing only two measures: behavioral supervision and placement in a reformatory. In contrast, for a *boy*, the legislator allows three measures: custody, supervision, and placement. Furthermore, in cases of crimes punishable by death, the law prescribes placement of the *youth* in a reformatory school for a period of no less than five years and no more than fifteen years, whereas for a *boy*, the duration of placement in a reformatory is set between one and ten years [34].

In Lebanon, based on a review of the provisions of Lebanese Law No. 422 of 2002 on the Protection of Juveniles, it appears that the delinquent juvenile passes through two main stages: the stage of non-responsibility and the stage of reduced responsibility [35]. The latter represents the gradual assumption of criminal responsibility, where the Lebanese legislator, similar to the Iraqi legislator, divided juvenile responsibility into multiple stages to reflect the progressive development of awareness and discernment.

## **Subsection Two**

### **Exemption from Criminal Responsibility of the Juvenile**

Both the Lebanese and Iraqi legislators consider a juvenile to be *non-discernible* if they have not reached a certain age, meaning they cannot be held criminally liable for acts deemed crimes under the law, even if such acts are proven to have been committed by the juvenile.

The Lebanese legislator, in Article 3 of Law No. 422 of 2002 on the Protection of Juveniles, stipulates: "*No one who has not yet completed seven years of age at the time of committing the offense shall be prosecuted criminally.*"



Similarly, the Iraqi legislator addressed this in Article 47/First of the Juvenile Welfare Law No. 76 of 1983, which provides: “*No criminal proceedings shall be initiated against anyone who had not completed nine years of age at the time of committing the offense.*”

From the above, it can be observed that both Lebanese and Iraqi legislations agree on this stage of the juvenile’s life the stage of *non-discernment* establishing that no criminal responsibility applies before reaching this stage. However, the two legislations differ regarding the age at which this stage begins: the Lebanese legislator set it at seven years, while the Iraqi legislator raised it to nine years.

We argue that raising the age of discernment to nine years, as in the Iraqi law, is problematic because it grants juveniles an extended exemption from responsibility, potentially undermining protective measures. Instead, criminal responsibility should be proportionate to the juvenile’s capacity for awareness and discernment, reflecting their gradually developing cognitive abilities. The distinction between the initial stage, where discernment is entirely absent, and the subsequent stage, where awareness remains incomplete, allows for appropriate monitoring and corrective measures rather than complete exemption from accountability. Raising the age threshold risks leaving society exposed to juvenile criminal acts without means for intervention, correction, or rehabilitation. Accordingly, we recommend that the Iraqi legislator amend Article 47/First to lower the age of non-responsibility to seven years, in alignment with the Lebanese approach.

It is also important to note that defining the age below which criminal responsibility is excluded implies that the juvenile is entirely incapable of discernment and awareness. This first stage, beginning at birth and ending at the age of discernment, identifies the juvenile as *incapable or non-discernible*. Establishing this age threshold eliminates the need to consider legal questions such as imposing punishment or applying measures against the delinquent juvenile, as such measures are impermissible due to the absence of responsibility. Likewise, it resolves questions regarding the assessment of the juvenile’s awareness during the non-discernment stage.

Both Lebanese and Iraqi legislations make it clear that juveniles below the age of discernment may not be prosecuted under any circumstances. They are deemed incapable of understanding or distinguishing right from wrong, and therefore cannot be held accountable for any acts committed. The non-discernment age thus constitutes an irrefutable presumption that prevents the judge from investigating the juvenile’s cognitive awareness at this stage and simultaneously limits judicial discretion: no punishment or measure may be imposed, even if the judge personally believes the juvenile understood the act.

## **Chapter Two**

### **Scope of Crimes Committed by Delinquent Juveniles**

Due to the high prevalence of juvenile delinquency, cases involving drugs and psychoactive substances whether consumption or trafficking as well as sexual crimes, are currently the most common offenses committed by juveniles. Juveniles are particularly vulnerable to risk, especially when exposed to adverse social conditions such as

homelessness or economic hardships like the loss of a provider, which may compel them to engage in activities such as begging or other acts that can lead to delinquency to secure daily sustenance. Conversely, even juveniles with access to favorable living conditions may be drawn into criminal behavior due to technological advancements, giving rise to what is known as *technology-related crimes*, particularly involving engagement with pornographic material.

To highlight the importance of the subject, this chapter is divided into two sections. The first section addresses crimes related to juvenile delinquency, while the second focuses on crimes involving drug use and participation in terrorist activities.

## **Section One**

### **Crimes Related to Juvenile Delinquency**

Juvenile delinquency is a critical social issue, encompassing a wide range of behaviors, from minor infractions to more serious crimes. Examples include begging and sexual offenses, which serve as indicators necessitating both legal and rehabilitative intervention. To elaborate, this section is divided into two subsections: the first examines the *impact of begging on the responsibility of delinquent juveniles*, and the second addresses *juvenile involvement with pornographic materials*.

#### **Subsection One**

##### **Impact of Begging on the Responsibility of Delinquent Juveniles**

The Iraqi legislator addressed the crime of begging in Chapter Eight on social crimes in the Penal Code, specifically in the section titled *Begging*. Article 390 provides: *"Whoever is found begging in public streets, public places, or enters a residence or establishment without permission for the purpose of begging shall be punished by imprisonment for a period not less than one month and not exceeding three months."*

The Lebanese legislator, in Article 610 of the Penal Code, provides: *"Whoever has resources or could obtain resources through work and begs for personal gain from public charity, either directly or under the guise of commercial activity, shall be punished by imprisonment with labor for at least one month and not more than six months. Additionally, the person may be placed in a labor institution in accordance with Article 79, which is mandatory in cases of repetition."*

If the offender has not reached eighteen years of age, the juvenile responsibility provisions apply. The court may, instead of imposing the punishment prescribed in Article 390/1, order: *"Placement in a labor institution for a period not exceeding one year if capable of work, or placement in a shelter, old-age home, or recognized charitable institution if unable to work and without means of subsistence, provided that placement in the suitable facility is possible."*

Furthermore, the Iraqi legislator provides for imprisonment of up to three years for anyone who induces another person to beg.

Paragraph (A) of Article 24 of the Iraqi Juvenile Welfare Law provides: *"If a person is found begging in public places, feigning injuries or disabilities, or using deceit to elicit public sympathy for the purpose of begging."*

Paragraph (B) of the same article provides: *"If a juvenile engages in street occupations such as shoe-shining, selling cigarettes, or any other activity that exposes them to delinquency, and the juvenile is under fifteen years of age."*

It can be concluded that many activities and methods practiced by juveniles are close to those mentioned in Paragraph (B) of Article 24, including:

1. Performing small income-generating tasks, such as shoe shining, selling ice cream, pulling carts, washing cars, and other similar jobs.
2. Collecting waste and garbage to sell to traders for recycling purposes.
3. Working as street vendors in public transportation vehicles.

Article 26 of the Iraqi Juvenile Welfare Law stipulates: *"If a minor or juvenile is found in the situations specified in Articles 24–25 of this law, the investigating judge shall refer them to the Juvenile Court, which shall issue its final decision after receiving the report of the Personality Study Office as follows: First, (A) – delivering the minor or juvenile to their guardian to implement the court's recommendations in light of the Personality Study Office's report, ensuring proper upbringing and behavior, under an appropriate financial guarantee."*

## **Subsection Two**

### **Juvenile Involvement in Pornographic Material**

Crimes against public morality have increasingly permeated social media platforms, as many individuals have used these platforms to promote content advocating moral corruption. Significant technological advancements in computing and widespread Internet use have facilitated juveniles' involvement in pornography-related offenses.

The offense of juvenile involvement in pornographic material can be measured against crimes of incitement to immorality and exposure to acts against public morals, as stipulated by Iraqi and Lebanese legislation. Article 399 of the Iraqi Penal Code provides: *"Anyone who incites a male or female under the age of eighteen to immorality or encourages them to practice vice professionally, or facilitates such acts, shall be punished by imprisonment."*

Article 403 of the same law adds: *"Anyone who manufactures, imports, exports, possesses, acquires, or transfers, with intent to exploit or distribute, books, publications, writings, drawings, images, films, symbols, or other items that violate modesty or public morality shall be punished by imprisonment for a term not exceeding two years, a fine not exceeding 200 dinars, or both."*

The Lebanese legislator, in Article 532 of Penal Code No. 340 of 1943, stipulates: *"Any act affecting morals and public decency, by the means referred to in Paragraphs 2 and 3 of Article 209, shall be punished by imprisonment from one month to one year and a fine of 20,000 to 50,000 Lebanese pounds."* Article 533 of the same code prescribes similar punishments for producing, photographing, importing, acquiring, or trading books, drawings, images, films, or other items violating decency, intending to trade or distribute them.

Juveniles are not treated identically to adults in such cases. The legislator imposes mitigated penalties, reflecting the juvenile's distinct nature, and provides special measures that may be custodial or non-custodial, depending on the juvenile's age at the time of the offense and the manner in which the crime was committed.

Notably, Article 535 of the Lebanese Penal Code provided: *“Any minor under the age of eighteen who habitually engages in prostitution shall be subject to the reformatory measures outlined in Articles 239 to 244 for minors committing misdemeanors, except for placement in a disciplinary institution.”* Article 536 clarified that minors could not be placed in a specific institution or reform school unless a dedicated wing for reformed girls was available.

Interestingly, Article 120 of Lebanese Law No. 81 of 2018, concerning electronic transactions and personal data, abolished the third section of Chapter Two of Title Seven of the Penal Code, replacing it with provisions related to the exploitation of minors in pornography. This section had included Articles 535 and 536 under the heading of juvenile prostitution. The legislator’s approach in abolishing an already repealed section is problematic; it would have been more appropriate to reinstate the third section with the newly intended provisions explicitly applied.

## **Section Two**

### **Crimes Related to Drug Use and Participation in Terrorist Activities**

Comparative legislation has increasingly focused on combating juvenile use of drugs and psychoactive substances, due to the wide scope of such offenses and their resulting harms to lives, as well as threats to both the health of the juvenile and the community. The legal age of the offender plays a crucial role in determining the applicable legal measures when juveniles are involved in terrorist activities.

To clarify the discussion, this section is divided into two subsections:

1. Penal Provisions for Juveniles Concerning Drug and Psychoactive Substance Use
2. Penal Provisions for Juvenile Participation in Terrorist Activities

#### **Subsection One**

##### **Penal Provisions for Juveniles Concerning Drug and Psychoactive Substance Use**

To clarify the penal provisions for juveniles involved in drug and psychoactive substance use, we will first examine the Iraqi legislation, followed by the Lebanese legislation.

#### **1. Penal Provisions in Iraqi Legislation**

The measures and penalties imposed on juveniles for drug-related offenses are graduated according to severity under the Iraqi Juvenile Law. Juveniles are not treated the same as adults due to their specific developmental and psychological characteristics. The Iraqi legislator has detailed the measures applicable to juveniles as follows:

##### **1. Boys’ Rehabilitation School:**

Established under Article 10(2) of the Iraqi Juvenile Law, this school aims to provide the boy with social re-adaptation and vocational or educational training for the duration specified in the judgment. The law distinguishes between boys, adolescents, and adults, applying age-appropriate measures to each category.

##### **2. Adolescents’ Rehabilitation School:**

Designed for juveniles who are between 15 and 18 years old at the time of the offense, this measure provides social re-adaptation and vocational or educational training. For misdemeanors, the period of deprivation of liberty must be between six months and five years.

**3. Adult Youth Rehabilitation School:**

This institution accommodates juveniles who have reached 18 years of age either while in an adolescents' rehabilitation school or at the time of sentencing. The court may apply the measures appropriate to adolescents, and if deprivation of liberty is imposed, the juvenile may be transferred to the adult youth rehabilitation school.

**2. Penal Provisions in Lebanese Legislation**

**1. Probation or Supervised Freedom:**

This measure places the juvenile under the supervision of a social worker or designated authority under judicial oversight. It includes monitoring the juvenile's behavior, work, health, and social and professional development. The duration ranges from one to five years. The juvenile must comply with instructions and attend meetings with the supervising authority. This measure is therapeutic and aims to reintegrate the juvenile into society while maintaining significant freedom under supervision.

**2. Placement in a Reform Institute:**

This measure isolates the juvenile from harmful influences and subjects them to a comprehensive rehabilitation program, including moral guidance, vocational training, and academic education. The minimum duration is six months, and the institute supervises the juvenile's health, psychological state, and ethical development.

Judges have discretion to modify the measure, either increasing or decreasing its severity, or suspending it under specific conditions if it benefits the juvenile, based on reports from the institution or social investigations.

Second Two

Penal Measures for Juvenile Participation in Terrorist Acts

To highlight the penal measures applicable to juveniles involved in terrorist acts in detail, we first address the death penalty for juveniles, followed by life imprisonment, as follows:

## First: The Death Penalty for Juveniles

*The Iraqi legislator, in the **Anti-Terrorism Law**, Article 4, Paragraph 1, states: "Anyone who commits, as a principal actor or accomplice, any of the terrorist acts listed in Articles (2) and (3) of this law shall be punished by death. This also applies to instigators, planners, financiers, and anyone who facilitates the terrorists in committing the crimes stated in this law, with the same penalty as the principal actor."*

*From this provision, it is understood that anyone participating in the terrorist acts outlined in Articles 2 and 3 of the Anti-Terrorism Law is subject to the death penalty.*

*However, the **Juvenile Care Law** does not impose the death penalty, taking into account the juvenile's young age and lack of full comprehension. Instead, it provides **rehabilitative measures** rather than punitive penalties. The distinction between punishment and measures lies in their objectives: punishment aims primarily at retribution and deterrence, whereas measures aim primarily at rehabilitation. While punishment looks backward at the committed act, measures are forward-looking, designed to prevent future offenses by juveniles. The Iraqi legislator emphasized the welfare of juveniles and stipulated that the measures imposed on them aim at their care, upbringing, rehabilitation, and reintegration into society.*

*Furthermore, the Juvenile Court is the sole authority empowered to impose these measures; no administrative body may do so. Paragraph 2 of Article 76 of the Juvenile Care Law specifies the legal measure for a juvenile (boy) who commits a capital felony, stating: "If a boy commits a felony punishable by death, the Juvenile Court shall, instead of the legally prescribed penalty, order his placement in a boys' rehabilitation school for a period of no less than one year and no more than ten years."*

### *Second: Life Imprisonment*

*The Iraqi legislator addressed **life imprisonment** in the Anti-Terrorism Law, Article 4, Paragraph 2, stating: "Anyone who deliberately conceals any terrorist act, or any terrorist person in order to provide cover, shall be punished by life imprisonment." Life imprisonment is a deprivation-of-liberty penalty, resulting in the convicted individual being stripped of freedom.*

*Article 76, Paragraph 1 of the **Juvenile Care Law** specifies the legal measures for a juvenile (boy) who commits a felony punishable by life imprisonment. The provision states: "If a boy commits a felony punishable by life or fixed-term imprisonment, the Juvenile Court shall, instead of the legally prescribed penalty, impose one of the following measures:*

- 1. Hand him over to his guardian or a relative under a financial guarantee determined by the court according to his financial capacity, to implement the court's recommendations to ensure proper upbringing, good conduct, and prevent the commission of another crime, for a period of no less than one year and no more than three years.*
- 2. Place him under behavior supervision in accordance with the provisions of this law.*
- 3. Commit him to a boys' rehabilitation school for a period of no less than six months and no more than five years."*

## CONCLUSION

**Fundamental Finding :** This study demonstrates that while both Iraq and Lebanon have taken important steps toward establishing juvenile justice systems, significant shortcomings remain in their substantive protections, particularly regarding recidivism, sexual exploitation, and the clear differentiation between delinquent and at-risk juveniles. **Implication :** These findings underscore the urgent need for legislative reforms that align national laws with international standards, strengthen preventive and rehabilitative mechanisms, and provide comprehensive safeguards that support the reintegration of juveniles into society. **Limitation :** However, the study is limited by its reliance on doctrinal and comparative legal analysis without incorporating empirical data or perspectives from judicial practitioners and affected juveniles, which may restrict the practical depth of its recommendations. **Future Research :** Subsequent studies should integrate empirical investigations, such as case analyses or interviews with stakeholders in juvenile justice systems, to enrich the understanding of how legislative provisions are applied in practice and to design more effective, context-specific reform strategies.

## REFERENCES

- [1] Al-Kafai Al-Sayyid Mar'i, *The Strategy of Combating Human Trafficking Crimes: A Comparative Study*, 1st ed. Dar Al-Nahda Al-Arabiya, 2009.
- [2] H. Madi, *Principles of Criminal Trials*, 2nd ed. Sader Legal Publications, 2002.
- [3] Z. A. Awwin, *Juvenile Justice: A Comparative Study*, 1st ed. Dar Al-Thaqafa, 2003.
- [4] S. Abdel Moneim, *Principles of Criminal Procedures: A Comparative Study*, 1st ed. Al-Hilli Legal Publications, 2005.
- [5] S. M. Abdel Hamid, *Juvenile Delinquency from a Sociological Perspective*, 1st ed. Dar Al-Fikr Al-Arabi, 2005.
- [6] A. H. Foda, *Exemption from Criminal Liability in Light of Jurisprudence and Cassation Rulings*, 1st ed. Dar Al-Matbouat Al-Jami'yah, 2005.
- [7] A. M. Al-Isawi, *Motives of Crime*, 1st ed. Al-Hilli Legal Publications, 2004.
- [8] A. B. Al-Hijazi, *Juveniles and the Internet: An In-Depth Study on Juvenile Delinquency Online*, 1st ed. Dar Al-Kutub Al-Qanuniya, 2007.
- [9] A. Shams Al-Din, *Principles of Criminal Trials*, 1st ed. Al-Hilli Legal Publications, 2001.
- [10] A. Al-Qahouji and S. A. K. Mahmoud, *Principles of Criminology and Punishment*, 1st ed. Al-Hilli Legal Publications, 2010.
- [11] A. Y. M. Mousa, *Juvenile Delinquency*, 1st ed. Nawabigh Al-Fikr, 2009.
- [12] K. M. Sofi, *Selected Legal Principles in the Court of Cassation of Kurdistan and Iraq (Juvenile Justice)*, vol. 1, [Publisher not listed], 2013.
- [13] M. M. Al-Qadi, *Criminology and Penology*, 1st ed. Al-Hilli Legal Publications, 2013.
- [14] M. Y. Q. Al-Najjar, *Children's Rights Between the Legal Text and Reality and Their Impact on Juvenile Delinquency: An Applied Study in Legal Sociology*, 1st ed. Al-Hilli Legal Publications, 2013.

- [15] M. Y. Q. Al-Najjar, *Children's Rights Between the Legal Text and Reality and Their Impact on Juvenile Delinquency: An Applied Study in Legal Sociology*, 1st ed. Al-Hilli Legal Publications, 2013.
- [16] M. K. Abbadi, *The Meaning of Participation in Terrorist Crimes: A Comparative Study*, 1st ed. Al-Kitab Press, 2019.
- [17] N. K. Al-Jurani, *Capital Punishment in Arab Laws*, 1st ed. Dar Al-Hamed, 2009.
- [18] N. S. Abdel Aziz, *Criminal Liability of the Child*, 1st ed. Dar Al-Fikr Al-Arabi, 2017.
- [19] H. A. K. Ban, *Juvenile Delinquency in Iraq*, Doctoral dissertation, College of Law, University of Baghdad, Iraq, 1999.
- [20] J. N. Alaa, *Criminal Liability of Juveniles in Iraqi Legislation*, Master's thesis, Faculty of Law, Mansoura University, Egypt, 2016.
- [21] M. J. Hato, *Juvenile Measures in Iraqi Law*, Master's thesis, University of Baghdad, Iraq, 2004.
- [22] A. M. Salman, "Criminal policy regarding juvenile delinquency in terrorism crimes," paper presented to the Higher Institute for Security and Administrative Development, part of the requirements for the diploma in criminal law, [Country not listed], 2018.
- [23] A. M. Salman, "Criminal policy regarding juvenile delinquency in terrorism crimes," paper presented to the Higher Institute for Security and Administrative Development, part of the requirements for the diploma in criminal law, [Country not listed], 2018.
- [24] K. A. Al-Tamimi, "Juvenile delinquency and their trial procedures," paper presented at the First Scientific Conference of Diyala University, College of Law, Iraq, 2009.
- [25] R. Khalil, "Sexual exploitation crimes against children via the internet: A comparative legal study," *Al-Fath Journal*, vol. 27, Diyala University, College of Law, 2006.
- [26] A. B. A. Al-Harqan, "Rights of juvenile defendants in the Convention on the Rights of the Child," *Arab Journal of Security Studies and Training*, vol. 27, no. 52, Naif Arab University for Security Sciences, Riyadh, 2010.
- [27] M. S. Al-Amin, "Opinions and observations on juvenile justice in Iraq: Analytical study of the Juvenile Law," *Ahl Al-Bayt Journal*, vol. 5, University of Ahl Al-Bayt, College of Law, Baghdad, Iraq, 2005.
- [28] Republic of Iraq, *Constitution of Iraq*, 2005.
- [29] Republic of Iraq, *Juvenile Care Law No. 76*, 1983.
- [30] Republic of Iraq, *Penal Code No. 111*, 1969.
- [31] Republic of Iraq, *Code of Criminal Procedure No. 23*, 1971.
- [32] Republic of Lebanon, *Constitution of the Lebanese Republic (amended)*, 1926.
- [33] Republic of Lebanon, *Juvenile Protection Law No. 422*, 2002.
- [34] Republic of Lebanon, *Penal Code No. 340*, 1943.
- [35] Republic of Lebanon, *Code of Criminal Procedure No. 328*, 2001.



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