

**DISPUTE RESOLUTION OF OFFENCES COMMITTED BY
JUVENILES UNDER OMANI LAW**

حل المنازعات في القضايا التي يرتكبها الأحداث الجانحون في القانون العُماني

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Abstract:

Although Omani law contains provisions on amicable settlement of disputes, it has clearly neglected offences committed by juveniles. There is only one law that applies to both adults and juveniles. Nevertheless, the latter should be given more

attention and care to spare juveniles from the complexity of trials that may have a bad impact on them. The present research aims to achieve a number of objectives which include defining the concept of juveniles and juvenile law under Omani justice system, presenting a dispute resolution system under the Omani judicial system which relates to juveniles for both criminal and civil offences and suggesting ways to improve its function. The research is based on a set of research methodologies. The research adopts an inductive approach by extrapolating legal articles concerning the settlement of disputes under the Omani legal system. Moreover, the research also adopts an analytical approach to analyze the general principles and rules of Omani law in the settlement of disputes related to juveniles. Finally, a comparative approach is taken when required.

A comparison is made with Islamic law. The study concludes that there are legislative shortcomings of Omani laws in the settlement of disputes of offences committed by juveniles. The shortcomings need to be resolved by enacting laws that require amicable settlements in juvenile cases by a judge compelling a victim to settle amicably before resorting to a court. In addition to this, a special body should be established which is concerned with the amicable settlement of disputes involving juveniles.

Keywords:

Dispute Resolution, Offences, Juveniles, Omani Law

الملخص:

رغم إحتفاء المشرع العماني بوسائل وأنظمة حل المنازعات ودياً إلا أنه أهمل ذلك بشكل واضح فيما يتعلق بتسوية المنازعات في القضايا التي يرتكبها الأحداث الجانحون مطبقاً في ذلك ذات القواعد التي طبقها على البالغين، في حين أن الأحداث فئة خاصة يجب أن يوجه إليها اهتمام وعناية أكبر لتجنيبهم عناء المحاكمات وتعقيدتها التي تخلف أثراً سيئاً على الحدث.

ويسعى البحث إلى تحقيق جملة من الأهداف تتمثل في التعريف بمفهوم الحدث وقضاء الأحداث في القوانين العمانية، وعرض أنظمة حل المنازعات لقضايا الأحداث في النظام القضائي العماني، وبيان كيفية معالجة القانون العماني لحل المنازعات في القضايا التي يرتكبها الأحداث الجانحون في المجالين الجزائي والمدني واقتراح وسائل تحسين عملها. ويرتكز البحث على جملة من مناهج البحث العلمي، حيث يأخذ بالمنهج الإستقرائي من حيث استقراء المواد القانونية المقررة لتسوية المنازعات في النظام القانوني العماني، والمنهج التحليلي من حيث تحليل المبادئ والقواعد العامة في القانون العماني في مجال تسوية المنازعات الخاصة بالحدث الجانح، والمنهج المقارن - عند الحاجة إليه - من خلال بيان موقف المشرع العماني من حل المنازعات في القضايا التي يرتكبها الأحداث الجانح ومقارنة بأحكام الشريعة الإسلامية.

وقد خلص البحث إلى نتائج أهمها وجود قصور تشريعي في القوانين العمانية في مجال تسوية منازعات الأحداث الجانحين يلزم معها سد هذا القصور بتشريع قوانين تلزم عرض الصلح في قضايا الأحداث من قبيل القاضي كما تلزم المحنى

عليه (المضروب) بسلوك طريق الصلح قبل الشروع في محاكمة الحدث وإنشاء جهاز أو هيئة خاصة تُعنى بتسوية منازعات الأحداث الجانحين.

الكلمات المفتاحية:

تسوية، المنازعات، الجرائم، الأحداث الجانحون، القانون العُماني

INTRODUCTION

The issue of the settlement of disputes continues to prevail in modern legislation and laws. The legislations and regulations have always been enacted to govern the process of reconciliation and the settlement of disputes. Despite the fact that these laws still fall below required standards, their existence is still an advantage and commendable when they are utilized appropriately. The legislation deals with various aspects of issues relating to the settlement of disputes, whether they are related to commercial, labor, penal or civil conflicts. A great portion of the legislation deals with family law.

Despite the fact that there is a variety of legislation on the settlement of disputes, nonetheless, there is a group within society that require more attention i.e. juveniles, who are the men and mothers of tomorrow. Any nation aspiring to have a bright future should place special focus on this group.

The present era we live in is full of ideas and cultures that are distant from society's values. Juveniles are prone to committing criminal or civil offences that require their appearance in the courts. This results in the present study examining the needs of this group to resolve their disputes, to clarify the extent to which the Omani legal system addresses settlements of this kind and to compare the issue with Islamic law provisions.

The problem identified as a result of this research lies in the fact that both procedural and substantive Omani laws only provide for general settlement of disputes. Indeed, Omani laws do not provide sufficient provisions on the amicable settlement of disputes related to juveniles. The law does not differentiate between adults and juveniles, despite the fact that the latter deserve special consideration.

As a result of these legislative shortcomings, there are practical problems in various stages of court trials. Trials are slow and fast and fair justice is not achieved. Furthermore, these shortcomings may result in producing criminal juveniles. The present study will address these shortcomings and propose solutions and alternatives based on the provisions of Islamic law.

FIRST: THE CONCEPT OF JUVENILE DELINQUENTS AND THEIR TRIALS IN THE OMANI JUDICIAL SYSTEM

In order to understand the function of the dispute resolution system in Omani law in cases committed by juveniles, it is necessary to provide a brief overview of the concept of juveniles under Omani law.

The Concept of Juveniles in Omani Law

The Shariah scholars has several names for juveniles, such as minors, children, and boys or girls. It means anyone who has not reached the age of puberty. This stage begins from the time a child comes out of his mother's womb alive according to Islamic jurisprudence. This is based on a Qur'anic verse: "It is He Who has created you from dust then from a sperm-drop, then from a leech-like clot; then does he get you out (into the light) as a child: then lets you (grow and) reach your age of full strength; then lets you become old" (Surah Ghafir: 67). This verse mentioned an embryonic stage was followed by childhood from the time a human comes out of his mother's womb alive.

The age of criminal responsibility according to Islamic jurists begins from the age of puberty, which is also considered to be the end of the age of childhood. There is a conflict in the Islamic jurisprudence on two criteria of the age of puberty. The first one is an organic standard, which is concerned with the biological characteristics of a child's body and sign of a child's transition from childhood to the age of puberty, which consists of dreams, germination of hairs in a male and the start of a menstrual cycle in a female.

This criterion is realistic, which reflects changes in the body of minors. However, it is criticized for not considering mental maturity, and it is difficult to determine transitional stages of this age.¹

The second, which is an age criterion, considers age instead of a child's body and is thus primarily based primarily on determining date of birth to determine age of puberty. The jurists have different views on this. The Shafiis, Hanbalis, Sahiban from Hanafis² are of the opinion that the age of puberty is 15 years for both male and female. However, Imam Abu Hanifa believes that the age of puberty for a boy is 18 years and 17 years for a girl. On the other hand, a majority of the Malikis opine that the age of puberty is eighteen years for both males and females.³ Ibn Hazm Al-Dhaheri believes that the age of puberty would be after the age of 19 years for both males and females.⁴ Nevertheless, all the jurists agree that the calculation of age is based on lunar months.

In law, a juvenile is generally defined as a minor who has not reached the age of criminal liability.⁵ Most laws agree that a juvenile is considered liable for a crime he/she commits that is punishable by law before reaching the age of criminal liability, if he/she would be criminally liable for the act committed after reaching the age of criminal liability. On a whole, determining the age of criminal liability by law is done based on age, which starts from birth and ends at the age of criminal liability.

Omani law defines juveniles as, "every male or female less than 18 years of age".⁶ This age starts from birth until 18 years. The present article defines juvenile delinquents as "everyone who reaches 9 years of age but did not reach 19 years and commits an act punishable by law".⁷ Accordingly, a juvenile is considered an offender in the eyes of the law when he/she reaches the age of differentiating between things until reaching the age of criminal responsibility.

As a result, the researcher of the present study defined juvenile delinquents according to its concept in Omani law which is: “a minor who reaches the age at which criminal liability is incomplete. It begins at 9 years of age until the completion of 18 years.’

Based on the definition of juvenile accountability, the researcher concludes that there must be two conditions to consider a juvenile responsible for committing an offence.

Firstly, a juvenile has to reach 9 years of age but is less than 18 years of age. Someone less than 9 years of age is not considered to be an offender, even if they commit an offence punishable by law. Furthermore, a person who reaches 18 years of age is considered to be an adult.

The second condition is, the individual has to commit an act punishable by law during the said period.

Juvenile Justice in the Sultanate of Oman

Most Muslim countries, including the Sultanate of Oman, have endeavored to make Islamic legislation a general law which regulates the status of people in their transactions and behaviors.⁸ This was the case in the Sultanate of Oman until 1970, when his majesty Sultan Qaboos bin Said became the head of the country. He endeavored to modernize the country based on an institutional system governed by laws derived from the spirit of Islam which took into consideration the values and customs of society.

On February 16, 1974, Decree No. (7/74) was issued in the Penal Code which laid down the structure of the criminal system in the state. Chapter 3 (Criminal liability and punishment) of Part Three (terms of criminalization and punishment), consisted of four articles (104-107, (Rules on Juveniles)⁹ which included the rules for determining the age of responsibility and the mitigating penalties for delinquent juveniles.

In spite of this legislative development, juvenile justice was not independent. The criminal justice system continued to prosecute juvenile delinquents in accordance with procedures for the prosecution of adult offenders. However, with the entry of Oman into international conventions on juvenile criminal justice, the situation had to change. Hence the Juvenile Liability Act was promulgated, and an independent juvenile court was established, which prescribed rules of protection and care to deal with juvenile offenders and procedural rules that differed from adults.

Article 1 of the Omani Juvenile Liability Act in paragraph (f) refers to the definition of a court as “the chamber which is competent to hear the cases of juveniles in accordance with the provisions of this law. It is called a juvenile court.” It is noted from the definition under the jurisdiction of the court on juvenile cases that an offence committed by a juvenile for a crime punishable by law or a crime committed by an adult included exclusively in the juvenile liability law, which by its nature is linked to the juvenile.

Juvenile justice occupies a special place within the criminal justice system. It represents an advanced version of the criminal justice function in society. Its idea is based on the special character of a juvenile delinquent as he/she has not attained the age of criminal liability and needs to be distant from the formalities and procedures surrounding ordinary courts. The juvenile justice system is also interested in re-evaluating the deviant behavior of juveniles through corrective measures aimed at protecting and evaluating his/her behavior so that he/she will be used to taking responsibility and respecting the law.¹⁰

The juvenile court's philosophy is based on reform rather than punishment. Moreover, the evaluation procedure must be chosen after a comprehensive study of a juvenile's situation, the social circumstances surrounding him/her or the psychological factors within him/her. Thus, there are protective measures surrounding juvenile delinquents from the beginning of his/her criminal liability until his/her return and integration into society.

The wisdom behind the legislation was it wanted to provide reassurance and confidence in juveniles while keeping them away from traditional trials, prisons and custodial restrictions. A judge can be likened to a father who cares for his/her children, he cares for a child before accusing him/her of crime and cares about building society more than inflicting punishment.¹¹

The Juvenile Court is one of the Chambers of the Criminal Court and is part of the regular judicial organization. However, it has two special features which are as follows:

Firstly, the jurisdiction of the courts and the persons tried before it are juveniles, not type of crime.

Secondly, the procedures that are followed in the case of lawsuits are generally considered an exception to general criminal rules.¹²

In view of the special nature of juvenile justice, there are calls for the separation of juvenile court buildings from ordinary courts due to their own special nature and the atmosphere needed to comfort a juvenile's mind.¹³ This is a goal that has been turned away due to practical considerations and economic conditions but remains an ambitious aspiration of criminal policy to achieve full independence for juvenile justice. This is what the researcher is calling for.

SECOND: CONFLICT RESOLUTION FOR JUVENILE CASES IN THE OMANI JUDICIAL SYSTEM

Various dispute resolution systems have been incorporated into Omani legislation by the multiplicity of laws and their expansion. The laws have taken various forms of organization. Some of them are in the form of a special body for the resolution of disputes, such as conciliation and reconciliation committees, included within the regular judicial system such as judicial conciliation, as is the case with commercial and civil arbitration. It may also be included in a specific type of lawsuit, as is the case with legal arbitration between spouses. Within all of these systems, there are only two systems dealing with juvenile cases. First are judicial settlements,

a system of conflict resolution within the judicial system. And second are conciliation and reconciliation committees, which is a dispute resolution outside of the judicial system.

Judicial Conciliations

This conciliation is called judicial because it takes place after a court action and conciliation occurs during a trial. It has been defined as “a contract agreed upon by the litigants themselves and submitted to the court for approval or adoption and to make it enforceable.”¹⁴

The procedure of this action begins with a judge presenting the conciliation to the litigants, as the Civil and Commercial Procedures Act stipulates that the court should start the first session of a trial by offering reconciliation to the litigants.¹⁵ The reason for this is, the first session is often more conciliatory. After that, the details of the case are entered and reconciliation becomes more difficult. There is a dispute on whether the offer of reconciliation is obligatory or just permissible by a judge. The latest view is that it is merely permissible but not obligatory. However, the researcher believes that making reconciliation obligatory will increase the chance of reconciliation between parties. Therefore, the researcher proposes an amendment of the text of an article by making an offer of reconciliation for the parties obligatory, especially in juvenile cases.

Apart from a reconciliation offer by a judge, the litigants themselves may request the court in any case to prove what they agreed in the minutes of the meeting signed by them or their authorized agents¹⁶. If it was written what they agreed upon, the written agreement shall be attached to the minutes of the session and the contents thereof shall be approved. The minutes of the session shall in both cases have the force of an executive, and a copy should be given in accordance with the established rules for the delivery of copies of judicial decisions.¹⁷ After that, the court may issue a judgment including the prescribed form of the judgments to prove what the parties agreed upon, but this provision shall remain subject to all rules of reconciliation.

It is clear from this that reconciliation takes place before a judge. However, proving and confirming a reconciliation by a judge is not a judgment but rather a binding bond for a judge's approval according to his state authority and not his judicial power. This means that what happens before him relating to the litigants' agreement is not a judgment, because the judge does not play his legal role of weighing the evidence in order to reach a final judgment. Instead, he merely documents what the parties agreed upon.

The judicial process is distinguished by a number of features from judicial proceedings with the following:

First, the judgment issued proves that judicial conciliation cannot be challenged by methods prescribed for challenging judicial decisions, but rather by way of original case in which the decision to ratify the conciliation is invalidated for lack of capacity, mistake of fact, fraud or other reasons of invalidity.

Second, the judicial conciliation is as irrevocable as any other contract, since it is a contract between parties to a dispute. A judge confirms this contract by taking a prescribed form of the judicial ruling.

Third, the interpretation of judicial conciliation shall be in accordance with rules laid down in the interpretation of contracts, not the rules applicable to the interpretation of judicial decisions, because it is a contract not a judgment.

Fourth, a court may not ratify a conciliation except in the presence of two adversaries, because a judge is acting as a middle person, and it is not permissible to document a contract except in the presence of the parties, even if an absent party has accepted the ratification of a conciliation. Furthermore, a reconciliation shall not be ratified if it contains anything that contravenes public order or morals or is detrimental to the interests of others.¹⁸

Judicial conciliation is common with judicial decisions in that it is considered an executive bond that is implemented in the same manner as judicial decisions. The Code of Civil and Commercial Procedure clarifies executive bonds under which forced executions are carried out. It makes judgments and judicial orders a priority, followed by documents and peace records ratified by courts.¹⁹

Since the article authorizing judicial conciliation is contained in the Code of Civil and Commercial Procedure, then conciliation is valid in civil, commercial and personal status cases because the law regulates the proceedings in these cases. As for labor cases, it is also valid for conciliation to be incorporated within the law, provided that the conciliation does not affect rights recognized by labor law. The conciliation of a criminal complaint in exchange for a sum of money is considered null and void and cannot be used in criminal proceedings.²⁰ However, conciliation is allowed for financial rights arising from the commission of crime, as well as in the case of compensation for damages caused by a crime, where the amount of compensation may be reconciled.

This kind of reconciliation falls within the framework of Islamic texts urging reconciliation. Allah (SWT) said: "Reconciliation is good" (Surah an-Nisa': 12). He said again: "Believers are brothers and reconcile between your brothers" (Surah al-Hujurat: 10). And the Prophet (SAW) said: "Reconciliation is permissible amongst Muslims, except where it makes impermissible as permissible or vice versa".²¹

The researcher notes that this type of dispute settlement did not contain provisions for juvenile offenders, but it is a system that includes juveniles and adults alike.

Reconciliation Committees:

Reconciliation committees were established by Royal Decree No. 98/2005²² issued on 28/11/2005 and spread throughout Oman. A total of 46 committees were established in the states of the Sultanate of Oman²³ and all fall within the purview of the Ministry of Justice.

Reconciliation committees are considered to be a non-judicial way to resolve disputes. By extrapolating the provisions of the Reconciliation Commission Law, the researcher draws several characteristics that distinguish these committees which are as follows:

The use of these committees shall be free of charge, no matter the amount of the financial claim.²⁴

The use of the committees is optional for stakeholders.²⁵

Committees are not bound to appoint a lawyer for representation as required by the law of legal profession, if the claim exceeds a value of fifteen thousand Omani riyals.²⁶

Non-obligation on these committees to follow the Code of Civil and Commercial Procedure in terms of registration of an application, the mechanism of advertising and the use of experience.²⁷ This gives them flexibility and speed in taking action.

Non-restriction of the committees with official place and time of work.²⁸ This makes it easy for them to hold reconciliation meetings during non-official working hours.

A record of the conciliation that is issued is an executive bond which is executed in the same manner as final judicial decisions.²⁹

The committees are of a social nature.³⁰ Conflict is presented in a calm atmosphere and in an ad hoc place that is different from courtrooms away from formal procedures and trials.

Acceptance of conciliation is optional for both parties, and there is no coercion for either of them to accept it.³¹

The parties have the right to bring a claim before a natural judge directly if the parties do not reach a satisfactory settlement.³²

Article (5) of the Reconciliation Commission Law clarifies that the committee is formed by a decision of the Minister of Justice, and its composition takes three aspects which are stated in the article as follows:

Judicial formation: To be formed with a judge as a head and two other judges as members. The article gives priority to the formation of the judiciary so it is accepted by the people and so they respect the judiciary. Moreover, judges are more familiar with cases that may accept reconciliation and therefore it is consistent with correct law.

Mixed-formation: This is to be formed by the chairmanship of a judge and the membership of two experienced experts. This formation is unique, as it combines legal elements with legal expertise and competencies capable of resolving disputes.

A composition of the experienced: The committee may experience a scarcity of judges in an area, as they may be preoccupied with other judicial work. Thus, where it is necessary, the law authorizes the forming of a committee by experienced persons headed by one of them. The selection of the committee may be from experts within society, such as Sheikhs and respected individuals.

In spite of the position assumed by reconciliation committees, their jurisdiction in resolving disputes is initiated before a judiciary. Nevertheless, if a lawsuit is brought before a court, the committee is not competent to settle the dispute.³³

The committee also has jurisdiction only on specific disputes that may be settled based on reconciliation. There are three types:³⁴

1. Civil disputes: The subject matter is civil and civil transaction law applies to it.

2. Commercial disputes: Where one of the parties is a merchant or whose subject matter is commercial and governed by Trade Law.

3. Dispute in matters of personal status: These are legal issues relating to family issues such as inheritance, wills, which are governed by Personal Status Law.

Thus, the rest of the disputes cannot be settled by the commission as it is out of its jurisdiction. For example, disputes relating to the Penal Code, Labor Code, administrative matters and disputes over land titles.

It is clear from the previous statement that this system of settlement does not contain special provisions for juveniles. The researcher hopes that Omani legislators will expand the work of these committees to include criminal cases that can be reconciled especially for juvenile cases that are in dire need of settlement.

It is clear from the above that among all the dispute resolution systems in Omani law, only two systems can be used to settle cases of juvenile delinquents which are: judicial reconciliation and reconciliation committees, which include both adults and juveniles. It is clear that there is no independent settlement system, or a special committee concerned with resolving cases committed by juveniles. This is the status quo despite the urgent need for this group of society to settle their disputes and spare them from the complexities of trials that may negatively affect their personalities. This is a legislative shortcoming that Omani legislators must remedy by establishing an independent dispute resolution system, a committee or a competent body to follow the Juvenile Court. This is the proposal of the researcher to Omani legislators.

THIRD: RESOLVING DISPUTES IN CASES COMMITTED BY JUVENILE DELINQUENTS

It can be seen that cases of juvenile delinquents are heard by a special court called the “Juvenile Court”. It is clear that cases committed by juvenile delinquents are criminal cases before a special juvenile court, but civil claims arise as a result of a crime. Thus, it requires resolving disputes in criminal cases after civil cases.

Dispute Resolution in Criminal Cases

The Penal Code is defined as a set of rules enacted by a State to regulate its right to punishment, since it is the duty of a state to establish security and maintain peace within a society. Therefore, since crime is counter to it, the state must take necessary measures to combat it, and to do so criminals must be punished.³⁵ Thus, criminal proceedings are also called “Public Proceedings” which are initiated by a public

prosecutor who investigates a case and then refers it to a court as he/she represents society in combating crimes.

When a juvenile delinquent commits a crime, a special public prosecution department investigates³⁶ and provides him/her with all necessary legal guarantees and protection in preparation for his submission to a Juvenile Court. Since the crime of a juvenile is not inherent, the settlement of disputes in cases arising therefrom is inevitable, because of the inherent psychological and physical damage caused by trials. Thus, settlement in criminal cases avoids the disadvantages of freedom-related penalties because it does not involve freedom, honor or reputation, nor does it undermine the social status of a juvenile delinquent and will isolate him from criminals.

The question that arises is, to what extent can disputes be settled in criminal cases committed by a juvenile delinquent? There is a general rule in criminal proceedings that it is not permissible to reconcile crime because it is a public right of society and not of a specific person. It is also impossible to reconcile the determination of responsibility in criminal cases, since it is done by public order,³⁷ which cannot be breached.

However, there are a number of offences that may be waived, known as “complaint offences”, which take the form of personal prosecution. The Code of Criminal Procedure states that a public prosecution is only instituted on the basis of an oral or written complaint by a victim or his specific agent in offences which the law requires the filing of a complaint³⁸. There are specific crimes stipulated by the law that need the filing of a complaint from a victim for direct investigation of competent authorities to occur.

In the case of juveniles who commit crimes which require a complaint, the complainant may waive his/her complaint or request at any time to do so before deciding a case³⁹. The judge shall then issue a ruling on the termination of a public action by the complainant’s waiver.⁴⁰ This waiver often takes the form of a settlement between a juvenile or his guardian or his trustee and a victim, which will be held before a judge at a trial stage.

In the case of multiple victims, a waiver is not effective unless it is issued by all those who filed the complaint. But in a case where there are multiple complainants, a waiver of one of the complainants is considered to be a waiver by the rest. If one complainant dies, the right moves to his heirs, except in an adultery complaint where each of the children of a husband has to waive the complaint.⁴¹

The complaint offenses which the Penal Code stipulates need to be filed on the basis of a complaint submitted by a victim which are specified exclusively in the law as follows:

- The crime of committing acts of insult which are publicly committed or published against foreign Heads of State or their representatives to the Sultanate or against its flags – Article (153).
- The crime of fulfilling rights – Article (190).

- The crime of homosexuality and lesbianism if the matter does not lead to scandals – Article (223).
- The crime of adultery – Article (227).
- The crime of minor abuses – Article 247.
- The crime of abuse which includes neglect, lack of care for observance of regulations, provided that harm does not result from illness or disruption of work for more than ten days – Article (255).
- The crime of violating the sanctity of a dwelling in cases other than aggravating a punishment – Article (262).
- The crime of threatening by a weapon – Article (264).
- The crime of threats with misdemeanors – Article (267).
- The crime of threatening to inflict unjust damages – Article (268).
- The crime of abusing dignity – Article (269).
- The crime of theft for use and stealing trivial value items – Article (281).
- The crime of forging signatures or of any writing containing an undertaking or discharge by means of a threat – Article (287).
- The crime of breach of trust – Article (296).
- The crime of confinement of a missing item or any movable object entered into possession by an error or an emergency or a visible force – Article (297).

It is noted in these crimes that the personal right of a victim is clearer than the rights of society, and therefore public interest is overruled by an individual's interest, all of which are included in the Penal Code. The same rule applies to legal texts contained in other laws, for example: The crime of custom evasion contained in Customs Law where a request is required in order to trigger public prosecution⁴². If public action is brought before the issuance of this request, that action is null and void in relation to a public order as it is related to an essential condition of triggering public prosecution.⁴³

It is also noted that the general rule is that there is no requirement for a complaint or motion to initiate public proceedings. The exception is that there is an explicit provision that requires action on the basis of a complaint, request or authorization.

This is in the case of a settlement and waiver before the final judgment in a case, but the question that arises here is if a complainant waives his claim for crimes that can be waived after a final judgment, what will happen in public cases?

In this case, the law provides a solution called “pardon by the victim”, which means: “amnesty issued by a victim who suffered the crime which is material or moral”⁴⁴. This solution is considered a reason for waiving a sentence against a juvenile delinquent in a crime which involves a complaint. If an agreement is reached between a victim and a juvenile or his representative, after a final judgment against him has been made, the execution of a sentence shall be suspended.⁴⁵ If pardon is issued from a victim, it cannot be cancelled or retracted. Similarly, pardon is made on

a condition that has to be fulfilled. A pardon should include all the offenders where there is more than one and pardon is not accepted except when it is done for all of them.⁴⁶

The law did not specify a particular mechanism for this settlement. Since the reconciliation committees are not competent to settle criminal cases, and judicial reconciliation is limited to civil and commercial cases and legal proceedings but not criminal, then there is no legal provision for the settlement of this kind of dispute. Indeed, social norms and civil society institutions remain the custodians of this settlement. The researcher suggests that the committees of reconciliation should be expanded, as they are close to society and in a better position to deal with this type of dispute resolution and settle criminal disputes in complaint crimes during a trial and after a verdict.

The researcher understands that the legislator's goal of not allowing reconciliation in criminal proceedings is due to the fear of it taken as a means of business or means of enrichment without a legitimate reason. Nevertheless, the reconciliation of crimes of complaint limits this and can also be limited to restricting reconciliation in crimes committed by juveniles so that the settlement can be a means of avoiding juvenile difficulties of facing trials and penalties.

Accordingly, the researcher proposes that a special article be added in reconciliation bearing number (4, repeated) which reads as follows: The committees shall be competent to settle penal disputes that take the form of personal prosecution in crimes committed by juveniles. The reconciliation has the effect of a legal waiver prior to a judgment and may be a reason to waive a punishment after a judgment.

Dispute Resolution in Civil Cases

Crime often results in material or moral injury to a victim resulting in civil actions involving criminal claims for compensation of damage caused by a crime, which occurs in cases committed by juveniles or adults.

The Penal Code of Oman provides a general rule which says, "every crime causing physical or moral harm to a third party shall be subject to compensation by an injured party".⁴⁷ Moreover, the general rules of the Civil Code require the removal of injury from a victim regardless of the age of a perpetrator. The Civil Transaction Law stipulates that "any damage to third party requires compensation by a perpetrator."⁴⁸ This is consistent with Islamic jurisprudence which rules that "there should be neither harming [darar] nor reciprocating harm [diraar],"⁴⁹ "harm is eliminated"⁵⁰ and "harm is blocked as much as possible."⁵¹

The general rule is that any person who has suffered direct personal injury because of a crime may file a civil case before a court which examines the public case until it closes the case as a plaintiff who is bound by a public case. The plaintiff may make a claim to a member of the public prosecution during a preliminary investigation⁵². However, this principle is excluded in juvenile cases, as the Juvenile Probation Law prohibits the acceptance of a civil case relating to a criminal case before a Juvenile Court.⁵³

The law has many goals. One of which is that acceptance of civil proceedings before a Juvenile Court leads to the presence of persons not related to the interests of a juvenile, which is contrary to the principle of confidentiality of the sessions of a Juvenile Court.⁵⁴ Furthermore, this enables the Juvenile Court to devote itself full time to investigate a crime and the cases of perpetrators and assess appropriate measures for him without being distracted by civil cases.⁵⁵ In addition to this, connecting civil cases with criminal cases usually leads to the prolongation of litigation, which is contrary to the principle of expeditious decisions in juvenile proceedings. The removal of this jurisdiction from a Juvenile Court would shorten the length of litigation, which is one of the most important guarantees of a fair trial. Therefore the legislation was adopted in this direction as it aimed to separate civil cases from criminal cases, as one of the means of procedural criminal protection for juveniles. Based on the above, an offender adult or juvenile may only resort to one of the following two options:

1. Option one: The victim shall refer to the reconciliation committee to claim his right and file an application against a juvenile delinquent, his guardian or trustee, or the juvenile or one of his guardians may apply to the committee for reconciliation for the compensation amount. In this situation, a committee intervenes with its powers to settle disputes and estimate the amount of compensation that a victim deserves as a result of an offence of a juvenile delinquent. This will avoid the horror of trials, its complexities and the length of proceedings on juvenile delinquents, which is less harmful for him/her.

In order to achieve this option, the researcher proposes to amend Article (4) of the Reconciliation Law to read as: "The committees shall have the authority to resolve any dispute before a lawsuit is brought before the courts by way of reconciliation between the parties, whether the subject is civil or commercial or on matters of personal status, as well as the right to settle financial rights arising from criminal proceedings that take the form of personal prosecution in any situation of a case.

2. Second option: An injured person should go to a civil court to claim compensation by filing a claim against a juvenile delinquent, his guardian or trustee. In this situation, the case takes its usual proceedings before the courts. However, the judge may intervene in offering reconciliation to the parties in accordance with Article (99) of the Code of Civil and Commercial Procedure, which is known as judicial reconciliation or the application of reconciliation by a juvenile delinquent or one of his guardians to an injured person for amicable settlement of a dispute. In the case of a full reconciliation, this will avoid lengthy proceedings in different stages of litigation and avoid trials.

The researcher proposes to amend Article (99) of the Code of Civil and Commercial Procedures to read as follows: (The court shall begin the first session by presenting the conciliation to the litigants, and this shall be obligatory, and offending it will result in nullity of a case in which a defendant is juvenile....).

In both cases, the rules of reconciliation contained in the Civil Transactions Act, which authorizes a minor to conclude a conciliation beneficial to him, is applicable, as well as the judgment of parents, guardians and guardians of a juvenile delinquent.⁵⁶

We conclude that Omani law allows juvenile delinquents or his guardian or custodian to avoid civil proceedings arising out of criminal proceedings by submitting an application to the Conciliation Commission for settlement of a dispute to appear before it in the case of a request from a victim. Moreover, the conciliation is presented to a judge where a victim has filed a civil case against a juvenile. The two ways can settle disputes involving delinquent juveniles and avoid the length of trials and complex procedures. Thus, the failure to provide them is considered a legislative shortcoming that must be corrected. The researcher also hopes that the Omani legislators will make reconciliation obligatory in cases committed by juveniles. The researcher also hopes that Omani legislators will open a path to reconciliation in cases committed by juveniles by enacting legislation that obliges the offender and a juvenile delinquent or those responsible, to pass through a conciliation process either with a conciliation committee or before a court. This is the researcher's proposal to Omani legislators.

CONCLUSION

From the above, the researcher will conclude by summarizing the results and propose a number of recommendations.

""Results

A juvenile in Islamic jurisprudence is one who has not reached the age of puberty. But in Omani law, a juvenile delinquent is the one who has reached nine years but has not reached eighteen years and has committed an act punishable by law.

The Juvenile Court is an advanced version of the criminal justice function in society, which intends to remove juveniles from the formalities and procedures surrounding ordinary courts to protect juveniles.

Judicial conciliation is presented by a judge to parties involved or requested by parties to the dispute during an ongoing trial. In the event of its approval, it shall be given the power of an executive bond and implemented similar to judicial decisions.

Conciliation committees are a unique system that is distinguished by Omani legislation and are free from procedural restrictions present in judicial trials. Members are often wise individuals in society. A record shall be an executive bond as well as a judicial decision.

A criminal action may be waived by a victim in a complaint, and the pardon of an injured party may be a reason to waive a sentence against a juvenile delinquent.

Any crime that causes harm to another person materially or morally, upon a request by a victim, shall make an offender liable for civil compensation.

The Omani law allows a juvenile or his guardian to avoid civil proceedings arising from criminal proceedings by settling the dispute using a reconciliation commission before a judge if a victim sues a juvenile.

Recommendations

The researcher recommends that a proposal of judicial reconciliation by a judge to parties should be made obligatory. The violation of it should lead to the invalidity of proceedings, especially if one of the parties is a juvenile. It is also recommended that Article (99) of the Code of Civil and Commercial Procedure should be amended to read as: “The court shall begin the first session by offering reconciliation to the adversaries, which shall be obligatory, whose violation leads to invalidity in cases where the defendant is a juvenile....”

The researcher recommends separating the buildings of juvenile courts from normal buildings for adults due to the special status of the juvenile justice system.

The researcher recommends the establishment of an independent body or special committee to follow the Juvenile Court or any other body whose task is to settle criminal and civil disputes in cases committed by juvenile delinquents.

The researcher recommends expanding the work of reconciliation committees to include criminal cases that can be reconciled in juvenile cases by adding a special article in the reconciliation law with the number (4 repeated) which reads as: ‘The committees shall be competent to settle criminal disputes that take the form of personal prosecution in crimes committed by juvenile delinquents. The reconciliation has the effect of a legal waiver prior to a judgment and a reason for waiving a sentence after its issue.

The researcher recommends that jurisdiction should be given to reconciliation committees in civil proceedings arising from criminal cases involving juveniles by amending Article 4 of the Reconciliation Act to be read as follows: ‘The committees are competent to resolve any dispute – before instituting a lawsuit on it – whether the subject matter of the dispute is civil or commercial or related to a personal issue, as well as financial rights that arise from criminal proceedings that take the form of personal prosecution in any situation of a case.

The researcher recommends that reconciliation in cases committed by juvenile delinquents should be made obligatory through legislation obligating a victim to go through a reconciliation process before the trial proceedings which are heard before a reconciliation committee or the court.

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