

Prioritizing Reconciliation

The Role of Tribal Justice in Protecting the Rights of Children



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With the onset of the British colonization of Palestine, the impact of tribal justice expanded, as did the extent of its interventions in societal issues. When the Israeli occupation of the West Bank and Gaza Strip imposed its authority over all existing official institutions – such as health, agricultural, educational, and judiciary institutions, and appointed military rulers to oversee them – Palestinians sought alternatives to the occupation's criminal justice systems. As a result, Palestinian tribal justice mediators (re)appeared and have played a significant role in settling civil and criminal issues. Although the Palestinian administration has established authorities and organizations to monitor societal events and concerns and created preventative and rehabilitative mechanisms, tribal practices still have an influence today.

Similar to the ordinary legal system, tribal customs draw on a wide range of sources, such as Islamic law and customs and traditions that have evolved into social norms. In unprecedented cases relating to societal, scientific, and technological developments, tribal mediators and judges apply *ijtihad* (independent reasoning) and tribal justice precedents. Because the intention is to elicit proper

behavior and reconciliation, a person who administers tribal justice and applies its laws and customs is called *muslah* (reformer).

Tribal justice employs a variety of methods of proof, including explicit recognition, witness testimony, oaths, evidence, inferences, and peremptory judgments made by ordinary courts. Ethics, customs and tradition, and social norms all play a role in shaping tribal justice. They seek to protect the social fabric, which includes keeping high moral standards, ensuring equal rights for all citizens, and maintaining peace. Thus, its rulings are often seen as a moral obligation that must be met. Anyone who acts contrary to or in defiance of tribal justice is subject to social exclusion and punishment. Judgments are carried out by mediators upon whom the parties have agreed in advance.

According to traditional tribal norms, a boy is regarded as a minor until he reaches puberty, or age 16, and a girl is considered a minor until she

reaches sexual maturity. Anyone above this age is presumed to be of sound mind and legal capacity. Thus, if minors are accused of a wrongdoing, their testimony will not be considered. Instead, their legal guardians must listen to them, admit to a misconduct on the child's behalf, or deny the accusation and declare that the child is innocent. But the guardians' input is sought solely for the purpose of testifying.

According to tribal justice, the rights of any child, whether male or female, are protected. Because children are incapable of defending themselves, any violation of their well-being or assault against them is met with societal condemnation. Severe punishment and large financial penalties are placed on the perpetrator, especially in situations of sexual abuse. In severe cases, punishment may include the eviction of the perpetrator from his house or area. Moreover, reparation payments can be imposed that may exceed the value of blood money,* and financial

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Hathaleen School in Khirbet al-Daraj, Hebron.
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compensation may be demanded by the extended family and involve relatives up to the fifth degree of kinship.

Children who face tribal customs tribunals have no right to represent themselves, nor do they have autonomous rights to enter into economic contracts, job agreements, or other forms of partnerships. In contrast, the guardians may authorize and annul an agreement made by minors without accepting responsibility for any damage incurred as a result, particularly if the agreement had been made without their knowledge or in their absence, and the other party is regarded as the one who lured the minor and thus the first person to lose.

The penalties for crimes committed by minors are usually restricted to monetary compensation that is to be provided to the victim by the offender's family, which means that it does not exceed restitution for the harm caused by the offender. In situations of recurrence, however, in order to discourage and stop misconduct, the minor's family is required to pay a fine proportional to the severity of the crime. When dealing with killings perpetrated by minors, confidentiality tends to be

maintained to protect the parties' reputations. In most petty crimes perpetrated by minors, such as theft, tolerance is stressed as a means of preventing delinquency and to give the child the chance to repent and give the family the opportunity to correct the behavior. As a consequence, victims' rights to higher compensation, punishment, or even reimbursement might be lost to protect the child – which is very different in cases when perpetrators are adults. If the Bedouin victim does not keep the privacy of the case, he will be punished.

A number of drawbacks are associated with tribal justice interventions. For instance, individuals above the age of 15 years are regarded as adults when they commit crimes and assaults, whereas in the court system they are considered adults above the age of 18 years. Also, minors are denied the right to express their opinions or defend themselves, and victims' rights to higher compensation are frequently lost. Moreover, cases administered by tribal justice may not make it to criminal justice institutions for investigation, as families may decide not to disclose the case in order to prevent a child

from having to go to juvenile jail where he/she would interact with and might be influenced by hardened criminals and delinquents. Social workers and specialists do not get the opportunity to intervene and correct conduct. Furthermore, minors and their families may suffer injustice and at times may commit to the plaintiff party simply for fear of the child's being arrested and incarcerated. In addition, tribal justice *musalaheen* (reformers) are not concerned with changing the conduct of minors and do not help them reintegrate into society because they consider this task to be the obligation of the child's family.

Another drawback with the administration of tribal justice is that sometimes, by mistake, cases might go public, for example, when compensation is being paid to an extended family. This could cause social stigma and typecasting for minors who have committed a crime, which in turn might encourage the child to deviate and resume or perpetuate criminal behavior. Furthermore, in tribal justice rulings, collective penalties are inflicted on the extended families of minors who commit crimes. And finally, imposters could abuse the situation to enrich themselves and follow their own agenda rather than rule in the best interest of the child.

Nevertheless, clan tribal intervention in the cases of minors has a number of advantages, including the possibility of dealing with some cases confidentially, the speed with which issues may be resolved, and the relatively affordable expenses

and simple nature of the procedures. Moreover, it is typically possible to achieve forgiveness, tolerance, and a restoration of good ties between the parents of the children. The unofficial function that *musalaheen* play in the process of facilitating acceptance of the ruling or solution is especially helpful because the parties select their own representatives.

Musalaheen are in contact with and acknowledged by the judicial system, and there is coordination and communication in cases of minors. The legal system recognizes tribal rulings, solutions of disputes, and compensation agreements. The latter may even lead to the dismissal of incarcerated persons. Moreover, because *musalaheen* are recognized as guarantors of rights, legal-system officials can fulfill their responsibilities and support competent authorities as they follow up on, reform, and correct criminal conduct and misbehavior. This ensures a positive community approach to rehabilitation and the correction of behavior.

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Diyeh is the compensation that a perpetrator must pay to the family of a victim who has been murdered. It is a huge amount of money. But in cases of sexual assault of a minor, tribal justice imposes fines that can be up to four times larger than the amount imposed for murder.