



Survey on Children Criminal law's changes in new Islamic Penal code Regarding international Recommendations

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Abstract

People are obliged to do commitments and compensate losses to others. People are also responsible about penal affairs and complications of criminal acts and omission. Responsible means "complications acceptance of an action" and person in responsible is the person who has commitments to do against someone and in case of commitment break, he will be punished by law. So, commitments are always with obligation. In penal law, the content of obligation is acceptance of effects and complications of committing a crime. The main goal of this study is, Survey on children criminal law's changes in new Islamic penal code regarding international recommendations in current study we pay attention to international children for better understanding of these rules to collect penal substantive and formal children laws, we also regard the new Islamic penal code and its derived rules from international conventions.

Keywords: Children, criminal law, Islamic penal code.

Introduction

Children penal code and its characteristics: Every penal action must be verified in penal law region. But there are special rules and laws to apply for children and teenagers committed a crime and we should not call the "criminal" and we should call them "the person against law" and help them to return to the society and feel that the government is not only a punisher but also a supporter¹. If the children committed a crime believe that no criminal tag will be attached to him, he will try to amend himself much more and better².

Chapter one - There have been always some goals in children punishment such as, amending, rehabilitation and social reaccepting among lawyers and experts³. Rehabilitation of children committed crime is a new goal of punishments and there are few comprehensive description and authors try to study on this issue⁴. As it was mentioned above, amending and rehabilitation are main goals in children punishment⁵. Bernard Bouloc believes that punishments should lead criminals to follow social rules and return to the usual life⁶. Rehabilitation has been done when the person does not commit a crime again and return to a healthy social life⁷. So, rehabilitation means social amend and in rehabilitation process society is the center of attentions not the person committed crime. Maurice Cusson believes that rehabilitation is based on personalizing he claimed that punishment is appropriate reaction to the criminal's action to amend and return him to the life⁸. He also believes that rehabilitation means creation some mental balance for the criminal and this issue will be done by family, occupation and social adjusting of the criminal.

He also said that criminal rehabilitation should be appropriate

with crime he committed.

There have been many studies carried out to find the best way to rehabilitate criminal children and applying punishments such as suppression or social banishment do not work anymore and create irreparable damages to the society⁹. So, today the main goal of punishments application is rehabilitation especially for children committed crimes, because children's character is very flexible and amendable. Family, friends and living place have great effects on children and their criminal actions to the society¹⁰.

Chapter two: avoiding harsh punishments and abatement considerations about criminal children

There were two different approaches for child crime in past century: judicial-penal approach and supportive-adjust approach. The first approach looks at criminal children as an aberrant who deserve punishments. The only mild punishment in Iran is cultural development centers for children¹¹. Some of these centers are located close to the prisons and lack of primary facilities such as, sport center, learning centers and dining room make those places like a prison. Being far from families and learning centers may lead to serious and tough damages for children. Results show that adolescents after getting free from cultural development centers become a professional criminal who continues the way of committing crime¹². Here we offer some new and useful legal establishments to understand and apply the best rehabilitation and punishment abatements:

To use the word of criminal children and adolescents center instead of children court.

To establishing local committee includes of guardian officials, social assistants, and hygienic services and education agents to amend criminal children lives.

To keep criminal children in their families and provide consulting classes.

To along social assistants with the criminal adolescents from the beginning to the end of the program.

To take advantage of training coaches to return criminal children to a normal and healthy life that I the best meaning of punishments abatement.

Second approach is the supportive-amend approach that considers committing crime as a reaction to lacks and necessities of the criminal and tries to provide children's needs and necessities.

Chapter three: To avoid stigmatization of children:

Tagging first described by an American-German researcher Fernard Tannenbun in his book "crime and society". He described the social role or local society in committing crime. He believed that criminal behavior begins with simple abuses such as, running from schools or breaking windows. He believed that the society does not forgive simple abuses and the adolescent is tagged in living place, he will try to find same groups as himself to feel supports and encouragement to continue committing crime. In 1963 Howard Becker in his book of deviation psychology renewed Tannenbun's theories and offered stigmatization theory¹³. Tagging or stigmatization is a process which the criminal title is tagged to the criminal by the society. This process lead to banishment from the society for the criminal and encouragement to continue criminal behaviors, and a negative identity is created for the person committed crime¹⁴. Many criminal behaviors of children arrive from playing and curiosity but adults consider those behaviors as crimes. But these considerations have negative complications for children and affect other's behavior in family and school and also young members of the family. Criminal stigmatization decreases the competency to be employed¹⁵.

The adolescents who committed a crime should not be called by the title he committed. The word of "criminal" should be used for all crimes adolescents committed. Because this word shows support and help necessity. Mentioned views are exceptionable because if we call and tag an adolescent "criminal" because of what he committed and expect him to amend his behavior, is illogical. International recommendations use the term of "children against law" and no term of "criminal" is seen in international documents¹⁶. Because puberty periods are very fragile years and tagging children with an inappropriate term may affect all their life. Children law committee says: "penal laws include rules that criminalized against law behaviors of

children which generally come from mental, social-economic problems. Street girls and boys are the main target of criminalization¹⁷. Most of the criminal actions of adolescents called "situational crimes" not absolute crimes. This issue can be derived from mentioned theories that appropriate actions according to the age, gender, behavior type and the cause are applied to criminal adolescents, we can hope amends¹⁸. Second discussion: predictable principle from Non-binding documents international children penal law. United Nations has issued binding declarations and documents about children and adolescents. So general assembly can be the reflex of global thoughts in the world¹⁹. According to the United Nations charter, general declarations are not bidding even if they have approved with unanimously. But these declarations can create a new custom providing that they unanimously have been approved. But principal declarations shall turn to treaty, this case oblige all government approved them. Repeat, is an essential element of customs and no rule become a custom without repeat. So, Non-binding supportive rules such as Beijing or Riyadh rules can offer useful patterns to the governments for legislation of appropriate children penal law²⁰.

First discussion: documents of freedom depriving punishments:

We can point at some documents about freedom depriving punishments; such as supportive rules of United Nations about deprived children from freedom. 7th congress emphasized on necessity of adjusting monitoring rules to support deprived children from freedom. In 1986 economical-social committee asked the general secretary to prepare a report of struggles and improvements for adjusting supportive rules. In 1990 the declaration has been approved. The declaration includes four parts and 87 articles. This declaration called Havana rules and its rules are compatible with the character, age and crime type and also mental and physical condition of the adolescents committed crime. Every depriving place (prison) must have a library with new journals and books, both educational and entertainment types. In resolution of 45/113 issued in general assembly in 1990, the committee asked all member states to consider all rules with prisoners.

Second discussion: Non-depriving of freedom punishments documents:

The disadvantages of freedom depriving punishments and imprison systems in rehabilitation of criminals decrease applying these kinds of punishments. Short term prison is causing offence and criminal record and costs families very much, so short term prison is the last and worst way to punish criminals. Decreasing issued sentences for short term prison is a practical way to decrease short term prisoners and replacing an appropriate policy. Decreasing of prisoners and freedom depriving punishments is an important purpose of governments. Overcrowding of prisons makes prison management hard. Declaration 16th of prediction and rehabilitation congress of

United Nations has been allocated to decrease prisons population and social rehabilitation of criminals. The declaration suggests increasing of Non-depriving of freedom punishments sanctions to decrease prisons population. It has said that Non-depriving of freedom sanctions is easier than depriving freedom punishments. If Non-depriving of freedom sanctions applied more frequently, government will be able to manage depriving freedom punishments better. Applying fines or social services instead of imprison can increase incomes.

Applying depriving freedom punishments has its problems as it mentioned before, but not applying them may increase recidivism. A study in Nederland shows that 42 percent of criminals sentenced to social services and 54 percent of criminals sentenced to prison committed recidivism in a three years period. So the 1-10 rule of minimum code of United Nations suggests monitoring of Non-depriving freedom punishments for those who show inclination to recidivism. Most searches and tries on this affair have been carried out in Europe by approving declarations and recommendations and replacing appropriate policies to freedom depriving punishments. In the first five years congress of the United Nations, the minimum code of behavior (corrective) to prisoners was approved unanimously in 1955 and it subsequently was approved in the social-economical committee in 1975. Prison replacements were considered in declaration 8 of congress 6 in 1980, and decreasing of prisoners was considered an important affair in declaration 16 of congress 7 in 1985. The contents of minimum code of the United Nations were studied and approved in inter-regional meeting of Tokyo 8th congress. It subsequently was approved in 8th congress of general assembly of the United Nations in 1990. Beijing rules include an endless chain of Non-depriving freedom punishments that are mentioned in children rights convention. These rules and rights are about application of penal justice of the children and were accepted in 7th congress in 1985 and were approved in general assembly. The Beijing rules consider freedom depriving punishments as the last solution. In the 9th congress and in declaration of "children as crime's victims and perpetrator" there are suggestions to replace appropriate solutions instead of freedom depriving punishments. The first united nation's congress of crime prevention and criminal amending was disposed in Geneva. The subject of the congress was criminal amending and prison's facilities. The congress approved minimum rules code for prisoner's rehabilitation afterward it was accepted by economical-social committee and then it was considered as the pattern to collect rules, methods and international principal of management of penal justice.

Second season: Characteristics of children criminal law in new Islamic penal code compared with the previous

The most important goal of separation of children procedure from adult and establishment of children court is recidivism prediction. New Islamic penal code is more modern than the previous one and it considers children as flexible and fragile

human and has adopted wiser solutions. First discussion: acceptance of scaled penal system for children and adolescents. In the previous rules and laws the age of criminal responsibility was the religious age. This age (9 years old for girls and 15 years old for adults) was not compatible with international children rights documents and it was not wise as well to consider 9 years old little girl committed a crime as a professional criminal because children and adolescents are fragile and also flexible and can amend their behaviors with training. In the new penal code the age of criminal responsibility is still religious age but the legislators predicts some moderator rules for children under 18 according to the crimes type. The new penal code also considers the gender of the criminal to apply Qisas (nemesis). But in deterrent punishment there is no gender consideration.

Predicted punishments for children in the new penal code

There are changes in the new penal code which should be studied precisely. The new penal code divides children and adolescents in four categories:

Children under 9, Children between 9 to 12, Children between 12 to 15, Adolescents between 15 to 18.

Mentioned categories are complete, when they are combined with separated punishments. For a better understanding of criminal responsibility age and punishments for children below 18 years old sentenced to death or penal restriction (Hudud) we prepare 8 theories as follows:

Children below 9 years old committed a minor crime: in this situation there is no criminal responsibility age or safeguarding measures.

Children below 9 years old (religious age for boys is 15 years old) committed hadd crime: in this situation if the criminal is a boy, he will be delivered to his family with obtaining commitment and there will be communication restrictions for him and regular psychologist appointments. For girl below 8 years and 10 months (religious age for girls is 9 years old) is same as boys.

Children between 9 to 12 years old committed a minor crime: in this situation the court will apply safeguarding measures such as obtaining commitment from the family and or short term training and communication restriction.

Children between 9 to 12 years old committed hadd crime: in this situation if the criminal is a boy, he will be delivered to his family with obtaining commitment and there will be communication restrictions for him and regular psychologist appointments. For girls between 9 to 12 years old as they get to religious age may be sentenced to nemesis or penal restriction.

Children between 12 to 15 years old committed a minor crime: in this situation courts may apply minor crime rules or put them under take of the training and rehabilitation centers for 3 months to one year and there is no difference between girls and boys.

Children between 12 to 15 years old committed hadd crime: in this situation, gender religious age are important and they are the reason of differences between sanctions. If the criminal is a 14 years and 7 months old boy the court may put him under take of the training and rehabilitation centers for 3 months to one year. If the criminal is a 15 years old boy or a 13 years old girl, the court may sentence them to death or nemesis.

Adolescents between 15 to 18 years old committed minor crimes. According to the crime's level and type, the maximum punishment is five years living in training and rehabilitation center, or 2 years living in training and rehabilitation center or working free for public services and fines. There is no difference between girls and boys in this situation.

Adolescents between 15 to 18 years old committed had crime. In this situation criminal is deserved religious punishment as he/she passed the religious age and she/he is qualified criminal responsibility. So all girls after 9 years old and all boys after 15 years old are qualified criminal responsibility and in case of committing hadd crimes, they will be sentenced as adults and no safeguarding measure will apply for them.

The new Islamic penal code has considered some exceptions which will result in safeguarding measure. Article 90 of Islamic penal code says: if a 17 years old commits murder, adultery or sodomy, if the coroner accepts his/her mind's growth he/she will be sentenced to death or religious punishment.

Age and criminal responsibility age in the new Islamic penal code

The legislator considered religious age as the criminal responsibility age (9 years old for girls and 15 years old for boys). The Iranian criminal policy about criminal responsibility age is absolutely in conflict with all international rules and scientific founds. Article 49 of Islamic penal code approved in 1991 considered no criminal responsibility for children below religious age. Article 50 of the law approved in 1991 said: if children below religious age commit murder or battery, the parents or the guardian is responsible to compensate. But about property and any damage to other's property, the criminal himself/herself is responsible to compensate. The age of criminal responsibility in Iran is not even enough to distinguish between simple affairs and can't be enough to understand social affairs either. In many cases there need turning to higher age to obtain some rights such as 18 years old to obtain driving license or 15 years old to take part in elections?

There are not same comments between jurisprudents. Ayatollah Saneie said that 13 years old is the religious age. Ayatollah

Marefat believes that the age of puberty may be different in different people. A survey on Quran verses show that no fixed age has been mentioned in the holy book. Ayatollah Mojtahedi said: puberty is a developmental phenomenon and no fixed age can be described for it. In the new Islamic penal code the legislator tried to moderate punishments by categorizing crime types and age. But believing in religious age leads to a big paradox. A 14 years old boy is considered as an immature criminal, but a 9 years old girl is considered as a mature criminal who deserves even hard punishments and this is the paradox of justice in Islamic penal code of Iran. Because article 146 of the new Islamic penal code flatly states: age of puberty for girls is 9 years old and for boys 15 years old and this is gender discrimination for girl, according to the international documents the age of criminal responsibility is 18 years old for girls and boys both. According to the article 1 of children rights convention, child is a human below 18 years old. Article 4 of the declaration says: punishment rules and all rehabilitation laws should be applied without any gender, nationality, political beliefs, religion or age and language discrimination. This rule has been emphasized in special procedure of adolescent (Beijing rules) and also in other rules such as, clause 2 of article 17 of Beijing rules and clause 5 of article 6 of international civil law covenant and clause A of article 37 of children rights convention.

Cancellation of physical and life depriving punishments

"Mommy they want to execute me, I can imagine the gallows, mommy please save me I want to see you again, Mommy please save me for God's sake"

They were last words of executed girl for her mother in 2009. We all know and believe that executing immature people is an inhuman action because children and adolescents can be rehabilitated and return to social life. Shirin Ebadi the winner of peace prize Nobel said: there will be no change unless sentence to death is cancelled. The article 90 of the new Islamic penal code is the most controversial one of the code. According to this article if children below 18 years old committed murder and there be misgiving about his/her mind maturity, no sentence to death will be applied for him/her. With looking at international documents we can find that death penalty for children is an inhuman and illegal action. Iran is commitment to follow this rule because it has signed the children rights convention and the convention was approved in the congress in 1993. According to the article 37 of the convention, long term prison or life in prison and sentence to death for people below 18 years old is illegal. The new penal code has stranded into contradiction of religious age and age of puberty. But the new penal code is much better and wiser than the previous one.

Conclusion

Regarding mentioned issues it should be mentioned that: first, The previous penal code expressed criminal responsibility age

with religious age and girls after 9 years old and boys after 15 years old obtained criminal responsibility. But it was incompatible with international rules. Although the article 49 of the previous penal code considered no criminal responsibility for immature people but there were some punishments such as lash in article 112 and 113. Second, Rehabilitation and communication with criminal children should be done warily and mildly. Because harsh and aggressive behaviors may decrease the efficiency of the rehabilitation. Children rehabilitation with justice and fair rules will be so efficient. Third, the age of puberty is determining gradually in the new penal code and appropriate responses to the criminals can be applied gradually as well. Fourth, there was different religious age between girls and boys in the previous penal code and it has been considered in the new penal code as well. The injustice is that 9 years old girl in case of committing crime will be sentenced to death while a 9 years old boy will not because he has not reached to 15 and the religious age and only educational and safeguarding measures will be applied for him. Legislators should have considered psychological characteristics of girls and applied milder rules. Fifth, there is still death punishment for children below 18 years old if the coroner accepts mental growth of the criminal. If an adolescent below 18 years old commits murder, he will not be sentenced to death only if the court accepts he could not understand the nature of the crime that time. And if he could he would be sentenced to death. Sixth, the new penal code considers an institution for postponement of sentences of children which did not exist in the previous one. Seventh, Article 93 of the new penal code predicts commutations for criminal children even the punishments can be decreased to half or safeguarding measure applied for them. The level of commutation was not clear in the previous penal code but it is in the new one. Eighth, Commutation of religious punishments is not allowed yet. In note 2 of article 115 of the new Islamic penal code does not allow to any commutation for religious punishments and it is not clear if it only includes forbidden actions in the religion rules or not? One of the defects of the new Islamic penal code is these kinds of restrictions for children below 18 years old.

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