

Investigation of criminal responsibility and punishment of minors in schools Khamse religious Act 2014

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ABSTRACT : The most important topics in the field of jurisprudence and legal issues related to the criminal liability of minors. This is the law and the rights of ideas have been different. Due to the fact that human rights issues are also raised several challenges in this regard. It is essential to deal with. In this treatise of criminal responsibility for children's rights perspective Khamse religions and emphasized the Penal Code in 2014, which made significant changes to the criminal liability of children are discussed. The infancy stage, and having no power or characteristic in determining the criminal responsibility of children is important. In this regard, we can say that in general the lack of distinction between child and criminal liability of any kind tolerates impunity. But the distinction is that the child is able to understand and distinguish between good and evil good and evil deeds know his criminal responsibility is relative. Correctional penalty is applied to him that one of the purposes of child discipline, prevention and prevention of re-committing. Training and refinement rather than punishment measures can they be involved in the prevention of crime. Children in Islamic criminal law, according to Islamic tradition, removal of criminal liability, as well as training and education in children's literature prior to discipline and punishment, he must also punish children. The act or behavior is undesirable for the child after her ugliness was clear, committed and disciplined execution, have individual differences and the age and physical condition of children is also considered, then non-adult Tom reprimanded them.

Keywords: criminal responsibility of minors, religions Khamse, IPC, 2014

Introduction

Penal responsibility is the responsibility for committing one of the crimes stipulated in law for which the responsible person will undergo one of the punishments prescribed by law. Therefore, in this case responsibility refers to accepting the criminal burden, sanctions and penalties considered for a criminal act, therefore if one is not responsible for a criminal act, they will not be punished. According to The Islamic penal system and its anthropological principles, the effect of internal and external forces in human criminal behavior is completely recognized, however, no one is believed to be forced to perform a criminal act, rather it is believed that after individuals reach intellectual maturity in adulthood, they turn into an intellectually perfect entity and this new characteristic gives them conscience and freedom and consequently obligation and responsibility. According to this school of thought, adult, sane, and free men are subject to penal responsibility. In order to hold someone liable for a criminal act, we should be able to attribute a crime to them, however this requires specific conditions, for example the person's age, physical development status, and sense of discernment should be at the required level to enable him/her to foresee the consequences of a criminal act or volunteer to do that. Certainly, puberty and various consequences associated with that in both individual and social life, are accounted for in

Islam more extensively and precisely than any other religion or by any thinker of ancient times, to the extent that the holy Quran refers to majority with three different terms: Puberty (Noor 59), the maturity of intellect (Nisa 6) and the prime maturity (Joseph 22 and Qesas 14) indicating the importance of this topic as well as the mental, physical and legal aspects and consequences of puberty and maturity levels. In Islamic jurisprudence, and the Ja'fari jurisprudence in particular, the signs associated with puberty and gender segregation has long been the subject of comprehensive and detailed studies. Attempts are also made in the present thesis to discuss this topic adequately. In the contemporary world, Maturity health as well as the social and behavioral relations resulting from that have become one of the important yardsticks for measuring the development of societies. In addition, numerous conferences have been held and various international documents have been approved in this regard, the most important examples of such conferences include the International Conference on Population and Development held in Cairo in 1998 which was a turning point in addressing the puberty issues at the international level, because in this conference puberty was regarded and emphasized as a very important part of public health. Literally, "puberty" means attainment and is referred to a period of life when childhood is left behind and physical and

psychological evolution is going to take place until one reaches adulthood and experiences rapid physical and emotional changes. Thus, puberty is not an instantaneous phenomenon, but is a transient period that gradually passes over several years through various stages. The passage of this period has a direct impact on the future and fate of both individuals and the community. Though most commentators and experts are unanimous about the term “puberty” and its aspects, it is difficult to find a common theory among them. In general, the changes that individuals experience during puberty include many dimensions, such as physical, sexual, psychological, emotional, economic, social, religious and legal dimensions, each meriting detailed investigations. Religious and legal dimensions of puberty with emphasis on the capacity and penal responsibility age, is the point which is focused on and investigated in this book. One of the problems that requires detailed investigations in the current penal system of scientific research, is the issue of age for enjoying and exercising civil and political rights as well as their penal responsibilities. Multiplicity of age limits for the enjoyment of penal and civil rights and the conflict between them have led to confusion, chaos and some dire consequences. For example, according to the existing laws a 13 year old girl or a boy aged 15 can marry, but before reaching 18, they face numerous problems in terms of financial affairs or litigation to exercise their rights, such as dowry, petition for divorce, or the issuance of declaration and so on. ... Similarly, in the notary offices, age 18 is the criteria for filing documents and doing transactions, while this is not explicitly laid down in the legal texts. Similarly, individuals either boy or girl, cannot get a driver's license before the age of 18, on the ground that they have not reached maturity nor the balance between their intellectual, emotional and physical faculties. However, if a 9 year old girl or a 15 year old boy commits criminal offenses, he/she will be punished in some way, because the law expects them to think and control their behavior just like an adult person. The IPC of 2014 has largely accounted for the age of penal responsibility and has thereby resolved a lot of problems in this regard; Article 88 of this code, considers no penal responsibility for younger than 9 year old individuals who have committed a crime and considers relative penal responsibility for 9 to 15 year old individuals, in addition, according to this article, the maximum penalty for 9-15 year old individuals is three months to one year of detention at the correction and rehabilitation centers. According to Clause 2 of this article, the maximum penalty considered for the 12 to 15 year old minors for crimes resulting in hadd or qisas is the same as above (3 months to one year of

detention at a correction and rehabilitation center). According to Article 89 of this code, the maximum penalty for 15 to 18 year old individuals who have committed Ta'zir crimes is 2 to 5 years of detention at a correction and rehabilitation center. As for less than 18 year old individuals who have committed crimes resulting in hadd or qisas, Article 91 of this law stipulated that in case these individuals don't understand the nature of the crime they have committed or there are uncertainties about their intellectual maturity, they shall be, depending on their age, sentenced to the pre-determined punishments in this chapter (up to 5 years of detention in a correction and rehabilitation center). Firstly, in most cases the new code doesn't discriminate the male and female perpetrators of crimes, secondly, considering the determined punishments for less than 18 year old perpetrators of crimes, this law only considers relative penal responsibility for them, in addition, as for the crimes resulting in hadd or qisas, this code exonerates the less than 18 year old individuals from full penal responsibility. It is hoped that the present paper can to some extent clarify the vague points in this field as well as the modifications made to the laws for better protection of minors.

Statement of the Problem

Penal responsibility of children is one of the most important topics in the field of jurisprudence and Law, and since this topic has been subject to different views and theories in the field of law and jurisprudence, and given that human rights issues have raised several challenges in this regard, it is necessary to investigate this topic. The childhood stage, and presence or lack of the discriminating intellect in this stage plays an important role in determining penal responsibility of children. Therefore, we can say that at the stage when a child has no discriminating intellect, he/she shall be exempt from any penalty, but after the discriminating intellect is developed and the child is able to distinguish good and evil, he/she shall be subject to relative penal responsibility and disciplinary penalty shall be applied to him/her in order to prevent them from re-committing the crime.

In the legal regulations of the four Sunni schools, age 15 (either for girls or boys) is regarded as the age of puberty and penal responsibility. However, according to Abu Hanifa, the age of puberty is 18 for boys and 17 for girls.

In Iran, due to domination of religious rules and regulations over the positive laws and compliance of Iranian legislators with the famous idea of Shia jurists in formulation and adoption of positive laws, a certain age is considered as the basis for determination

of penal responsibility for offenders, on the other hand, due to Iran's accession to various international conventions and treaties and the need for consistency of domestic laws with the laws laid down in these conventions and treaties as well as specific definition of child in this references, and finally the conflict between the domestic laws and regulations and the provisions laid down in the treaties and conventions, Iran's penal system has been subject to criticisms in this regard (Ardebili, 2010).

In addition to Determining the age of 9 and 15 for penal responsibility of girls and boys respectively, the new penal code has tried to determine specific age limits for punishments by segregation of children's penal responsibility in case of crimes resulting in hadd, qisas or punishment and thereby determine appropriate punishment for each age level.

Therefore one major change that has occurred in this code is that with approval and implementation of the code, in case there is any uncertainty about the intellectual maturity of individuals under 18, they shall not be subject to hadd or qisas. In addition, according to this bill, the penalties for persons under 18, will be different from the penalties for those over 18, and those under 18 years of age shall be transferred to rehabilitation centers rather than being imprisoned.

The Guardian Council has made some modifications to Article 94 of this code and thereby has given some freedom to judges to postpone or suspend the punishments of the juvenile. According to thi article "In the case of all ta'zir crimes committed by young people, the court can postpone the deliverance of the judgment or suspend the execution of the punishment ". (Fathi, 2014)

In this study, while investigating the penal responsibility of minors in the five religions and the Iranian law, attempts are made to explain various conditions for realization of penal responsibility and investigate different penal responsibility ages, both absolute and relative, from the perspective of Iranian jurisprudence and law, to understand what age or criteria can be determined for applying relative and full penal responsibility, in addition, this important topic shall be investigated in the new Penal Code.

Review of literature

with investigation of the childhood concept and its start and end time and investigations of the penal responsibility age for children in ancient times as well as contemplation on the foundations of the penal responsibility age for children in the Jafari jurisprudence from the perspective of Quranic verses and hadiths, as well as the age of discretion, I came to the conclusion that puberty is a genetic process and

emerges in association with hereditary, climatic and other similar factors". The Holy Qur'an has referred to no certain age for penal responsibility and has only pointed to some criteria such as Puberty, the maturity of intellect, and the prime maturity. According to Article 49 of the IPC, children are exonerated from penal responsibility. According to Note 1 of this article, child is any individual who has not reached the Sharia adult age. The code does not define maturity age; however, according to Note 1 in Article 1210 of the Iranian civil code, the age of majority for boys is 15 lunar years and for girls 9 lunar years. (Jafari Clojeh, 2014)

According to Sadeghnia (2014) determination and limitation of penal responsibility is one of the key topics and themes of the penal code. Age of penal responsibility, and responsibility or irresponsibility of minors with relative or absolute discretion power, as well as consideration of juvenile crime causes in order to prevent them from committing crimes, which are inseparably linked with the topic of penal responsibility age of children are among the important topics in this regard.

In *Montaha-Al-matlab*, Allameh Helli writes: the age of less than nine years, is the standard age of childhood for girls because before this age, girls don't experience the menstruation blood, this is because of the fact that the Lord , created menstruation blood to feed the fetus. Therefore the menstruation blood was created for upbringing and development of the fetus in the uterus of women and girls, and girls can't become pregnant before the age of nine. Semen is created in boys for the same reason menstruation blood is created in girls. Semen is the source of fetus development and menstruation blood provides the food for the fetus growth and development, and none can be found in minors. Therefore, these factors can be a sign of maturity and the age 9 is the lowest age in which girls may experience menstruation blood (Helli, 2014).

In " *Fiqh ali a Al-madhāhib Al-khamsah*" Muhammad Jawad Mughniyah writes: as for puberty and its signs in the five religions: Imami (Ja'fari), Shafi'i, Hanafi, Maliki and Hanbali, "All these religions are unanimous on the fact that menstruation and pregnancy are signs of puberty in girls. "according to Imamia, Malikiyya, Shafi'iyah and Hanbaliyeh religions, coarse hair growing on the pubic area are also a sign of maturity, but the Hanafi do not approve that and believe that: Pubic hair is the same as other body hair and cannot be as sign of maturity (Mughniyeh, 1984).

According to Ghanei Rezaei Moghaddam (2014) the new Penal Code contains innovations in

addressing the crimes of children and adolescents. Some of the innovations are substantive and the others are formal. The substantive innovations in penal responsibility are such that a regime while accepting the for hudud and qisas offenses. The new discussions of Ta'zir penalties, have given way to considerations of appropriate reactions commensurate with the intellectual faculties of the perpetrator, as well as conversion of punitive reactions to social ones. The new penal code has also undergone many formal innovations including pre-determination of non-judicial institutions such as social workers, the existence of institutions for postponing the deliverance of judgement or suspending the execution of punishment for decriminalization and diversion purposes, which play an important role in preventing the juvenile and children from entering criminal justice systems and conversion of punitive reactions to social ones.

Objectives of the study

Investigation of the Penal Code articles concerning penal responsibility of children
Investigation of age criteria for penal responsibility of minors in the five religions

Research Methodology

This is a descriptive-analytic study. The required data in this study were collected from different related sources such as Libraries. Considering the research methodology, the notes taken from books and magazines and the information collected from them, served as the data collection instruments in the present study. After the required data were collected through note taking, the notes were classified in terms of title, subject and research chapters and the data and material obtained from different parts of the study were descriptively analyzed.

Result

As for the first research question (the five religions' views on penal responsibility of children) it was concluded that the Shiite scholars, the maturity age is characterized by capacity and responsibility, however in some matters such as financial affairs, age qualification is also taken into considerations as an additional criterion. The Shi'ite jurists have determined a specific age for maturity, but no specific age for puberty, rather they have referred to common criteria for determination of puberty.

in addition to determining age limits for maturity, the Shiite scholars have attributed the incidence of other natural physical signs to puberty, these signs include autoerotism and ejaculation,

development of coarse hair above the genitals, menstruation in girls, all leading to physical, intellectual and spiritual changes in Minors., but where the standard age for puberty is known, it would serve as the criterion. According to the famous idea of Shia jurists, boys and girls have different puberty ages. 15 lunar years of age for boys and nine lunar years of age for girls are the criteria of maturity. Contrary to this famous idea, some rare and old sayings have it that 10, 13 and 14 years of age mark the age of maturity for boys while the mark of maturity for girls is the age of 10 or 13. The above-mentioned ages are usually marked by physical development, autoerotism, development of coarse hair or menstruation, therefore these ages are known as the time of puberty onset and childhood end. In general, the incidence of these developments and natural changes in children during the ages listed above (which are different for boys and girls) are regarded as adequate and satisfactory criteria to warrant the onset of maturity in these ages.

According to common and famous idea of Shiite jurists, anyone who reaches the age of maturity (9 lunar years for girls and 15 lunar years for boys) has come to the end of childhood and has the same duties, rights and responsibilities as adults, in case such a person commits a crime, he/she shall be subject to punishment and hadd. However, to engage in financial affairs and transactions, such a person should be intellectually mature as well.

The Sunni jurisprudence follows the same procedure and includes some age differences in this regard, That is, the Sunni scholars have not pointed to any specific age for intellectual maturity, but have mentioned specific ages for puberty. However, according to the Sunni scholars there is no difference between boys and girls in terms of puberty age. In addition the age of puberty refers to the topmost possible age when natural developments such as autoerotism, menstruation and pregnancy may occur, that is 15 or 18 years of age. In Shafi'i and Hanbali schools age 15 and in Maliki and Hanafi age 18 is regarded as the age of puberty. According to Abu Hanifa, the puberty age in girls and boys is 17 and 18 respectively. In his book "al-Fiqh al-Islami and adillatuhu " Dr. Wahba Zuhayli ,a sunni scholar familiar with Law says: " from the perspective of jurists, the puberty age is marked by the emergence of natural signs such as autoerotism and periods (menstruation) or by reaching the age of 15 for girls and boys" but Abu Hanifa asserts that puberty age is 17 for girls and 18 for boys while according to Imam Malik , age 18 is the puberty age for both girls and boys. He believes that: "drawing on the Quran and sayings of the Prophet Muhammed, all the jurists are unanimous that a mature

individual is both responsible for all religious obligations and has the capacity to exercise civil rights. Therefore he/she is responsible for all the faith-related obligations associated with faith in God and the Prophet (pbuh) as well as religious obligations, as well as respect for property, life and honor of others and avoidance from sin and religious taboos. As for the capacity for exercising civil rights, in case the puberty age is associated with intellectual maturity, his/her financial possessions will be effective and the properties shall be transferred to him/her, but in case the puberty age is not associated with intellectual maturity, the financial possessions shall not be effective. According to religion, puberty is the evidence of intellectual maturity, in case proven otherwise, it will be acted upon as it is . Therefore, the condition of intellectual maturity is specific to financial possessions, but in cases other than financial possession, such as marriage and divorce, mere puberty is effective. In general, neither jurisprudence nor religious texts have determined any certain age for intellectual maturity, rather, this characteristic depends on specific nature of each individual and the family conditions in which he/she is brought up"

From the perspective of jurisprudent principles, children shall have penal responsibility if they have intellectual maturity, puberty, freedom of will and a specific age.

As for the third question regarding the modifications in the penal responsibility for children in the Islamic Penal Code 2014, the results are as follows: the IPC 2014 has undergone significant modifications compared to the previous terms of legislation. The Islamic penal code 2014 has adopted a hybrid-like approach for dealing with the minor and juvenile offenders. Although this penal code follows the same former procedure for dealing with penal responsibility, the performance bonds identified in this respect is the most important innovations in the Penal Code 2014. One chapter of this code id devoted to detailed definition of reactions against child offenders predicted, in addition a gradual and stepwise age-based model used in this penal code has given a specific diversity to the performance bonds for qisas, huddud and Ta'zir penalties.

Unique Features of children and juveniles require the penal codes to place protection-education approaches at the center of their penal policies. Although our country has always paid special attention to this important class of individuals, different legislative processes have not followed a unified trend in this regard. In the first legislative period the protection approach adopted for children and juvenile offenders, was accompanied with more common law

considerations. The basis for selection of this approach lies in the penal system model which was of great interest for our legislator. The period of this term was limited to the penal code which was practiced before the revolution. The second historical approach towards child and juvenile offenders is related to the penal policy practiced after the revolution. The first term of this approach focused on the penal code of 1361 and 1370. During this term, the legislator chose legal considerations as a model and used the religious laws based on the famous idea of jurists, to make fundamental modifications in the penal policy practiced before him. The most important parts of these modifications are reflected in the standard age of penal responsibility. Taking maturation as a criterion of penal responsibility and breaking it down into two separate parts for different child genders, leads to recognition of a differential penal responsibility between boys and girls. Theoretical critics and practical consequences were the factors that prompted the legislator to reconsider his legislative procedures. The recent approach of the Islamic penal code Legislator can be considered as the turning point in legislature. Finally, The Penal Code 2014 adopted a hybrid-like approach for dealing with the child and juvenile offenders although this penal code follows the same former procedure for dealing with penal responsibility, the performance bonds identified in this respect are the most important innovations of the Penal Code 2014. One chapter of this code id devoted to detailed definition of reactions against child offenders predicted, in addition a gradual and stepwise age-based model used in this penal code has given a specific diversity to the performance bonds for qisas, huddud and Ta'zir penalties. This is one of the implications of this process which has proved to be more consistent with individualization of punishments as well as disciplinary measures.

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