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The proportionality of crime and punishment on children gradual criminal liability

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Abstract

In this article, criminal responsibility for Gradual Children in the Islamic Penal Code of 2013 emphasizing the principle of proportionality of crime and punishment is being investigated. For this purpose, first, the terms of criminal liability, the gradual or non-existent liability, the principle of the proportionality of the offense is unfishable by definition, our legal system approach, after the adoption of the new penal code, is the age of 18, and is the end of the childhood period. As a conclusion, the Islamic Penal Code of 2013 is in a privileged position in relation to the previous laws.

Keywords: Children, Penal Code, Principle, Punishment.

La proporcionalidad del delito y el castigo en la responsabilidad penal gradual de los niños

Resumen

En este artículo, se investiga la responsabilidad penal de los niños graduales en el Código Penal Islámico de 2013 que enfatiza el principio de proporcionalidad del crimen y el castigo. Para este propósito, primero, los términos de responsabilidad penal, la responsabilidad gradual o inexistente, el principio de la proporcionalidad de la ofensa no se puede controlar por definición, nuestro enfoque de sistema legal, después de la adopción del nuevo código penal, es la edad de 18 años, y es el final del período de la infancia. Como conclusión, el Código Penal Islámico de 2013 se encuentra en una posición privilegiada en relación con las leyes anteriores.

Palabras clave: Niños, Código Penal, Principio, Castigo.

1. INTRODUCTION

The gradual increase of responsibility according to the level of perception with the age indicator is studied from accepted global approaches for the realization of justice and a sign of social justice (Khani and Hosseiniaheqh, 2016). By reviewing Criminal systems of different Islamic countries, it can be seen that the gradual increase of criminal responsibility Many have been accepted and one of the problems that has always been in the field of human rights in Iran's laws before 2013, Elimination of Child Criminal Responsibility and lack of attention Rational growth and the issuance of penance penalties

including retaliation. According to some psychologists, children of the present century due to lack of independence, failure to accept responsibility and non-commitment to work, relative to their peers in the past and less can detect the right thing from the wrong one. Also, disgrace of the child Due to getting caught in the criminal justice system and also the inaccurate performance of this system and collision Racial Discrimination Class and sexuality still exist.

In most cases, the emotions and the maturation crisis affect juvenile offenders. This is why psychologists remember maturation as a period of crisis. The maturity period is the best time to implement correctional measures adapting the age of full criminal responsibility to puberty is, in fact, neglecting social realities and psychiatric theories. So that is expressed teenagers under fourteen years should not be for each crime was tried in an adult court and they are in the process of trial and a special trial is needed. On the other hand, in Iran's criminal system there must be a principled religion to stay Principle of mass equivalence with a crime when it comes to the principle of proportionality, includes the concept and meaning that must be between crime and punishment, balance and coordination would have existed. So that the crime is more harmful and with social values It has to contrast, to despise resulting in a more severe penalty to be answered and conversely, whatever crime, have less personal and social devastation and less invaded by the values of society will have a milder punishment (Javanbakht and Mohammadi, 2016).

In general, children's penal code in Iran from the beginning of the revolution, various laws were drafted in this context, the criminal laws adopted in 1983 and 1983, The Islamic Penal Code adopted by the Parliament and the Expediency Council of 1991, The Law on the Procedure of Public Prosecution and Revolutionary Courts of Criminal Law, passed on (1999) in many respects, Obscure Incomplete Inadequate Contradict with internal regulations Conflicting with the needs of the community day and in contradiction with international rules, including the Convention on the Rights of the Child, which Iran has acceded to and in accordance with Article 9 of the Civil Code, is required to enforce its provisions (Mousavi et al., 2016).

Since 2013, according to the new Islamic Penal Code the severity of the punishment based on the age and crimes committed by children and adolescents with the goal of training and bullying specify and Article 95 stipulates the criminal convictions of children and adolescents are not criminalized. In the new Penal Code a positive step by setting age responsibility and uniformity of responsibility regardless of gender and age He has been taken offenders. Penal has turned to a gradual punishment And unlike previous vague procedures The severity of the punishment is based on age and crime, Committing With the goal of training and Correction Has specified And Decriminalization Which has the nature of care / Educative Educational / Therapeutic And training Work is On reactions Punishable He has preferred. In this article Children Gradual criminal responsibility in the Islamic Penal Code of 2013 Emphasizing the principle of proportionality of crime and punishment Is being

investigated And for this purpose, first, the terms of criminal liability, The gradual or non-existent liability, the principle of the proportionality of the offense is unfishable by definition, and further by the law of punishment, is described using these cases.

2. THE IMPORTANCE OF GRADUAL CRIMINAL RESPONSIBILITY OF CHILDREN IN LEGISLATION

Usually, legislators are taking into account The fact that children are due to little experience And vulnerability Are easily seduced Or affect their And they do not have the power to disagree with adults In the criminal law, the educational aspect and corrective measures and the reduction in punishment are considered. Given the special importance of juvenile delinquency Some countries create a child law or allocate a specific section of the penal code to them As well as the formation of special courts for child offenders. Even after Achievement to perceive the results of a criminal act (distinction) they also have less criminal responsibility than adults. In a fair system, punishment and responsibility are always proportional to perception.

The emergence of perceived consciousness in a person is gradual, hence, the competence of the person to assume responsibility is gradually completed and has a degree of severity and weakness and depends on the amount of person's perception of criminal act. The growth of national power in people is not the same. But the possibility

of a medical examination of each individual to issue a verdict To full rational growth Does not exist In any country Therefore, the legislators are using scientific research and with the use of signs and indications, A certain age imperious Growth has been introduced. Generally, in the different countries of the world, the fair determination of the minimum age for criminal responsibility is taken into account with the understanding and rational development of children, as well as the classification of children between the minimum age and the maximum age of criminal responsibility. However, the methods of punishment and protection still do not have a special form in many countries. Iran, age of criminal responsibility for children it should be one of the most challenging Legal issues related to the rights of children in Iran, This is because On the one hand, according to the rule of law And rules Religious On The rules of the law And the compliance of the Iranian lawmakers with the famous Shiite jurists in the compilation And ratification of the law, Establishing a specific age as a religious maturity age The basis for identifying criminal responsibility for child offenders has been and, on the other hand, by the accession of Iran to the conventions and various international covenant and the need for non-conflict of domestic laws with the provisions contained in these conventions and the treaties and specific definitions given to the child in these references.

And the conflict between domestic laws and regulations with the provisions of these Covenants and conventions, There have been criticisms of Iran's criminal system And the finger of the charge of human rights abuses Also in this regard Has noticed Iran. The

importance and sensitivity from here Arises that is the age of childhood and adolescence and the effect it puts on this time to build a child's future and from a different perspective since the child and adolescents are different from the physical and mental power of adults.

3. KEY WORDS

3.1. Children and puberty

Baby Or other similar terms that signify this Including Minor, Child, Teenager as social vulnerable groups from different angles And by psychologists, sociologists, Criminologists Jurists and jurists of interest And reviewed. The child is meant to be someone Which has not reached Religious maturity limit And wise Not insane ;Being conscious and alert to his own will not be compelled to commit crimes. Article 1 of the Convention on the Rights of the Child influenced by the theories of psychologists such as Erik Erikson (1994-1902) And Jean Piaget (1980 - 1896), Child means every human being below the age of 18 knows. "Unless, in accordance with the law applicable to him, the legal age is less determined" (madani and zeynali, 2011).

The Covenant on the Rights of the Child in Islam "The Covenant as a regional document of Muslim countries on the rights of children was approved in Yemen in Sana'a in 2005" (Mosafa, 2007). This Covenant is in Article 1 Every human child knows: Which has not

reached the age of maturity under applicable law. Thus the present Covenant, without a treaty, Circumstantial evidence consider the age for childhood. The age of maturity stipulated in the laws of the Islamic Republic of Iran has been considered as a child's age. Therefore, an important issue is the excretion or gradual of puberty. Adoption of natural maturity requires accepting scientific opinions about the quality of puberty. Psychologists consider puberty to be a gradual process that is between adolescence and adolescence. However, the age of puberty should be age-appropriate, with gradual changes completed and puberty fully appearing. In the religion of Islam too Scholars and jurists based on the criterion clean Childhood Periodic they have mentioned: A) from birth to seven years old, Child in this course Non-Audacious infant It is called and they believe that the child does not have absolute criminal responsibility at this stage and is not punishment or correction.

B) From the age of seven to the age of puberty the child in this period is called Audacious infant Of course, there is a difference in the age of puberty .The child is a correction at this time .The concept of the child teenager in jurisprudence refers to the end of this age in the process of puberty. That is, the child who is on the verge of puberty.

C) From puberty to later, in this case, the person is fully responsible (Mousavi et al., 2016). Until the adoption of the Islamic Penal Code of 2013, according to Article 49 of the former Penal Code, children were exempted from criminal liability. And their education was the center of reformation.

The Iran legal, by ignoring the international definition of the child, considered the child to be one who did not reach the religious age of maturity. Religious maturity and how it was recognized was not mentioned in the former law And was referred to in practice by civil law which was in place of discussion. According to Islamic sources, the criterion of criminal responsibility is to reach the age of religious maturity, which according to the famous Shiite jurists, 9 years of the whole lunar (8 years and nine months) in girls and 15 lunar years (14 years and 7 months of Solar) in the Boys. Of course, proof of religious maturity based on other indications (sexual maturity), Even before reaching that age it was also polluted For example, a boy who is less than 15 lunar years may be considered an adult nocturnal. Of course puberty, in the word means reaching and in the sense of the term is the arrival of the child nocturnal (In the man) and menstruation or carrying (in the case of women). On the other hand, puberty is said to be male or female reaches the age of sexual desire (Nobahar, 2012).

3.2. Growth

The meaning of growth in the word and In the term growth in the word, it means guidance And that is the kind of people that Obstacle From the spoiling of property And spend it in irrational ways And legally, Quality growth Is sensual That its holder can benefit

And the loss in civic growth Or advantage And indecency Recognizes
criminal penalties

3.2.1. Idiom Definition

This term is used in many positions of sources of jurisprudence (book and tradition) and the words of the jurists have different meanings and use the word of growth in legal affairs by using this word in criminal matters somewhat inconsistent with each other

A. Legal Concept

The term growth has been used in most cases in the form of civil law

; But it can be applied in legal matters in two ways General and specific Divided:

1) Legal growth in the general sense; in this sense, foolish Refers to someone which does not have the ability to maintain their property and therefore spend their property for the wrong purposes.

2) Legal growth in the special sense; this kind of growth is achieved for an individual who, in addition to his ability to preserve property, ethically, it also has justice.

B. the Criminal Concept of Growth

There is another term of growth that can be understood as wisdom. And intellectual ability Remembered the term, In addition to legal aspects, it will also include criminal matters

But since this term is not well-written in the words of the jurists, it is necessary to be examined in detail. This meaning of growth can be divided into two general and specific meanings (Zeraat, 2013):

a) Wisdom versus insanity

The reason is in the general sense of being in the face of insanity. Some jurists have used the term growth in the sense of reason and their purpose from this Adverb, Wisdom has been against madness. Though the same thing is neglected some other researchers and experts.

B) - wisdom against foolishness

The term growth is used in the other sense, in the sense of reason. But in this sense, the concept of reason is more

complicated than the former concept. Because, on the basis of this term, the wisdom is used not only in the meanings of madness and nonage but in front of the idiot and stupid well placed. This term is somewhat alien to the people who are familiar with the traditional meaning of growth (growth in the sense of Reason wisdom) but the proven validity of growth in this sense could open up a new dimension in the criminal responsibility of individuals in jurisprudence.

3.3. Criminal liability Gradual

Criminal liability is the obligation of a person to respond to the consequences and consequences of a crime and in order for a person to be punished He must have committed a criminal act on his/ her own and one must be able to obtain and make his bent and intention to commit a crime, That is, the person has the ability to perform the task and the crime can be attributed to the offender. For this reason, a child, like madness, is considered as agents for the prosecution of criminal responsibility; because the condition is the guilty wanting and knowing. In general, there are two types of criminal responsibility system for children in different countries. In the first place, the criminal responsibility of children will be completed at once The Islamic Penal Code of 1991 He had followed such a system, Because children had no criminal responsibility until they reached adulthood

And then, they found complete criminal responsibility. There was no difference between punishment and another penalty in this case.

Another is that the criminal responsibility is gradually being completed. In this way, up to a certain age, the person is absolutely not responsible for the crime and there is no criminal response to the offense committed by him. Then enter the era Criminal liability is reduced. In this sense, in the face of the offense committed by him, a milder criminal response is shown in comparison with adults who committed the same crime. Upon transition from this stage, the person enters into full criminal responsibility; it means being an adult and a criminal response to him will be the same as an adult. The gradual system, since criminal responsibility evolves in line with the increasing perception of the individual. It is fairer in the gradual system, the two concepts of minimum age for criminal responsibility and the age of maturity are distinguished from each other. The minimum age for criminal responsibility is at least the age that, in terms of the criminal justice system, the individual finds the ability to be prosecuted in a criminal court. Responsibility in the word means accepting the consequences and consequences of the work and is responsible for someone who: He is questioned and held accountable.

Therefore, requirement is always associated with commitment. Within the realm of criminal law, the obligation of this commitment. Accept the works. And the consequences of criminal verbs, means Endure punishment to punish verbs. Blaming Delinquent it is considered. However, once the crime is committed, one cannot take

responsibility once to put Obligation Guilty But before that, he deserves to bear this heavy burden. Persons from criminal responsibility to two group's Criminal liability and persons without criminal responsibility are divided. For persons with criminal responsibility, persons who possess abilities such as perception, discretion and maturity .However, persons without criminal responsibility do not have such abilities and, in some respects, they are exempt from punishment. To fulfill the criminal responsibility, the person must be eligible capacity Criminal and this ability is summed up in reason, maturity, and discretion. That is, the only wise, mature, and voluminous person can be punished and if one of these three attributes does not exist in a person, He will not have capacity criminal. In fact, criminal responsibility is in the abstract sense Single before committing a crime Available in people and in this sense, criminal responsibility means capability or capacity the person to bear the consequences of his criminal behavior. The conditions for liability are (1:existence commandments And Prohibition (2 Awareness of the person from the rule or assignment,And the ability to do or leave it. The elements of criminal liability are: Criminal capacity and guilt. Criminal capacity it consists of two elements of perception and discretion. Perception in criminal law means the power and ability to understand and distinguish between the nature of the acts, the effects, the moral and social consequences that are inflicted on them. However, if the offender is not a lawyer, he is not responsible for his actions. Therefore, to define the limits of criminal liability in criminal law, it is very important. Criminal liability has several conditions. A) The person has reached a certain age; B) Madness and similar expressions

are not affected) under the influence of coercion or other factors of will not be denied.

The delinquency of children and adolescents has long existed and research suggests the beginning of a criminal life from childhood. Of course, their involvement in low-level criminal activities as part of their growth process either victimized either in the form of delinquent or both. Despite the developments in the criminal systems of children and adolescents, there has always been a punishment for them. And governments have always enjoyed the right to punish (Mehra, 2004). Age of criminal maturity or age of absolute criminal responsibility, Sunni, who is considered a great offender and is subject to criminal law in full. This age has been set at 18 years in nearly all European countries (Germany, England, Belgium, France, Italy, the Netherlands and Switzerland) (Najafi, 2013). The interval between the age of criminal responsibility and the age of criminal maturity, in other word, is the age of the relative and absolute criminal liability of the period of the leniency and special Which is the trial Teens special at that meaning Find In this period rarely Warranty Criminal performances for children and adolescents The perpetrator of the offense is imposed And criminal responses are mostly educational and social.

The existence of this stage is due to the acceptance of several fundamental questions: First, the special status and characteristics of children; secondly, the ability of children's education and the justice system should be about them into the educational system. Because the

goal is not only to punish and intimidate them, but to restore them to society. The existence of institutions such as privately knowing all crimes of children and adolescents, The lack of penalties for them, the use of the criminal justice options and more . . . In pursuit of this goal. Third, the advocacy of a special hearing for children and adolescents, That is, delinquency of children is usually subject to factors such as poverty and inaccuracy, misuse, and so on.

Therefore, you have to Reverse Discrimination and double support Of the children in opposing with the law, Shortcomings and past deprivations that led to their delinquency, By providing the facilities And more rights Destroyed. The gradual criminal liability in the Beijing Convention is extracted from paragraph 1 and paragraph (a) of article 40, paragraph 3, of the convention, which contains the principles of a special hearing for children. According to these two paragraphs, the Gradual of children's criminal responsibility in the period between the minimum age of criminal responsibility and childhood age is realized.

Of course, with regard to the gradual of criminal responsibility, There is a difference between different legal systems, Some by stepping the time interval of this period for each stage, There are special reactions to the law And others, like the German legal system, considered this stage united and continuously and gave the judge the right to choose the appropriate response. The holy law of Islam and its jurisprudents based on the narration for the removal of the child from a criminal point of view, unspecified

responsibility and deliberate and pseudo-intentional offenses are considered by him as an error rule. Infancy in most current criminal systems, Is one of the factors responsible for eliminating criminal responsibility. Responsibility is Human Being investigation In other words; it means that man is responsible for duties, deeds and actions.

3.4. Principle of proportionality crime with crime

The criminal law follows the principles each of these principles aims to create a social order and pursues the protection of individual and social rights of the most important of these principles:

1) The principle of the legality of offenses and penalties which is in accordance with this verdict Criminal provisions not turning into retroactive.

(2) The principle of equalization means that, in the case of offenders who have committed similar crimes in similar circumstances, the same and equitable punishment should be determined.

(3) The principle of individuality, namely punishment, should only be applied to the perpetrator, not on the members of his family and relatives, the effects of punishment should also be

limited to the offender and should not be spread to third parties. (Bagheri, 2001).

So far, two issues have always been considered by humans. One is what the philosophy of punishment is and why it should be punished and how much and how much should be punished if necessary. In response to the second question, which is the same as the distribution of punishment, many opinions and opinions have been presented.

In this regard, different ideology has come up with different solutions the principle of the proportionality of punishment with the offender, or the principle of individualizing punishment is one of the most important principles governing punishment, and constitutes one of the fundamental objectives of criminal law. And gradually and with individualization the more punishment, it reduces the full assurance of the principle of the legality of penalties one of the principles governing the determination of punishments is the principle of proportionality between crime and punishment.

Undoubtedly, this principle is one of the most important principles governing the situation And Impose penalties which are provided through criminal justice. The principle of proportionality from other principles governing punishments, such as the principle of legality, personality, and so on, and the ignorance of this principle will be abusive. Under this principle of the criminal justice system, the traditional approach answering to victimize put off the delinquent and

it responds to criminals in a mutually exclusive manner. In fact, this principle is the application and execution of a punishment commensurate with the personality and physical, psychological and social characteristics of the perpetrator, which is predicted by the legislature on the nature of the crime of committing or committing an offense against, and by the judiciary and the executive the show has come. And may, as the case may be, lead to escalation, relief, suspension, or postponement and ... punishment Meanwhile, with regard to the unchanging religious punishment, the implementation of this principle is restricted in this area (Khafioriani et al., 2015). So the principle of proportionality between crime and punishment is one of the principles protected by human rights and Islam The proportion between crime and punishment is one of the rules that have long existed in Islam's Islamic law, and it has also been taken seriously in the penal institutions of recent centuries. And as one of the indicators of criminal justice it is mentioned. In the verse of the revelations related to punishment, there is an interpretation that shows the attention and attention of the Holy Qur'an to the principle of subjection, For example in verse194Sura Baqhare is expressed In general, anyone who has sustained you in the forbidden acts of hatred, Rape him like him.

4. ISLAMIC PENAL CODE APPROVED IN 2013

4.1. Child Criminal Responsibility in the Law

The Islamic Penal Code of 2013, following the rules of human rights and the gradual responsibility And categorizing children to

different groups And taking into account the specific criminal liability of each group Significant changes in relation With a growing criminal case. The law divides the childhood and adolescence into four periods. These four courses include birth to 9, 9 to 12, 12 to 15, and 15 to 18 years old But this division becomes complete when it comes to distinguishing between crimes and punishments1- penance 2- Retribution And 3- punishment. In addition, where the issue of limits and retaliation is in between, it is also distinguished between adult and immature. Thus, the following eight assumptions can be imagined: One: Children under the age of 9 commit offenses :In this hypothesis there is no criminal responsibility for this category of children and not action Supply and education they are foreseen for them. Of course the law is silent about it, but any conclusion other than this illogical and wrong seems. Two children under the age of 9commit crimes penance and retaliation in such an assumption that the offender is a male offender or the girl is different. If the offender is a boy, given that the boys in this the age range has not reached Religious age of the maturity.

According to Article 87 of the new law, only educational measures Includes delivery to parents by getting a commitment Send to the caseworker And psychologist Restrictions on socializing with certain people or traveling to certain places will be condemned. If the offender is a girl aged less than 8 years and nine months, the same will be the case. But the girl who reached the age of maturity, but not yet nine years old For example, eight years and 10 months, it may be subject to punishment or retaliation, which we will continue to

consider. Three- children will be sentenced to 9-12 year offenses: The court will consider child care in accordance with Article 87 of the new law, including delivery to parents and the obligation to send to a training center, restrictions on socializing with certain people or commuting to certain places and so on. Four - children aged 9 to 12 years committing crimes causing penance for retaliation: In such a hypothesis, according to the fact that the offender is a male offender or the girl is different.

If the offender is a boy Given that boys are still in this age range Have not reached religious age of the, maturity. Five- children - 12 to 15 years old - commit punishment crimes: In the case of crimes Mild sanctity, Court decisions similar to the provisions of committing crimes punishment by children 9 to 12 years old. But in the case of severe punishment criminal offenses, the courts can Child maintenance of Correction and education Center From three months to one year. There is no difference between the boy and the boy. Six - children - 12 to 15 years old - commit crimes for punishment or retaliation :As it was said, where there is a question of limits and retaliation, still, sexual maturity of the religious is important and causes differences in the judgments. Similarly, if the offender is a male offender it has not reached the age of maturity (14 years and seven months) like severe criminal offenses, in such cases, the court can, as a matter of high court, convict the child for a period of three months to one year in of Correction and educations Center. But if the offender is a guilty guy which has reached adulthood (for example, 14 years and 9 months), or a girl in this age range (for example, 13 years old), May

be subject to punishment Limit or retribution we will look at this later. (See paragraph 8).

Seven-adolescents aged 15 to 18 commit offenses: Depending on the importance of the offense, the amount of conviction will also be different. But in the worst case, it does not go beyond five years of maintenance of Correction and education Center. In the case of milder crimes, Maintenance In the center of the correction and Upbringing For less than two years and free public services and Cash penalty is foreseen. There is no difference between the boy and the girls. Eight - teenagers aged 15 to 18 commit crimes for punishment or retaliation: Regarding the concept of opposition to Article 90 of the new law and Also, in accordance with other provisions of the law, in such a case the principle is to enforce the punishment or retaliation. In other words, teenagers aged 15 to 18, whether male or female, Due to the age of puberty Religious Possessing criminal responsibility.

Consequently, in the case of committing crimes, punishment and retribution Depending on the case, he will be sentenced to a punishment or a retribution. As we have seen in the preceding paragraphs, when the question of limits and retribution is raised Still Achieve Religious Maturity is the criterion of action. Boy after reaching the age of 15 lunar years (14 years and seven solar months) And the girl after reaching the age of 9 lunar years (8 years and nine months) In case of committing crimes, punishment and retribution Other included Supply and training measures will not be taken And like adults, it will be subject to the rules of punishment and

retaliation. However, Article 90 of the new law is in certain circumstances such as adolescence is not entitled to punishment for punishment and retaliation the same applies to the above mentioned training and education:

According to the advisory opinions of the legal department of the judiciary, the age of the perpetrator in this regard and his responsibility and non-responsibility is the time of the crime, not the time to deal with it. It is noted that the new penal code does not neglect the right to live as an ordinary citizen in adulthood. And Article 95 stipulates that criminal convictions of children and adolescents lack criminal acts. In the criminal perspectives, important achievements in the field of Children's and juvenile judgment Criminal rights were followed. Considering the personality traits of children and adolescents, the emergence of differential criminal policy, adopting appropriate responses to their crimes with the goal of education, social inclusion and accountability are among the most important achievements, including principles And numerous rights Is procedural and substantial.

One of the common international principles is to determine the minimum age for juvenile justice. This has been emphasized in various international documents and legal systems and different countries, according to the social environment and different growth indices, have defined different ages as the minimum age for criminal responsibility. In addition, the vast majority of countries, along with a minimum age for criminal responsibility Age of absolute criminal liability Or

determine the age of maturity of the people And for the time limit between these two ages, different social reactions For children and adolescents, they are against the law. These reactions to responsibility and Adult punishment Reduced aspect And the growth and evolution of the child has a gradual and evolutionary background. In addition to the division of the 2013 Islamic Penal Code from the point of view of the child's age. While according to the religious of Islam When they reach maturity, they will be prosecuted. However, the new legislature on children, despite the religious theories, gives a gentle turnaround of the legislator from the full criminal responsibility of adults under the age of 18 in extreme punishments and retaliation.

4.2. Principle of proportionality Crime and Punishment in the Law

The necessity of proportionality of crime and punishment can be reviewed both at national and international level. A punishment commensurate with the crime is punishable which highlights the degree of social disapproval of criminal behavior and determine the amount of action to be taken by the community. Punishments are expressed in various ways throughout history. Justifications like compensation for religion, Abolition of crime, Refinement of the offender, reform the unfair rating, Satisfaction of feelings and transmission of blame. Remunerate and punishing offenders with inherent characteristics and the basic system of criminal justice has been from the past to the present. And this inseparable property is

somewhat contradictory with the principle of proportionality of crime and punishment which is an element of the criminal justice systems of many societies (JavanBakht and Mohammadi, 2017).

If we consider punishment as a factor in the compensation of the offender's loss to the community because a massive crime creates a heavier debt so the compensation should also be heavier than that; If you punish the offender Causing Abolition and elimination of crime to know, Obviously, the amount of damage for which Abolition of crime It is entered It must be proportional to the amount of damage that is obtained from the mass to eliminate it; Also, to justify the punishment Based on the spiritual refinement of the offender, It can be said that punishment is a way to blame and salvation the offender The amount of punishment necessary for the perpetrator's spiritual and spiritual purity It must be proportional to the negative effects That is the crime The morale of the offender has been affected.

If it is based on Utilitarian Proportionate punishment There is a punishment that can deter the offender from committing a crime Disabling or correcting him. Because the amount of the penalty may be too deserve Guilty exceed. Subject of review Child crimes When it comes to committing an offense or crime, it is more challenging Because of the fact that these crimes are caused by things such as the separation of Pedro Mother of Poverty and Addiction Disorder, the foundation of the family and the incorrect education of the child.

On the other hand, it causes unintended reactions with children to establish a criminal character in them and become dangerous offenders in adulthood. With the final adoption of the Islamic penal code in order to achieve the achievements of the advanced world criminal science and criminology and coordination with international instruments on the rights of the child and according to the rules of the holy religion of Islam to a large extent, the deficiencies in the previous laws have been resolved and revising about the age of criminal responsibility and pay attention to growth judicial along with brain development and categorize this group in exposure to crime and appropriate response measures for each group according to specific age and conditions legal principles an important change jurisdiction children have been taken. In terms of comparative appropriateness, the appropriateness of a punishment for a crime considering the punishment of other crimes comparative proportions are in fact the same proportion of penalties to offenses.

4.3. Analysis of Law

The Islamic religion does not have a criminal responsibility for children. But, for the sake of proper education and directing them to ethical and social issues, the correctional punishment for delinquent children has been foreseen. This tactic makes them responsible after puberty and because of this, although the children have not reached their height, however, as soon as they reach puberty, they have

criminal responsibility (ABirie, 2011). So in the new law, particularly in punishment offenses that have been gradually accepted, the separation between the girl and the boy has been eliminated and the physical punishment has been removed like a whip.

In accordance with Note 2 of Article 88, the same decisions as those in Article 88 shall apply to male children aged 12 to 15 years and older, 9 to 12 years. The decisions of the judgments are subject to appeal by the child's court, as often as the child's best interests require. Convertible maintenance punishment in the center And Cash penalty to other things that are in the best Expedient of the child and the adolescent, Convertible punishment penance And Retaliation punishment crimes for children under the age of 18, in the event of doubt in the wisdom and development of children, Is one of the important issues in the new bill.

In the new law, delaying the issuance of child sentences and the lack of the effects of criminal conviction is also accepted which is a positive development. In accordance with international standards, Reduction approach Resort to Legal interventions Judiciary And adopting objective measures that include the universal mobilization of all sources, including the family, Community groups, Schools and other social institutions, One of the most important principles in juvenile justice implementation. Also, the child is given to the parents and guardians of the law referred to in Article 89 Appropriate action is and parental homework for correction Specific training and monitoring of their actions are also considered. Apply multiple and

legal discounts Facilitating the use of conditional release/ The intervention of medical experts when in doubt in the intellect of adults under the age of 18/ Determine and explain the position of the working reports from supplementary mechanisms Which can be executed in good faith It is effective in correcting and improving the character of the teenage juvenile And prevent him from repeating his crime.

If one is without consent And with reluctance to do something, Like that with threats or above that, To force her to commit a crime with material compulsion Like taking someone's hand And press on a gun trigger to be killed by a third-person shooter. In this case, the person is considered as a compelled agent and will not be held liable. In other articles of the law, we have the following points related to our discussion: Article 141: Criminal liability is personal. Related points in this material: One of the principles governing punishments Principle of personal punishment (principle of proportionality of punishment and punishment) and the criminal liability is the legislator in this article has pointed to it. The concept of the principle of the personal nature of the criminal responsibility is that everyone is solely responsible for his or her actions and no one can be held accountable for other acts. This principle is a reaction to the collective idea of responsibility that has spread for many centuries in different societies.

2. Crime perpetrators Contains foreman Partner, Assistant and the cause of the crime. Article 142: Criminal liability Because of another behavior, it is fixed only if it is that the person is legally responsible for other actions or in relation to the outcome of the

behavior committing another, perforator fault. Notes on this material: 1 the responsibility arising from a non-exceptional verdict is based on the principle of personal punishment. That is, someone who is punished for another act, in fact, the spiritual subject is a criminal act. And his responsibility is attached to the responsibility of the main criminal offender who committed the act and the material agent of the crime. Therefore, except in cases where the legislator has determined, the imposition of criminal liability is not due to an incorrect verb. Article 142 states this exception. 2 According to this article, to be able to He took responsibility for the non-verb, three conditions must be present: First, crime Act of committing; Second, having a task In front of another; third, committing a fault from the personal area which is supposed to take responsibility.

3. Criminal liability is the result of another action if possible another act punishable by the Criminal Code And in relation to regulations that is personally responsible for other acts of compliance with those regulations. For example, the head of a workshop personally in the workshop management not undertake.

And managers of each part have total powers; the head of the workshop is without the criminal responsibility of the workers and employees of the workshop.

4. Everyone has the duty to preserve, care or monitor other acts and in the exercise of his duties it is responsible for committing a

crime from another area. Although the perpetrator's or third party's fault is also effective in the occurrence of crime.

5. Impose Responsibility Take personal duty for another action, Inconsistent it will not be the responsibility of the steward and in general in all cases his exemption does not result in punishment.

Article 143: In the criminal responsibility of the principle of responsibility is the private person and the legal person has criminal liability who is a legal representative of a legal person in the name of, or in the interests of, a crime. The criminal responsibility of legal persons does not preclude the liability of natural persons who commit a crime.

Article 146: Persons Immature They do not have criminal responsibility.

Legislative background

This article corresponds to Article 49 of the former law : Children are subject to criminal liability if they commit a crime and their training with the court's opinion Responsible Head of Pediatrics, and where appropriate, children's Correction and Rehabilitation Center.

Note 1: The child is meant to be someone that is the limit religious maturity has not come.

Note 2: Whenever for the education of children the perpetrator needs their physical punishment. The punishment should be to a degree and be expedient.

Notes on this material:

Question 1: If persons under the age of eighteen years are sentenced to a fine in a general criminal court for payment of a damage or remission of property derived from property offenses such as robbery or fraud, given that these people have capacity to exercise rights were not and do not have the right to seize their property. if the convicted person for not paying a wergild or not rejecting property based on article 696 of the Islamic penal code 1996 or article 2 of the law on the implementation of financial convictions from the exit court, ordering their detention until payment of the religion or proved insolvency do. Is there a precondition for refusing to pay the debt as described above? Can they be arrested before the age of eighteen?

A: The use of Article 146 of the Islamic Penal Code of 2013 is that after maturity, individuals have a criminal responsibility and the age of maturity is nine and fifteen, respectively, in all boys and girls, according to Article 147 of the said law.

So, if the court is convicted of a crime mature person less than eighteen years old in addition to determining the punishment, conviction financial also to rule, because execution of financial convictions involves interference with property and financial rights and

according to the vote no. 30 of 3rd of april1975 general court of the supreme court and also note 2 of article 1210 of the civil code, reaching adolescence not to be involved in property, but the person's development must also be established in court, therefore, if the convicted person who is under the age of eighteen is not found competent in the court, because it does not apply to him as absent the provisions of article 2 of the law on the implementation of financial convictions or article 696 of the Islamic penal code, adopted in 1996 not applicable to him. Article 147: the age of puberty in girls and boys is nine and fifteen, respectively, in the lunar year.

5. LEGISLATIVE BACKGROUND

This article corresponds to note 1 of article 49 of the former law, which stipulates: the child is meant to be someone which has not reached the level of religious maturity. Article 148: in the case of immature persons, in accordance with the provisions of this law, actions supply and education apply legislative background: this material corresponding article 49 of the Islamic penal code was approved in 1991. The point of this article: it is deduced from this article that in the case of children, supply measures and education applies and juvenile punishment applies. The sum of these articles with ex material is concluded that children under nine years old (girl or boy) in case of committing a crime has not faced any punitive action or punishment.

About boys, nine to fifteen years provisional and educational activities are applied and about girls over the age of nine and boys over fifteen years old the sentence is issued for punishment. Consequently, the purpose of immature people in this article, only boys is nine to fifteen years old. of course, there is a violation of the law regarding the principle of proportionality of the offense and punishment in the Islamic penal code of 2013, precisely in the reproof punishments, which also have less violence and violence and the possibility of combining crime with them using mechanisms such as delaying the issuance of a sentence, discount punishment and suspension of punishment.

6. CONCLUSION

The criterion for the execution of a criminal offense is punishment. This is partly taken into account in the Islamic penal code of Iran of 2013 in other words; children are among the most vulnerable groups of society who need to support education and training. Therefore, when this group makes a mistake, Islamic penal code of 2013, the promise to overcome is that the purpose of the child and adolescent punishment is to correct age-appropriate education, the gender and circumstances of the perpetrator and his family background. Our legal system approach, after the adoption of the new penal code, is the age of 18, is the end of the childhood period. In accordance with the requirements of time and fatwa of jurists, the fourth principle of the constitution is also observed and the provisions

of the convention on the rights of the child, which are approved by the assembly in accordance with domestic law. in spite of the existence of such penalties as imprisonment, whipping and ... on the system of the sovereignty of the Islamic penal code, lawmaker approaches 2013 the Islamic penal code for child offenders commensurate with their age and offense is a completely new position. The actions against the offending children in the law are as follows.

1. Maintenance of correction and training center.
2. Cash payment.
- 3 Free public services.
4. Surrender to parents and legal by getting a commitment to discipline and take care of good morals.
- 5 Surrender to natural and legal persons another is for the benefit of the child or adolescent.
6. Notification and written notice or receipt of written commitment to the non - repetition of the offense.
7. Advice by the judge of the court.
8. Follow-up and Supplementary Measures that Courts after Subjection to Children and Adolescents in accordance with

Clauses A and B, with their expediency, such as sending to the educational and cultural institutions, leaving addiction, etc. In fact, according to the new criminal law, punitive liability should be a gradual liability, and criminal liability for expulsion, it does not fit with the principles of prevention and Correction the Islamic Penal Code, approved in 2013, using Imamieh jurisprudence this law has been approved by the Guardian Council. International documents and legal experience of progressive countries in this field, has adopted a new approach based on different punishments, such as limitation, punishment, etc. The age of criminal responsibility for children and adolescents varies. In accordance with the international guidelines, it can be argued that the Islamic Penal Code 2013 is in a privileged position in relation to the previous laws. Because in the bulk of the crimes mentioned below are the general title of punishment crimes.

In line with the guidelines of international documents and references, the age of criminal maturity in punishment crimes at the age of eighteen years on the one hand, and the prediction of the gradual system of criminal responsibility for children on the other, has created a favorable relationship between this law and the guidelines of international documents related to children's rights and has resolved some of the criticisms of the United Nations children's rights committee on the criminal code for the rights of the child in Iran. another aspect of the importance of changes to the 2013 penal code in the field of criminal responsibility for children, which is much more

fundamental and deeper than the previous ones, is to make changes to the principles and criteria that were previously considered unchangeable and unconventional and establishing the principle of proportionality between crime and punishment, this, of course, comparisons in some cases suggests that this principle is not strictly observed in this law in respect of fines in excess of non-fines and there is a need for amending the law in accordance with this principle.

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