

Study of the age of criminal responsibility in the new Iranian penal code (2014)

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Abstract

Determination of the age of criminal responsibility is one of the most important issues in criminal law. The age of criminal responsibility represents the age after that person will be treated as an adult who has judicial faculty. This person with full criminal responsibility deserves compensation in case of commission a crime. The age of criminal responsibility is a creative command, not compulsory one. So it appears during the natural growth process and climate factors, genetics and Etc. are also effective. Holy Quran hasn't determined a specific age for puberty and has only mentioned some criteria such as puberty to marriage, autoeroticism and growth. Basis and foundation of human responsibility is intellect. Human being deserves to be appointed by god and receiving bonus and punishment because of his intellect. In addition to intellect, also puberty should be considered in criminal responsibilities and religious judgment. Therefore, puberty and intellect are two prerequisites for criminal responsibility and growth is not mentioned in the valid resources of Islamic jurisprudence. The age of criminal responsibility varies in different countries. In most countries e.g. England echelon form system or progressive responsibility is used to make someone criminally responsible (full criminal responsibility) gradually.

Key words: criminal responsibility, age of criminal responsibility, puberty, growth, minors

Introduction

After a long debate, finally new penal code adopted by parliament and confirmed by guardian council. Development of a chapter of this code (Vol. 1, Part 2, chapter 10) entitled “punishments and security and corrective measures for children and adolescents show an outstanding transformation of the differential approach of legislator in field of children.

The 1992 penal code did mentioned the age of puberty and consequently the age of criminal responsibility neither explicitly nor implicitly and it was a controversial issue so that researchers had to recourse to civil law. Even some researchers had different interpretation with respect to using the term “border of religious puberty” instead of “the religious age of puberty”. In fact, legislator wanted to add the concept of growth to sexual puberty for establishment of criminal responsibility. It means that, basically, there is no any legal justification for coincidence of the age of puberty (mentioned in first note of article 1210 of civil law), with concept of the border of religious puberty (mentioned in first note of article 49 of penal code).

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Because, basis of the establishment of the puberty age in civil law is the emergence of physical symptoms. But, border of religious puberty consist different and more complete prerequisites and it required symptoms and signs other than physical one.¹ The most important changes in new penal code are inter alia the new gradual system of criminal responsibility for juvenile offenders, considering the age levels, not to apply the legislations related to offence repetition and laying away the criminal effects of their criminal conviction, eliminating gender segregation for calculating the age of criminal responsibility in discretionary punishments. Removing punishment is for sinful act (Hadd) and retaliation (Ghesas) for child and juvenile offenders. We analyze these items in this part.

Section one: advantages of the new penal code related to the age of criminal responsibility

This part, which is presented in two sections, focuses on the topic of progressive criminal responsibility. This topic is a criminal policy issue which is undoubtedly one of the prerequisites of differential encounter and it is totally consistent with the fact of progressive growth and its necessity drives from the coordination of genesis and canonization.

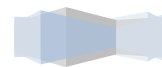
Paragraph one: regarding empirical, scientific and intuitive evidences human growth

At all stages of its evolution is gradual. So, duties and responsibilities of a person can't be inconsistent with this obvious fact. Basically lawmaking and imposition of responsibilities is a contractual matter and this contract can't be in contrast with creative and ontological realities. Harmonization between contract and fact require a relation between growth levels and rate of criminal responsibility. Full harmonization is unreachable but it should be done to the extent possible. Characteristics of criminal responsibility require a certain level of knowledge and understanding which is different from legal, religious or even economic capacity. Allame Tabatabaei, in his book "TafsirAlmizan", notes that puberty of autoerotism, puberty to marriage and puberty of growth happen in different stage and time.² So it can be noted that revelation is for progressive approach in growth and consequently is for progressive responsibility. By the way, since growth and intellectual awareness are the central factor of criminal responsibility and this factor grows gradually, it is normal and rational to see criminal responsibility relying on growth levels. Fegh-h (Islamic Jurisprudence) applies a separation between the levels of capacity and responsibility. Some effects are applied on pre-pubertal acts of children, e.g. religious narratives and Fatwas acknowledge that a 10-year old child's will is valid. In contrast with some Islamic quotations which consider children non-free and even equal to animal and insane, this one admits that there are different levels of capacity and legal enjoyment. Analysis of Islamic texts shows that Islamic jurists don't consider children totally aimless and do not count their acts legally ineffective.

The correction of discerning child is permitted in criminal cases unlike the correction of in-discerning child, acknowledging that both of them don't have criminal responsibility. There is also a category after puberty. Evolution process of criminal growth may be considered in two approaches in criminal rules. First approach is lack of growth presumption. In this approach the undeniable presumption of lack of growth makes children totally absolved from responsibility up to a certain age. At older ages if criminal growth of a child be proved, he will have responsibility. Second approach is the gradual nature of type and intensity of reactions responding to criminal phenomenon; it means regarding to the gradual process

¹ - Najafi Tavana, Ali, *Infants` Criminal Responsibility Age in Internal and International Regulations*, Teacher of Humanities Journal, Law Newspaper, 2005, Page 115

² - Tabatabayee, Mohammad Hoseyn, *TafsireAlmizan*, Forth Volume, Tehran, AllamehTabatabayee`s Intellectual and Scientific Foundation Publication. P.181



of criminal growth legislator may take different actions consistent with each level of growth. The judicial system doesn't leave child offenders for lack of growth presumptions. For these children, early intervention is necessary as preventive measures. Supportive and corrective measures bring them out from crime prone environments. This procedure put the children confronted with the results of their actions and strengthens their sense of responsibility.

Paragraph 2: progressive criminal responsibility is inspired by growth presumptions

In the new penal code, presumption of growth and the concept of "Doli in capax" (it means the children of a certain age cannot be considered delinquent) are comparable in two subjects of discretionary punishment and retaliation. In article 88 about discretionary punishments, legislator determines the minimum age of criminal responsibility³ 9 years old (girl or boy). If a person is committed of a crime before reaching the age of 9 years old, he/she is exempt from criminal responsibility. But in some crimes deserving Hadd or retaliation the situation is totally different. Note 2 of article 88 implies that when an immature commits a crime deserving Hadd or retaliation, while he/she is between 12 and 15 years old, he or she shall be convicted to one of the measures specified in paragraph (d) or (e), otherwise, one of the measures specified in paragraphs (a) to (c) of article 88 should be applied. Due to the milder measures specified in paragraphs (a) to (c) compared to paragraphs (d) and (e), it is obvious that the term "otherwise" specified in note 2 article 88 includes immature under the age of 10, so even if children under the age of nine commit a crime deserving Hadd or retaliation, they are exempt from punishment just in a case that according to the article 91 they don't realize the nature and sinfulness of that crime or there are doubts in their intellectual development. So as we noted above, the new code extends the inclusion of Hadd and retaliation even to minors. About the "deniable presumption of growth" or in other words "deniable presumption of puberty" in the new penal code, with an important and significant decision (development of article 91), legislator tried to set the puberty presumption instead of growth presumption in order to open the nodes of religious debates. If applying this article to the under 18 years old offenders become a judicial precedent, it would be an important step to adapt Iranian legal system with international conventions and legal systems to set the age of 18 as the minimum age of criminal responsibility. Therefore, legislator sets a new scheme according to which if offender doesn't realize the nature and sinfulness of his/her acts or there are doubts in his/her intellectual development, he shall be punished with discretionary punishment commensurate with his/her age, and punishment of Hadd or retaliation is not permissible for her/his. Under the note of this article, recognition of growth and intellectual development shall achieved from certain ways included referring to the forensic doctor. This rule also covers males and females under the age of 18 years old. So there is no gender segregation here too. It was better to use the term "expert or specialist" instead of the forensic doctor as the reference of recognition in order to ask psychologists, sociologists, public and even parents' opinion to reach a desired decision. By choosing legal medicine as the competent authority, legislator insists on physical and sexual criteria or in other words "the strict meaning of puberty" on establishment of criminal responsibility and non-existence of physical criteria shall be proven by the decision of this authority, which exempt the minor from punishment.

Paragraph 3: change in procedure and progressive age of responsibility

³- This is a term which was first used by Professor MirmohammadSadeghi.



Sentences and security and corrective measures can be executed in two manners gradually. In the first method legislator develop certain articles for offenders according to their age. According to the other method, sentencing is at the discretion of the judge which is possible with the prediction of legislator in advance. In the new penal code both of the legislative and judicial (in the strict meaning) method were considered for the progressive criminal responsibility of children and adolescents. This change in procedure of reactions by criminal justice system can be seen in both severity and type of punishment and security and corrective measures.

Article 88 which is about the offenders of 9 to 15 years old, provides a wide range of security and corrective measures e.g. giving pledge to educate and train by his/her parents, advice, warning notices, giving pledge not to repeat the offence, confinement in house of correction. Article 89 applies certain security and corrective measures and punishments for the juvenile offenders between the ages of 15 to 18 which is totally at the discretion of the judge. These security and corrective measures include:

- 1- Confinement in house of correction from 2 to 5 years for the crimes deserving discretionary punishment (level 1 to 3).
- 2- Confinement in house of correction from 1 to 3 years for the crimes deserving discretionary punishment (level 4)
- 3- Confinement in house of correction from 3 to 12 months and money judgment (10 to 40 million Rials) and 180 to 720 hours of doing free public services for the crimes deserving discretionary punishment (level 5).
- 4- Paying 1 to 10 million Rials and doing 60 to 180 hours free public services for the crimes deserving discretionary punishment (level 6).
- 5- Paying up to 1 million Rials for the crimes deserving discretionary punishment (level 7).

Second section: Mechanisms of criminal justice in response to juvenile delinquency

Children and adolescents are more impressionable and sensitive toward social events like delinquency and deviation. Children and adolescents who commit crimes are actually the victims of social institutions inactions in doing their duties. Although these children and adolescents are subjects to criminal law, they can enjoy from certain legal supports. Differential policy on juvenile delinquency can be defined and justified in this framework.⁴

The first paragraph: to establish the principal in case of doubt on maturity

Determination of the principle in the issue helps us to refer to it in case of doubt. It can be said in explanation of the principle about maturity that “if there is doubt on maturity as a matter to hold some one responsible versus religious commandments, the principle is incertitude. So if we believe in the application of principle of observing status quo ante in religious commandments like most recent theologians, so we can also apply incertitude principle on commandments regarding maturity. Islamic jurists fatwas about special issues shows the application of principle of observing status quo ante in religious commandments; for example if the killer claims that he had committed murder in the period of

⁴ - Mahra, Nasrin, Iranian Criminal Law and Regulations on Delinquent infants and juveniles, Present and Future, page 41



infancy, while avengers of blood claim that he was adult at that time, the killer`s words will be acceptable about being infant, if it is not possible to detect the fact by using valid presumption.

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