

# Criminal Responsibility of Children in International Documents and Comparative Study with Iranian Law

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## Abstract

Criminal growth, reach the age that person has the power of discernment and full recognition of good and evil actions and understand the legal and religious commandments and on the basis of the criminal in front of their criminal acts, will have criminal responsibility. This article is to examine the criminal liability of children with attitudes to Iran and some countries with international rules. United Nations as a global organization, without following any legal system and also due to the diverse needs of member countries, providing solutions in the field of juvenile delinquency in the form of documents that primarily to improve the national law in this area is rich countries that are not and need international assistance. According to the documents of the United Nations, having a special child rights law is that all children and young people who live in this vast universe, must have it and this national legislation in this regard, it can take effective steps for the rights of children, following the international rules in this area. Criminal growth requires criminal responsibility and with recent developments of the Islamic Penal Code, many former legal forms have been overcome and effective steps have been taken in order to keep pace with human rights law, which has long attached great importance to this issue.

**Keywords:** criminal responsibility, child, Iranian law, international documents

## 1. Introduction

The international human rights system is a collection of international and regional treaties, non-binding declarations, resolutions, rules and guidelines, in principle, the protection of offenders so far as is relevant to the provisions encumber and compliance with legal formalities in the hearing process. At basic human rights treaties have been predicted. Thus, under these treaties, children can be given, for example, the provisions relating to freedom and security under Article 5 of the European Convention on Human Rights and Fundamental Freedoms that is the kind of deprivation of liberty, or the provisions of Article 6, which concerns the characteristics of "fair hearing", there are provisions in human rights instruments that have been added directly to the rights of the child, after the Declaration of the Rights of British America Act of 1689 dated July 4, 1776 Declaration of Human Rights Declaration of human and civil rights and duties of citizenship 1793 1795 French Declaration of the Universal Declaration on 10 December 1948 in the UN General Assembly that was held in Paris, with a preamble and thirty articles were approved, of course, the Declaration despite the political and historical importance, have no legal validity and enforcement for the people of the country. However, there are aspects of guiding. The second paragraph of Article 25 of the Universal Declaration of Human Rights, the right care for mothers and children raised. Paragraph provides: Motherhood and childhood are entitled to special care and assistance. All children, whether they were born in marriage or no marriage, the right to enjoy the same social protection (Peyvandi, 2011: 137). This regulation has been emphasized in various aspects of criminal justice has long been considered the rules of human rights that it pays to predict the position of the government on a separate system for juvenile delinquency. But in practice, these provisions have a limited impact on the standard of domestic criminal justice rights of children in most member states of the Convention. Furthermore, despite the commitment to advancing pediatric fair system of criminal justice, the international community has not prioritized this issue. In some rare cases when the European Court of Human Rights before the adoption of the International Convention on the Rights of the Child to the juvenile criminal justice and related issues, its decisions do not fit in with the needs of children. A clear example of this case Sargin the parties' German government, where police found a 10 year old girl from the school to the police station had shifted, because the

teacher the girl to his participation in the robbery committed on school be considered. He was interrogated at the police station for two hours, during which time his parents were unaware of his presence at the police station and he was not possessed of legal advice. Finally, he was released without charge. But then filed a complaint pursuant to Article 5 of the European Convention on Human Rights as a violation of their rights and freedoms. The Human Rights Commission did not establish any case of violation of rights and freedom for his arrest. It was strange that any arguments regarding the vulnerability of zero age, he was not provided. For those reasons, the vote due to lack of attention to this issue is no longer valid (Mehra, 2011: 57).

## **2. Compare the Criminal Liability of Children in Iran with International Documents**

### *2.1 Iranian Law Changes*

In Iran, according to public opinion on 8 December 1285 (corresponding to 14 August 1946) constitution on 15 October 1286 (as at 29 June 1946) adopted amendments to the constitution of Iran. According to Article 36 amendment to the constitution of the Islamic Republic of Iran: ((sentence and the sentence must be only by a competent court and in accordance with law.)) On 23 January 1925, Articles 1 to 169 and on 7 February 1925 and in July 1931 of 170 to 280 281 to 288 of Iran's Penal Code, adopted by the Commission of Justice (Justice) National Assembly, the government tentatively runs it and defects and failure to review it and propose a comprehensive plan for approval by the National Assembly. Cases involving children are as follows:

- The children of non-point cannot be condemned criminal in criminal matters, any child who is not 12 years auditor's punishments.
- If the child is an immature point below the age of 15 years have not committed misdemeanors (minor) or crime are only 10 to 50 lashes, but in an excess of 10 days in two consecutive days of 15 lashes should not be pressed too far.
- Adults over 15 years of age but have not reached 18 years in prison if they commit a crime in the juvenile detention center while you will not be in excess of 5 years if they are misdemeanors punishable by less than 1/2 half the minimum and more than 1/2 half maximum (the maximum) will not be punished as misdemeanors.
- In determining jurisdiction in Article 37 of the Penal Code, 1925 It is decreed: If the persons mentioned in the previous article. Although the crime they have committed a crime is a crime in court misdemeanor trial unless it is based on age-appropriate way an accomplice or deputy should be tried in a criminal court case will be prosecuted both in criminal court.

The Penal Code Act 1810 France (Napoleon) was adapted to the needs of the day and does not conform to public opinion and scientific ideas on 6 September 1939 the Ministry of Justice (Justice) relatively complete bill borrowed from penal Italy and Germany proposed to the National Assembly but after a while the bill was withdrawn (Ghasemi, 1995: 45). On 10 June 1933 and 30 February 1956 and the first Hijri and 23 August 1958 the Joint Committee on Justice, Parliament (National Assembly and Senate) was amended provisions of the Code of Criminal Justice. To coordinate the implementation of the resolutions of the UN General Assembly on 10 December 1959 the National Assembly had adopted the Law Courts offenders. Jurisdiction to all juvenile delinquency that it was the age of 6 years to 18 years were referred to juvenile court. For crimes in juvenile court with two advisers should be accounted for in accordance with Article 7 if research on the situation of temperament or mental (psychological) child or his/her parents or the child's family situation and social environment, he was required to juvenile court could do the research themselves by any means it considers suitable or intended to attract qualified persons. The law was not implemented due to lack of facilities until 1968 with the opening of the first juvenile court in Tehran Correction and Rehabilitation Center, actually began its work. On 7 June 1973 amending the Penal Code and Article 33 of this law was decreed: Crimes against children, law offenders' trial runs correction and Rehabilitation Center has been formed and where the children will be as follows:

- In children aged 6 years and has more than 12 years, if they are committed to making a commitment to discipline and educate their parents or guardians and care in moral surrender and in cases where the child has no parent or guardian or supervisor or the appropriate court to entrust the child does not recognize or do not have access to them, the court shall take that prosecutors bring a criminal child to a public or private institution or firms that few suitable for maintenance and training for a period of 1 month to 6 months or assign work and monitor the child's upbringing in faith for the good of the person who knows if the supervisor or refer it to court if he did not reach his qualification by requiring discipline the child will be handed to him/her.

- To offenders has over 12 years to 18 years, the court shall adopt one of the following decisions:
- Submission to the parents or guardians are committed to discipline and moral education in child care
- Blame, advised by the judge
- From 6 months to 5 years' imprisonment in a juvenile detention center if the child has more than 15 years and guilty of the crime, and 2 to 8 years of imprisonment in a juvenile detention center if the crime is punishable by death or life imprisonment, and in this period of incarceration in the juvenile detention center will not be less than two years.

After the victory of the revolution and the establishment of the Islamic Republic of Iran, according to Clause 1 of Article 12 of the General Courts of law 20 September 1979 to juvenile delinquency to criminal court established by law in the courts and law offenders were referred to juvenile court implicitly revoked (Zeraat, 2006: 89). On 6 September 1982 of the Code of Criminal Procedure material correctional criminal-court criminal court to juvenile delinquency division 1 and 2 were also mentioned in the jurisdiction. In criminal law courts 1 and 2 branches of the Supreme Court Act of 31 June 1989 does not mention hearing about how offenders, a Tehran criminal court 2 practically to juvenile delinquency proceedings that the juvenile court was called (Danesh, 2007: 35 and 36). Parliament in 1982 Article 1209 of the Civil Code that the legal culture of our country's heritage was eliminated in the article stated: "Whoever has not eighteen years as an immature, however, if proved in court after 15 years to be under the guardianship of someone exits", new legislation without sufficient attention to Article 1210 of the same law with the words, "no one can be after reaching 18 years as madness or was incapable of growth or no growth unless he proves to be madness." he clumsy way of reform. After amendment, Article 1210 of the income statement, "no one can be after reaching puberty as insanity or lack of growth insolvent unless it is proved that inhibition or his madness." Legislators in Note A under this Article puberty in girls and boys were 9 and 15 lunar years. Instead of reaching the age of maturity is 18 years old in 1210 were female. The most important adverse effect of the codification of criminal responsibility is reduced. A legislator in Article 49 of the Islamic Penal Code says that children as innocent of criminal responsibility, but when the child refers to someone who has not reached the age of 9 and 15 years above the age of criminal responsibility will be every child. But what was most impressive and important is that legislative developments regarding the relationship of age and not criminal responsibility and puberty, the age of criminal responsibility together (Azmayesh, 2006: 167).

### 3. Some Criticism of Iranian Law in Relation to International Documents

- 1) One criticism of the government is that it has been stipulated in the Civil Code of the age of majority, with Regulation CRC on the definition of a child as well as the principle of securing the child as one of the four principles of the Convention, is in conflict. The legal difference between boys and girls with the principle of non-discrimination in the age of the child in conflict.
- 2) Another objection to the Penal Code, the minimum age of responsibility in accordance with Article 49 of the Penal Code, reach the level of maturity that according to Clause 1 of Article 121 of the Civil Code, in the case of males and 15 years for girls, 9 years. That the provisions of the Convention on the Rights of the Child prohibit executions of persons under 18 years of conflict.
- 3) Covenant on Civil and Political Rights adopted by the Parliament in 1975 has not yet officially commented on the Guardian Council, said: "The death sentence for crimes committed by persons below eighteen years of age and shall not be." It raised an important issue and it is banning the death penalty. In accordance with Article 9 of the Civil Code, the Code Covenant is the law. But with the implementation of the Penal Code Act of 1991, in practice this part of the Covenant on civil rights have been abrogated except with the approval of the parliament will be no criminal capabilities. But have international responsibility for the Iranian government and this is one of the important things that finally the government must clarify its position in relation to its commitments (Katouzian, 2003: 56).

### 4. Investigation of Islamic Penal Code 92

According to what is stated on the Iranian government objections and protests was excessive from the international community and the Iranian government is still in the conventions and treaties did not comply with its provisions and this led international pressure forced the government to seek changes in its laws. It might seem an exaggeration, but a quick look at the main changes can be added to the Penal Code Chapter 2013 named "Penalties and security measures and upbringing of children and adolescents". In the case of children and adolescents who commit crimes are punished, ages 9 to 15 years that the court can delegate the supervision of a parent or legal guardian with them to get a commitment from them or to a doctor, social worker report or in a

cultural and educational institution for vocational training send them. Therefore, in accordance with the provisions of hudud and qisas laws for children under 18 years of age and their development in the fullest sense there is uncertainty, will not be executed. There is a major change in the law is that children who are legal adults (age of maturity is 15 years and 9 years for girls and for boys) but if they are under 18 years of age and their development has created doubts in the fullest sense, Hudud and qisas will not run for them. Usually grow in wisdom and children under 18 years who have committed crimes, and there is uncertainty if the court is also the doubt, about punishment and retribution will not run for them. That does not condemn the death penalty. According to the law, children are also exempt from criminal liability and jail sentences for persons under 18 years with discretionary punishments are different people over 18 years. People under 18 are not sentenced to prison for education are transferred to a juvenile institution if the parents do not have the authority to hold him/her. These children are entrusted to train the natural or legal person competent (Nobakht, 2006: 166). The legal materials, characteristic thing is that the age of criminal responsibility has been gradual maturity was important because under the previous law, the waste, but now it is important for children under 18 years of deciding judge. There are also gender and involves boys and girls together.

### **5. Criminal Liability of Children in the Justice System in France**

Child in French law, minors under age 18. Today, it is as a material for obtaining intelligence and will power is not enough, so much for that Minor has the distinction of committing a crime deterrent and be treated like an adult. Fortunately, what has changed, minor operation works, in terms of substantive criminal law and criminal law enforcement and in terms of form, procedure and trial-specific references. A minor who has not reached the age of sixteen years, the punishment is not necessarily the child, meaning under the age of 16 years, but if, while committing more than 16 years, in such a case can be subject to enforcement measures. Identify criminal liability of minors under the criminal authorities, they explained. This transformation process which in the future will create a sense that the criminal liability of minors in criminal law of minors will be a practical idea. This logic demands that the new definition of criminal liability of minors is provided. This is what the legislator has done on 9 December 2000 although the causes of and ways that it requires policy does not match drawn (Mohaghegh Harchaghan, 2011: 166).

### **6. Principles of Criminal Responsibility for Children**

#### *6.1 The Principle of Criminal Liability Decree February 2, 1945 AD*

The adoption of a legally February 2, 1945 in relation to offenders placed a new system which hedge alternative penal measures and Judge children and special courts where international experts on children in addition to judges and paid according to the new procedure for dealing with juvenile delinquency proceedings resulted. If 18-year-old minor to commit a crime would not be punished but also basically the same as the Great to regulatory assistance and educational support measures taken against him/her. This is a minor release of criminal convictions resulting from the criminal justice will not be held responsible. Despite the lack of criminal liability of minors is not hampering the implementation of educational measures is no command in the month of February 2, 1945 2 provides: The juvenile court and criminal court to support children in terms of the measures that help monitor and take their proper upbringing (Stifani et al., 1998: 543).

#### *6.2 The Principle of Sentencing against Children 13 to 18 Years*

Although all children 13 to 18 years old are strictly under the Security and Corrective Measures and Regulatory but an exception, whether they have more or less than 16 years, court and criminal court for children, where appropriate, the circumstances and character of the offender can issue a warrant criminal conviction (Article 2, paragraph 2 of the Decree of 1945). If you have a 13 to 18-year-old Minor also repeatedly refused to accept the verdict of educational measures, the judges gave the verdict to jail by teaching with supervision and assistance required to ensure that minors do not hesitate to stay in special centers. However, when children are court verdicts issued against children 13 to 18 years, they cannot expect to be punished by law for the offense committed vote. Minor 13 to 18 years of pardon or a commutation of the sentence minors extenuating use (Ibid: 545).

#### *6.3 The Principle of Criminal Responsibility of Minor Children*

Article 122-8 of the Criminal Code amended by Law of September 9, 2002 states that children are able to distinguish and detect the crimes are criminal, unlike those aspects and conditions set by specific legislation, namely the 1945 decree known offenders are responsible. Thus, contrary to the theory that even today many fans because of the child itself cannot be invoked. Children for all offenders who are committing the crime of criminal responsibility, but also for the recognition should also have the power to distinguish. So the criminal

law distinguishes two children from each other: First, those who do not have the power to distinguish or identify the category of children because of not criminally responsible. Therefore cannot be subject to any action or criminal. The children who have the power to distinguish and recognize that these children have the potential crime attributed to them. In the absence of clear rules that determine age as the age of discretion, determine the age of discretion will be the judge who will decide the case (Loterfy and Kolb, 2008: 102).

#### *6.4 The Principle of the Decline of Criminal Responsibility for Children*

Although children as well as adults in terms of criminal responsibility are auditor, but all children benefit from a special place organized by criminal law and decree sets and on February 2, 1945 (except that it refers not to a specific law that Article 8-122). Because of a certain age that children have in fact decreased their amount of criminal responsibility. In this context mentioned decree gives distinction to be threefold:

- A) Children, regardless of age who committed the crime is special, in principle, be the subject of any action taken unless actions supportive aspects of care and educational assistance (first paragraph of Article 2 of the mentioned decree). Paragraph sign is mentioned here that educational reform has been on oppressive regime lead. Juvenile offenders in the first place, as does the risk assessment.
- B) A child 10 years old or more can be sponsored educational performances. This sanction mentioned in Article 1-15 counted command (confiscation of property, a ban on meeting the victim) this is about the First Amendment guarantees the principle of the supremacy of the penal sanction and on the circumstances and personality of the child such a thing is required by paragraph 3 of Article 2 of the decree is mentioned.
- C) Children 13 years old and more could be sentenced to penal sanction. This is the second exception to the principle of the supremacy of the guarantees of criminal sanctions and its implementation still requires reasoning is justified circumstances and character (paragraph 2 of Article 2 above command). For children 13 to 16 years necessary as a result of extenuating excuse the child and to reduce the need for punishment lessened the punishment.

### **7. Criminal Responsibility of Children in America**

Unfortunately, because of the number, in terms of judicial procedures and different approaches to the age of criminal responsibility in America, could bring the age of criminal responsibility to accurately separate them, but the criminal policy of America, the Department of Mental Health and Anti-Addiction's S.A.M.H.S.A, that America is binding for all States in this regard, we express are precedents. Mental Health and Addiction Services Administration to fight America, which has received a significant program that the program has been established to prevent and limit alcohol consumption. The program of so-called model (N.R.E.P.P) on the local laws that regulate alcohol and opiate-up, designed for young people under 21 years is unavailable (Fathi, 2009: 78).

### **8. Criminal Responsibility of Children in Germany**

According to German criminal law, these plans [diversion in the form of mediation schemes in Germany] to young people in England and Wales over 20 years and is considered a "young adults". Germany's new law aimed at adolescents 14 to 21 years old who have committed crimes (Ashouri, 1997: 260).

### **9. Criminal Children in England**

According to criminal law a child under 10 years of punishment for any crime (mentally incapable of committing a crime) is not responsible for and therefore cannot be condemned. Among children ages 10 to 14 years for any offense that may be committed, provided that the court ascertains that the child knew that his action is a crime. Children over 14 years for the imposition of criminal responsibility. The evidence from the House of Lords in the case of a minor against a prosecutor (approved in 1995) was approved again. Young people aged 14 years and are responsible for their criminal acts. Children (i.e. persons under 14 years) and young adults (i.e. persons over 14 and under 17 years) as a general rule by judges competent to stand trial in youth court. If the nurturing of a criminal indictment is a severe homicidal child or youth usually sent to the royal court. However, no person under 17 years cannot be sent to prison. However, other institutions such as the Center for Education Reform and conservation centers and detention centers, juvenile offenders are punished for acts or provided. A child or young person may be fined for any crime. Pursuant to paragraph (1) of the Family Law Reform Act 1969 enacted the first date in January 1970 instead of a 21-year-old man with capers will reach 18 years of age and everyone on it if it has reached the age of 18 but has not reached twenty-one years of age will be mature. For example, a child who was born on 31 December 1970 for the first time on 31 December 1988 will be great. In English law, juvenile offenders, individuals between the ages of 10 and 17 years of age who has committed a crime. Young offenders aged 14 to 17 years that is personal to commit a crime is committed and people between 10 and 14

years as a child cannot be charged with a crime is committed, except when the murder. So if a child less than 10 years have undeniably an assumption that he is not able to commit a crime, although that may be the intention of the act is committed by a material element (crime). If the older adult may participate in child crime through the theory of "agency without fault" to be recognized as a perpetrator responsible. If the child is between 10 and 14 years would be blamed only if the government "evil approach" to prove to him/her. There is also an assumption that the child less than 14 years can not commit rape, however, between 10 and 14 years old and from a perspective of "evil approach", have also assumed the Sexual Offences Act 1993 was abolished. However, after searching the supposition convictions overturned a lot about a boy under 14 years to commit a sexual assault has been issued and criminal responsibility of persons over 14 years as adults. The most recently placed greater emphasis on correcting and training (Abachi, 2009: 32).

## 10. Results

- International rules more focus on children's rights and therefore more support than what the domestic laws of most countries are predicted to be considered.
- Convention on the Rights of the Child is the most important international human rights treaty is a legally binding instrument and member states are bound by its provisions in the Convention persons under eighteen years of children's and the execution and torture of these people is forbidden, in addition, there are others such as the Beijing Rules and Riyadh Guidelines cite. In general, the rules of human rights of governments to the minimum age for criminal responsibility to determine logical, non-judicial ways of dealing with juvenile offenders to create and punishment aimed at correcting and training should be considered.
- Iran created by developments in Islamic Penal Code 92 is more in line with human rights law. So the impact of human rights law and State practice in this area is limited behavioral deficits, but recent developments suggest that widespread acts by international courts can create new support for children.

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