

The Influence of Age on Criminal Responsibility in Iran and Azerbaijan Law

Leila Mohammad Biklou¹

¹Department of Criminal Law, Baku State University, Baku, Azerbaijan

ABSTRACT

Childhood is a special stage of human life that is with physical, mind and education growth, the end of this stage is called maturity that is different in girls and boys. Criminal punishment with children requires trial and applying special punishment and after the concept of maturity, civil and punishment growth is raised and in Iran law civil growth is considered and some criterions such as the age of 18 for girls and boys or is determined by proving growth after maturity and it is not used in criminal growth. In Azerbaijan without considering physical maturity of girls and boys or criminal growth of the ages 14 and 16, it is used as the basis of criminal responsibility that show more similarity to Iran public penal code before Islamic Republic of Iran and from 16 to 18 years in Azerbaijan the punishment reduction is used as the criterion but it is not seen in the present law of Iran and in Iran criminal law the crimes under the age of 18, is following criminal penal code and in this article these differences are reviewed.

KEY WORDS: Criminal responsibility age in Iran and Azerbaijan laws; gradual responsibility of children and adolescents-differential trial; Correction and rehabilitation center.

INTRODUCTION

Allah in An-Nahl Surah, verse 78 says:” And Allah brought you out from the wombs of your mothers when you nothing and bestowed on you hearing and sight and hearth (1)

The child by hearing, sight and mind and other senses tries to gain knowledge and recognition of the facts around him and occasionally do trial and error and adds to his information and the personality of each person is formed at childhood. Imam Ali says the heart of an adolescent is like an empty group accepting everything exposed to it (2) and as the child is growing in terms of the body and mind, the society considers to approve the supportive instructions and rules for the child in terms of civil and criminal rules, then criminal policy as the set of society methods including government and civil society that by them organize the required response for criminal entity (3). This criminal policy about children and adolescent delinquency is separate from the criminal policy in coping with adults delinquency, because the child passes different stages to reach adulthood including immature child who doesn't recognize anything and is regarded as insane and the child who can understand good from evil and physical maturity period with the preparation for bearing child that is called as adolescent and youth period leading into adulthood and the child is vulnerable to delinquency and being victim in these age intervals. Children and adolescent delinquency mostly is without enmity and revenge and it is the natural result of these stages in the life and there should be punishments and corrective measurements consistent with these stages and this was considered more in criminal humanity held in 1906 in Torin of Italy ((The judge should use various measurements in terms of social-individual conditions of each child...)) (4).

Considering Criminology thought and approving Declaration of the Rights of the Child (Nov, 20, 1959) and other global declarations, a special criminal law is created for children and adolescents with the following properties:

Differential reaction toward delinquent children and adolescents

Gradual criminal responsibility in different periods

More emphasis on educating children responsibility and benefiting social court supportive system for fair trial and consideration basis and the minimum (5)

In Iran penal code in 1925, children are divided into 3 age groups and in 1959 by approving to hold trial of differential trail of delinquent children to children and adolescent and after Islamic Revolution of Iran in 1979, law system changed in Iran and according to the forth principle of Islamic constitution all the civil, penal, financial, economical, administrative, cultural, military, political and etc rules should be compatible with Islamic rules (6) dramatic change was occurred in penal code and gradual criminal responsibility of children and adolescents lost its position but in Azerbaijan this was used by lawmaker.

*Corresponding Author: Leila Mohammad Biklou, Department of Criminal Law, Baku State University, Baku, Azerbaijan.
E-mail: bikloolya@yahoo.com

Chapter 1: Gradual criminal responsibility of delinquent adolescents and children in Iran

Responsibility literally means being obliged to do something (7)

Responsible is a person who is obliged to another person and if he refuse to do it, he will be blamed for it, thus responsibility is always along with obligation and in criminal law domain, the content of this obligation is accepting all the criminal acts consequences, it means tolerating the punishment that is waiting for blameful acts of delinquents and to blame him for his guilt and the ability to accept the burden of fault is attribution ability (8) and as children will is not along with distinction, the law maker doesn't know this will as valid and forgive his punishment. Thus, the first condition of criminal responsibility is that the person has reached a definite age and human being will is dependent upon his age and due to this criminal responsibility starts at a definite age (9) in European countries the children were punished as adults.

The law of Dec 22, 1688 of France condemned a little child to be hanged from the public square of the city from his side and then he was lashed and was sent to prison (10).

In England in 17th century in Ebingden a 8-year old child were sentenced to death due to burning two warehouses and a 9-year old child was executed because of murder and a 10 and 13 years old was also sentenced to death and in 1814 3 teenagers with the age of 8, 9, 11 were sentenced to death due to stealing shoes (11).

The minimum age considered for a child to hold trial for him is different in all the countries and this different is seen in Iran and Azerbaijan. In Iran two legal governments before and after Islamic revolution are separately being reviewed.

First: The age of criminal responsibility in Iran public penal code in 1925

Classic thought theories were reflected gradually in the law of 18th century and in it was effective in France and penal code of 1810 being famous for Napoleon law about children crimes considered 3 principles.

Determination of age limit, prediction of distinction ability and determination of less criminal responsibility for children in article 66 of France public penal code, minor age is at 16 and the people who are over 16 were at complete criminal responsibility age and before 16, if a child committed crime, the judge at first should determine whether the child can make distinctions between good and evil or not?

And if the child was not able to make distinction and commit crime, the child is not responsible and cannot be punished. So, the court can deliver him to his family to be educated or send him to one of rehabilitation and correction centers and when the court believed that the guilty child has the distinction ability and committed crime, he was responsible for his act and was punished but he was obliged to reduce his punishment due to his age and Iran public penal code approved in January 1925 being influenced by public penal code in France and Islamic rules, divided the children into 3 categories (12):

a. The children less than 12 years

In article 34 of the mentioned law it was stated (immature children cannot be condemned on criminal basis in criminal affair, any child under 12 is immature)

And immature child was less than 12 (13) and if these children committed murder, were not punished. Judiciary courts should deliver them to their parents to be educated and punished.

b. The children between the age of 12 to 15

In the previous section article 34 it was stated that (if immature children (but able to distinct good from evil commit a crime, should be given to their parents to oblige them to be punished and being considerate about their behavior)

So we conclude that the lawmaker considers 12 age the distinction age and before 12 is ignorance age and after 12 is being informant and the fact is contrary to the lack of distinction and ignorance after the age of 12 (14).

Regarding the punishment of children between the age of 12 to 15 as they could determine between good and evil, but they were immature, article 35 in 1925 adds (if immature person but able to distinct between good and bad is not at full 15, commit crime is sentenced to 10 to 15 lashes but he should not be lashed more than 10 lashes in one day and not more than 15 lashes in two consecutive days. And if he commits murder his punishment was not more than 50 lashes.

c. The children between the age of 15 to 18

Article 36 of public penal code of 1925 about mature children who are more than 15 but they didn't reach 18 says (mature people with the age of more than 15 but not 18, when commit crime, they will be sent to correction center for a period of not more than 5 years and if his crime was Misdemeanor, his punishment will be less than the half at least it will not be more than the punishment of the criminal of the same crime)).

But 15 age is the legal sign of distinction ability and about criminals if it is of Misdemeanor type, the punishment of the delinquent child is half of the punishment of an adult and if the criminal punishment of adult is 6 months to 3 years, it is 3 months to 1 and half year for these children in correction and rehabilitation center and if

the adult kills another deliberately he was sentenced to death and if the children do the same act, they will be sentenced to at most 5 years presence in correction center (16). another punishment reduction for children was that the rule of poly crimes and frequency of crimes were not applied for them.

2. Criminal responsibility age in Iran public punishment rule in 1973 and delinquent children trial law in 1959

In 1959 the law of Iran delinquent children trial was approved and articles 34, 39 of public penal code approved in 1925 was not enforced, then by approving public penal code in 1973 the rule of public penal code of 1925 about children crimes were abolished completely.

In delinquent children trial law some main innovations were done as: 1. Holding children court, 2. Correction and rehabilitation center instead of Dar-al-tadib, and it is good for supervising the re-education of delinquent children. 3. Using special trial procedure avoiding the propagation of the news of children delinquency and causing terrible damages to his personality. 4. Light rules that can correct the child instead of making him worse 5. Creating the link between the court issuing decree and delinquent child in order that the judge is informed of the changes in the child's behavior and if necessary, takes new decisions to correct the child (17).

In children court law and article e33 of public penal code of 1973, the children are divided into 2 categories:

a. The children between the age of 6-12

In article 17 of delinquent children trial it was assigned that (about the children more than the age of 6 or 12, if they commit crime, the following decisions are taken.

Delivering the children to their parents by getting written commitment of education and correction and being considerate in good behavior of the child

Sending the children to correction and rehabilitation center to be educated for 1 month to 6 months (in some cases that the parents or his guardian are not qualified or it is not possible to oblige the child to be educated or being considerate in good behavior) and article 33 of public penal code of 1973 stated that (delinquent children court is being held for children crimes and in cases of the lack of correction and rehabilitation center, the court of the children considered the followings:

b. The children between the age of 12 to 15

These people understand more so, article 18 of delinquent children court made three kinds of different rules.

Giving them to their parents and obtaining written commitment for being educated and being considerate in good behavior of the child

Blame and advice by the judge

Sending them to correction and rehabilitation center (from 3 months to 1 year)

c. The children between the age of 15 to 18

These people could distinct between good and evil and they were mature and their punishment was similar to young age people and in some cases similar to adults and it was:

Giving them to their parents and obtaining written commitment for being educated and being considerate in good behavior of the child

Blaming and advice by the judge

Sending them to correction and rehabilitation center (from 3 months to 1 year) and if it is of criminal type, the judge is obliged to sent the child to correction and rehabilitation center for 3 months to 1 year and if it of criminal crime, the court is obliged to sent them to correction and rehabilitation center for 6 months to 5 years and even in public penal code 1973 in article 33, it is emphasized that if the punishment of a crime is death sentence or life sentence, this period shouldn't be less than 2 years and the court can determine this period to 8 years prison.

3- Criminal responsibility age in Iran Islamic penal code

After Islamic revolution of Iran in 1978, all the rules should be Islamic according to the fourth principle of Iran constitution, so Iran rules is changed considerably. Article 1210 of civil law in 1922 by Islamic council Majlis determined maturity age and the note 1 states that (maturity age in boys is 15 Ghamari years and in girls 9 Ghamari years (18) and is stated in article 49 of Islamic penal code in 1991.

The children in case of committing crime are devoid of criminal responsibility and their education by the view of the court is under the supervision of children and the head of correction and rehabilitation center.

Note 1 the child is a person how not mature is based on religious rules

Note 2 when physical punishment is used to educate delinquent children, the punishment should be done as quantified. Maturity in Islam religion means that the little boy can make a woman pregnant and the girls menstrual period start and determining the fact that when a girl menstrual period starts and gets pregnant and the boy can

makes another pregnant, is different in different parts of the world. But Iran law by the view of Islamic Foghaha stated maturity age in girls as 9 and in boys 15. In this article the law is not different between a person who can distinct between good and evil and about homosexual relationship (the relationship between men and men and if he is immature and that is not clear whether distinct or not according to article 113 of Islamic penal code states that (when an immature person has relationship with another immature, he will be punished to 74 lashes).

Considering adultery and homosexuality to a person is called Gazf and if an immature person do it, according to article 147 of Islamic code when an immature person attribute adultery or homosexuality to a person, is punished by the court and recent law of Iran, distinction is not depending upon an age but it is determined by an expert thus, if 9-year girl and 15-year boy commit crime are punished as the adults and only the judge can reduce the punishment according to article 22 of Islamic penal code in terms of low age and the judge is not obliged to reduce the punishment and as Iran joined Children rights convention approved on Nov 20, 1989, Iran was obliged to attribute a section in criminal procedure to children crimes and all the children and mature people less than 18 , their crimes is reviewed in children court and specialized judge and obliging the judge to file personality for delinquent person, giving protest right to the decision of the court to the child and creating supervision committee during giving decree as differential trial between adults and young age less than 18 years are the consequences of this specialized court.

And it should be considered that investigation type of the people under the age 18 is different from the others but about applying punishment, 9 years is good for boys.

Chapter 2: Criminal responsibility in Azerbaijan law

In Azerbaijan law public law is more similar to Iran and France law and in section two of chapter 4 about criminal responsibility of the people some rules are determined.

First: Children to the age of 14

In article 20 legal age of criminal responsibility is determined (19).

In article 1-20 is stated ((the people with the age of 16 who committed crime will be arrested thus, criminal responsibility age in contrary to Islamic punishment law there is no difference between man and woman and both groups are the same and physical maturity of girls and boys are not considered and as some of the crimes are against the society security and qualifications. In article 2-20 criminal responsibility age is reduced to 14 years and the people who commit deliberate murder, kidnapping and sexual harassment, robbery, plunder, strike and turbulence , etc damaging the public security and comfort, criminal responsibility criterion is at 14 and under this age, they are not under criminal responsibility. Thus, in Azerbaijan, a special age was the basis of criminal responsibility but in Iran physical maturity has created different criminal responsibility of girls and boys.

Second: Children to the age of 18

In section five of chapter 14, criminal responsibility of immature people are considered an article 1-84 states that (the people who passed 14 but they didn't reach 18 are considered as immature and in article 2-84 of penal code of Azerbaijan stated that (if immature people commit crime , corrective punishment can be considered for them or corrective and education should be considered. In Iran immature people are the ones who are not physical mature and if they reach physical maturity that is normally for boys at the age of 15, they are responsible for every crime and this physical crime is the reason to social growth but in Azerbaijan immature person is the one who didn't reach social maturity. Although he is physical mature to bear child but legally in Azerbaijan 18 years of age is an age in which girls or boys reach social growth and they will be responsible for all their crimes like adults, thus, from 14 to 18, a kind of gradual criminal responsibility is predicted depending upon the type of crimes in this country and it seems that it is more acceptable. Because a man who is physically prepared to bear child is possible that in some of the social consequences and crime is not reached the maturity and lawmaker of Azerbaijan country has considered this fact and considered according to its social growth, gradual criminal responsibility so in article 85 it is stated that (different kinds of punishments considered for immature people)

1-85 the following crimes are considered for immature people:

1-1-85 Fine (For immature people who have job or estate)

2-1-85 social works (of 40 hours to 160 hours don't interfere with their lessons)

3-1-85 Corrective works (it is determined of 2 months to 1 year)

4-1-85 they are deprived of freedom for a definite time and condemned to prison and according to article 5-85 their prison shouldn't be more than 10 years and immature girls and boys are condemned for the first time and are in correction and rehabilitation institutions with the common system or the system is more serious that is stated in article 2, 1-5-85 or in article 89 to the other immature criminals freedom who committed crime is accepted according to the special conditions of Azerbaijan such as:

Not committing heavy crime by considering obligatory educational measurements (article 1-89)

Immature commit a little heavy crime to the age of 18 that is not more than 3 years in corrective centers (article 2-89).

Immature criminal in case of being corrected with the management of the mentioned centers are released before the deadline (Article 3-89) a person who commit heavy crime and has taken the half of his punishment (article 20-90) (20) and some examples that are predicted in different items of Azerbaijan country.

Conclusion

Maturity in Iran is physical growth in girls and boys and this physical growth is assumed. Girls and boys are socially grown and knows the meaning of the word responsibility and crime.

Thus, the girls at 9 and boys at 15 who commit a light or heavy crime, have complete criminal responsibility, in Iran law, criminal gradual responsibility for these people are not predicted and only the judge can reduce punishment in some cases or give them probation freedom periods and as Iran is joined the child rights convention it has caused that the people under 18 are having differential trial and this trial didn't influence 15-year boys and 9-year punishment while in applying punishment, in addition to physical growth, social growth should be considered and criminal gradual responsibility system in Azerbaijan is observed and in Iran law it is done in accordance with Islamic rules.

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