

## **Child Offenders in Iran: Legal Analysis on the Age of Criminal Responsibility and Sentencing**

### **Pesalah Kanak-kanak Di Iran: Analisis Undang-undang Terhadap Umur Kebertanggungjawaban Jenayah dan Hukuman**

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#### **Abstract**

The age of criminal responsibility of children is important because of its relevance to children life. The minimum age of criminal responsibility of children is the lowest statutory age at which children may potentially be held criminally liable for infringements of the penal law in a given country. Thus, the area of children's rights includes the issue on age of criminal responsibility of children in international instruments as international standard. This article analyses the age of criminal responsibility of children in Iranian laws as a Member State of international instruments such as the United Nations Convention on the Rights of the Child (UNCRC) as the basic sources for the children's rights in international law. This article analyses the legal framework for the age of criminal responsibility of children under the Iranian laws especially the Islamic Penalties Act. This article also discusses the conduct of prosecution and sentencing of children in Iran. The methodology involves gathering relevant data from the specified documents and compiling databases in order to analyse the material and arrive at a more complete understanding on the

issue. The results of this analysis can be used to determine the proper age of criminal responsibility of children in Iran, specifically, and to promote protection of the rights of child offenders in Iran, generally.

**Keywords:** *Age of the child, rights of child, age of criminal responsibility, legal perspective, Iranian law*

### **Abstrak**

Usia kebertanggungjawaban jenayah bagi kanak-kanak adalah sangat penting kerana kerelevanannya terhadap kehidupan kanak-kanak. Usia kebertanggungjawaban minima kanak-kanak ialah usia terendah bagi seorang kanak-kanak dikatakan mempunyai potensi untuk melanggar undang-undang jenayah di sesebuah negara. Maka, bidang hak kanak-kanak melibatkan isu penentuan terhadap usia kebertanggungjawaban jenayah kanak-kanak yang terkandung dalam instrumen antarabangsa sebagai piawaian antarabangsa. Artikel ini mengkaji usia kebertanggungjawaban jenayah kanak-kanak di Iran sebagai sebuah negara ahli bagi instrumen antarabangsa seperti *United Nations Convention on the Rights of the Child (UNCRC)* sebagai sumber asas untuk perlindungan hak kanak-kanak dalam undang-undang antarabangsa. Artikel ini menganalisa kerangka undang-undang bagi usia kebertanggungjawaban jenayah di kalangan kanak-kanak di Iran khususnya *Islamic Penalties Act*. Artikel ini juga membincangkan pendakwaan dan penghukuman pesalah kanak-kanak di Iran. Metodologi bagi artikel ini melibatkan pengumpulan data yang relevan daripada dokumen-dokumen yang telah ditetapkan dan menyusun pangkalan data dalam usaha untuk mendapatkan pemahaman yang lebih lengkap mengenai isu dalam artikel ini. Dapatan dari analisis ini boleh digunakan untuk mencari piawaian usia kebertanggungjawaban jenayah di kalangan kanak-kanak di Iran, secara khusus dan meningkatkan perlindungan hak pesalah kanak-kanak di Iran secara amnya.

**Kata kunci:** *Usia kanak-kanak, hak kanak-kanak, usia kebertanggungjawaban jenayah, perspektif undang-undang, undang-undang Iran*

## 1. Introduction

During the past two decades, the rights of child offenders in Iran has been an important and controversial issue concerning the Iranian penal system, with interested parties continuously expressing concern regarding the minimum age of criminal responsibility of children in Iran. Following the Islamic Revolution in Iran in 1979, the Iranian Constitution was framed to include a provision in Article 4 that stated that all rules and regulations in Iran should be based upon Islamic criteria. Article 4 of the Constitution provides that all the legislative provisions, such as the right to life, freedom from torture, and right to a fair trial to be regulated in accordance to the Islamic laws.

The emphasis upon the compliance of Iranian laws and regulations with Islam resulted in the revision and reformation of the Islamic Penalties Act 1991 of Iran. As a result, rules relating to the criminal responsibility of children were abolished and new rules were established that were consistent with the provisions of Islamic law. The revision of laws resulted in the age of the criminal responsibility of children being linked to puberty and the ability of the child to accept religious duties and legal responsibilities.

In this article, two important aspects regarding child offenders in Iran will be discussed. Firstly, this article will review the age of criminal responsibility of children in Iranian law and the age that distinguishes between adulthood and childhood from the perspective of the Islamic law, as Islamic law is considered the fundamental source of Islamic Penal Code of Iran. To be specific, Iranian laws (Islamic Penalties Act and Civil Code) relating to the age of criminal responsibility of children will be reviewed and the importance of the age of puberty in relation to the age of criminal responsibility of children will be critically analysed. Secondly, this article will discuss the conduct of investigation, prosecution and sentencing of children in Iran.

## 2. The Age of Criminal Responsibility under the Islamic Penalties Act 1991

Who is a child? When will they have criminal responsibility? The current domestic laws of Iran divided individuals into two general categories of age: age of minority and age of majority. The age of majority is determined through the regulations of the Islamic law. As the Initial Report of CRC stated, according to *fiqh* (religious jurisprudence) and the law, a child or minor is a male or female offspring that has not attained maturity. Maturity is a natural and instinctive matter. One of the signs of attaining maturity is age. In *fiqh* and the law, a person who has not reached the age of majority is called a minor. A minor cannot dispose of his/her property. Iranian law does not offer any definition of a child and only the age of maturity is defined (Initial Report: CRC/C/41/Add.5, 1998). Further, according to Article 49 of the Islamic Penalties Act, children shall be free from criminal responsibility and the responsibility for correction, education and disciplining is given to the guardian, and if necessary the court will instruct a correction house to carry out this task (Initial Report: CRC/C/41/Add.5, 1998).

The most important issue of the penalty for child offenders in Iranian law is the age of puberty. Note (1) of Article 219 of Procedure Law of Revolutionary and Public Courts and Note (1) of Article 49 of the Islamic Penalties Act defines a child as: “someone who has not reached the age of the puberty.” Although the Article's note defines a child as someone who has not reached the age of puberty (*boloogh*) as stipulated by the *Shari'ah*, the Islamic Penalties Act does not offer any definition of the age of child or puberty. The Act does not fix any chronological age, but refers to the notion of “religious puberty”. Thus, “religious puberty” has been considered as the basis for criminal responsibility of individuals and differs between girls and boys. The principle conceptualization of criminal responsibility contained within the Islamic Penalties Act is based upon natural puberty. The important issue that arises now is when the age of puberty begins.

## **2.1 Age of Puberty: Concept and Application**

Puberty is the process of physical changes whereby a child's body becomes an adult body capable of reproduction. Puberty is initiated by hormone signals from the brain to the gonads. In response, the gonads produce a variety of hormones that stimulate the growth, function, or transformation of brain, bones, muscle, blood, skin, hair, breasts, and sex organs. In the first half of puberty, growth accelerates and stops at the completion of puberty. Before puberty, body differences between boys and girls are almost entirely restricted to the genitalia. During puberty, major differences of size, shape, composition, and function develop in many body structures and systems (The Titi Tudorancea Bulletin, 2010).

In a strict sense, the term puberty (derived from the Latin word *puberatum*, meaning age of maturity or manhood) refers to the bodily changes of sexual maturation. Puberty is not the period of psychological and social transition between childhood and adulthood. Adolescence is the period of psychological and social transition between childhood and adulthood. Adolescence largely overlaps the period of puberty, but its boundaries are less precisely defined and it refers to the psychosocial and cultural development during the teen years resulting from the physical changes of puberty (The Titi Tudorancea Bulletin, 2010). Puberty is a natural and instinctive matter that occurs at different ages for girls and boys.

Two of the most significant differences between puberty in girls and puberty in boys are the age at which it begins and the hormones involved. Although there is a wide range of normal ages, girls typically begin the process of puberty at age 10, boys at age 12. Girls usually complete puberty by age 16 or 17, while boys complete puberty by age 17 or 18. Girls attain reproductive maturity about 4 years after the first physical changes of puberty appear. In contrast, the physical changes in boys accelerate more slowly, but continue for about 6 years after the first visible pubertal changes (The Titi Tudorancea Bulletin, 2010). Another difference in puberty between girls and boys arises from the different physical changes, such as body and facial hair; voice change; and the male musculature and body shape for boys and the shape and composition of the body for girls. In a general sense, the conclusion of puberty is marked by reproductive capability.

In accordance with scholars' view, the age of puberty is different for each individual and can be affected by biological and external factors such as climate and nutrition.

## **2.2 Puberty and Intellectual Maturity: Differing Concepts**

This article argues that puberty does not inherently indicate the attribution of penal responsibility because a person who has reached puberty is not necessarily wise and mature. Puberty is a physical change, not necessarily indicative of intellectual. The age of responsibility for criminal act is not simply subject to sexual puberty. *Shari'ah* law indicates that puberty and intellectual maturity are both to be considered in determining the age of criminal responsibility. For example, an insane person may have reached the age of puberty, but is not criminally responsible due to the lack of intellectual faculties. So the age of puberty *per se* cannot be the determining factor of the age of criminal responsibility (Baghi, 2007, p.7).

### **2.2.1 Puberty and Intellectual Maturity in Quran**

As Van Bueren mentioned, Islamic law has had an influence on the formation of the international rights of the child, most obviously with *kafalah*. According to *kafalah* a family is able to take in an abandoned child or a child without a family. The child's first right under Islamic law is to establish parentage. Once parentage has been established certain rights and duties follow, the most important of which are fosterage, custody, maintenance and guardianship. A child is entitled to custody from birth. It is form of guardianship which jurists divide into three categories: guardianship of the infant, which Islamic law places on women, to look after the child during the child's early life; guardianship of education (*al wilayat at tarbiya*), which according to the *Shari'ah* is the responsibility of the man; and guardianship of property (*al wilayat al maal*), which entrusts the management of any property of the child to the man (Bueren,1998, p.xxi). Throughout the 1,400 years history of Islam, children and insane people have been absolved of criminal responsibility, while such practice in western states has only been consistent for the past 200 years. The Quran is the basic source of Islamic law. When the subject of human puberty has been focused upon in the Quran, it has been described in interpretations as the puberty of meekness and puberty of marriage, alongside religious duty (Asghari, 2002). In the following discussions, the Quran's verses show a clear different between the issues of intellectual maturity and puberty.

#### **2.2.1.1 The Quran and the Issue of Puberty**

The Quran uses the word of *al huluma* (age of puberty) in relation to physical and sexual maturation without difference between girls and boys. Also, *al huluma* has been considered as the age of puberty in the Quran verses such as *wallatheena lam yablughoo al huluma* (those who have not reach the age of puberty) (Al-Quran, An-Nur 24:58) and *wa-itha balagha al-atfaluminkumu al huluma* (and when children reach the age of puberty) (Al-Quran, An-Nur 24:59).

Another verse states: “*Wabtaloo alyatama hattaitha balaghoo annikaha fa-in anastumminhum rushdan fadfaAAoo ilayhim amwalahum walata/kulooha israfan wabidaran an yakbaroowaman kana ghaniyyan falyastaAAafif waman kanafaqeeran falya/kul bilmaAAroofi fa-itha dafaAAatumilayhim amwalahum faashhidoo AAalayhim wakafa*” (and test the orphans until they reach (the age of) marriage. if you perceive in them right judgment, hand over to them their wealth, and do not consume it wastefully, nor hastily before they are grown. And whosoever is rich let him abstain, if poor, let him consume with kindness. When you hand over to them their wealth, take witness over them; it is sufficient that Allah is the reckoner) (Al-Quran, An-Nisa 4:6). Finally Al-Anam 6:152 states: “*Wala taqraboo mala alyateemiilla billatee hiya ahsanu hattayablughu ashuddahu*” (And do not approach the orphan's property except in a way that is best until he reaches maturity).

### 2.2.1.2 The Quran and Issue of Intellectual Maturity

In the Quran, the word *alrrushdu* (growth and mature) has been used for intellectual maturity and diagnosis between right and wrong (Mansouri, 2007). For example:

“*Saasrifu AAan ayatiyaallatheena yatakabbaroona fee al-ardi bighayri alhaqqiwa-in yaraw kulla ayatin la yu/minoo bihawa-in yaraw sabeela arrushdi la yattakhithoohusabeelan wa-in yaraw sabeela alghayyi yattakhithoohusabeelan thalika bi-annahum kaththaboo bi-ayatinawakanoo AAanha ghafileen*” (From my signs I will turn away the unrightfully, arrogant in the land, so that even if they witness every sign they would not believe it. If they see the path of righteousness, they shall not take it as a path; but if they see the path of error, they shall take it for their path because they have denied our signs and they were heedless of them) (Al-Quran, Al-Araf 7:146).

“*La ikraha fee addeeniqad tabayyana arrushdu mina alghayyi faman yakfur bittaghootiwayu/min billahi faqadi istamsaka bilAAurwatialwuthqa la infisama laha wallahusameeAAun AAaleem*” (There is no compulsion in the religion; truly the right way has become clearly distinct from error; therefore, whoever disbelieves the rebels (false deities) and believes in Allah, he indeed has laid hold on the strongest handle, for which there is no break off; and Allah is Hearing, Knowing) (Al-Quran, Al-Baqarah 2:256).

In addition, the word of *alrrushdu* (growth) is means of the intellectual maturity or intellectual power in the Quran verses (Mansouri, 2007). According to the Quran:

(Al-Kahf, Verse 66) “*Qala lahu moosa halattabiAAuka AAala an tuAAallimani mimma AAullimtarushda*” (Moses said to him: 'may I follow you so that you can teach me of that you have learned of righteousness?')

(An-Nisa, Verse 6) “*Wabtaloo alyatama hattaitha balaghoo annikaha fa-in anastumminhum rushdan fadfaAAoo ilayhim amwalahum walata/kulooha israfan*

*wabidaran an yakbaroowaman kana ghaniyyan falyastaAAfif waman kanafaqeeran falya/kul bilmaAAroofi fa-itha dafaAAtumilayhim amwalahum faashhidoo AAalayhim wakafa”* (And test the orphans until they reach (the age of) marriage. If you perceive in them right judgment, hand over to them their wealth, and do not consume it wastefully, nor hastily before they are grown. And whosoever is rich let him abstain, if poor, let him consume with kindness. When you hand over to them their wealth, take witness over them; it is sufficient that Allah is the reckoner.)

Thus, the Quran’s verses draw a clear distinction between the age of maturity and puberty. The main criterion distinguishing childhood from adulthood is sexual and intellectual ability. Therefore, there is no certain age for puberty because it needs to some process for puberty. Originating issue of puberty should be identified by biological science and natural issue under the *Shari’ah* framework. Additionally, the Quran has stated *wabtaloo alyatama hattaitha balaghoo annikaha* (and try the orphans until they reach the age of marriage) (Holy Quran, *An-Nisa* , Verse 6), this verse uses the word of *alyatama* (orphans) for boys and girls and there is no different between girls and boys.

Before the attainment to these conditions (intellectual and sexual maturity) children cannot take possession of their properties but ironically these two conditions are not being observed in determining the age of criminal responsibility in Islamic Penalties Act. Reaching to the sexual maturity in Quran means *alhhuluma* (sexual maturity) while reaching to the intellectual maturity means *alrrushdu* (growth). Some scholars disagree with the use of the age of puberty as the determining factor for the age of penal responsibility, arguing that it has not been referenced anywhere in the Quran. Of course, the Quran contains verses about puberty but has not determined any age as the age of puberty. The age of puberty cannot be used to determine the age of criminal responsibility at which a person is subjected to the death penalty. The general ruling of the Quran is that “responsibility” is subordinate to “puberty”, while the issue of when puberty occurs is a topical issue and subordinate to the discernment of the person itself and or subordinate to the geographical environment (Baghi, 2007, p.6).

### **2.2.2 The Criteria of Religious Responsibility (Duties) and Criminal Responsibility (Punishment)**

One of the principal issues in Iran is the assumption that the age of puberty is the age of criminal responsibility, whereas *Shari’ah* states that the age of puberty and sexual maturity is the condition for responsibility of people in respect of religious rulings, rather than criminal matters. For example, when prayers and fasting would become obligatory for a Muslim person, and it is not possible to extend them to the sphere of penal affairs. The principle of religious responsibility is based upon natural puberty and the age has been determined for this responsibility. Therefore the criterion for criminal responsibility and punishment should be maturity, not puberty. A person’s sins are recorded after their childhood period is over. The issue of recording the sins (for the afterlife punishment) is other than worldly punishment and implementation (Baghi, 2007,

p.7). Thus, criteria of religious responsibility are based on the age of puberty but criteria of criminal responsibility and punishment is based on both, puberty and intellectual maturity.

### **3. The Age of Puberty under the Civil Code of Iran**

The Civil Code, which has been approved by the Islamic law, distinguishes between maturity and puberty, but the same distinction is not made regarding punishment. Article 1210 of the Civil Code as amended in 1982, stipulates that: “No one, when reaching the age of majority, can be treated as under disability in respect of insanity or immaturity unless his immaturity or insanity is proved”. Note 1 of the Article provides that: “The age of majority for boys is fifteen lunar years and for girls nine lunar years.” Note 2 further states: “The properties which had belonged to a minor who has now reached the age of majority may be given to him only if it has been proved that he has full legal capacity.”

Thus, the age of puberty has been specifically established in Article 1210 of the Civil Code of Iran, 14 years and 7 months (15 lunar years) for boys and 8 years and 9 months (9 lunar years) for girls. It does not integrate the concept of intellectual maturity. These ages are the age of religious puberty. In the Civil Code of Iran, different ages are utilized in regards to intellectual maturity. The definition of the age of puberty in the Civil Code of Iran has been used by the Islamic Penalties Act to determine the age of criminal responsibility for boys and girls. Unlike the Civil Code of Iran, which applies to religious responsibilities, the Islamic Penalties Act does not integrate different ages alongside the concept of intellectual maturity when determining responsibility.

#### **3.1 Civil Code of Iran: Different Issues of Puberty and Intellectual Maturity**

The Quran draws a clear distinction between the age of maturity and puberty. (Al-Quran, An-Nisa 4: 6). This distinction is reflected in the provisions of the Civil Code of Iran, such as:

**Article 211:** “In order that a contract may be valid both parties to it must be of age, must be in their proper senses and must have reached puberty.”

**Article 1210, Note 2:** “The properties which had belonged to a minor who has now reached the age of majority may be given to him only if it has been proved that he has full legal capacity.”

**Article 1214:** “Transaction and legal acts performed by a person not of age of growth are not binding except with the permission of his natural guardian or his guardian, whether the permission has already been given or will be given after the transaction is made. Never the less, all kinds of possessory acts against no consideration are binding even without permission.”



The Civil Code of Iran places great emphasis on the intellectual maturity of an individual, because under Articles 211 and 1214 transactions and taking possession of property by immature persons are not effective and the validity of their transactions shall depend on their legal representatives (Baghi, 2007, p.10). As a result, the Civil Code of Iran considers the age of 18 as the age of majority and persons under the age of 18 as potentially intellectually immature.

### 3.2 Varying Ages of Responsibility in Iranian Legislations

Iranian civil law, as mentioned above, provides that individuals under the age of 18 cannot own property without their guardian. This illustrates merely one distinction amongst many different legal conceptualizations relating to the age of maturity in Iranian law. Arguably, a different age of eligibility or maturity is assigned in various legal instruments within the domestic legislation of Iran. The table below demonstrates the various ages assigned for different legal activities under Iranian legislations.

<b>Legal Acts</b>	<b>Age of Eligibility</b>
Obtaining Passport	18
Driving License	18
National Military Service	18
Opening Bank Account	18
Opening a Company	18
Real Estate Transactions	18
Personal Property Transfer	18
Voting	18

The age of maturity or eligibility noted in the table above indicate a much higher age requirement than that has been determined for criminal responsibility. In some cases it is twice the age mandated for criminal responsibility in cases involving female children. If a person cannot be deemed mature enough to drive an automobile, own property, enter the military or gain employment until they are 18, how can someone below that age be considered capable of comprehending the consequences of their actions and be held criminally responsible? The discrepancy in such ages has resulted in a contemporary trend among Iranian jurists to work towards rising the current minimum age of criminal responsibility (Danesh and Afshin Jam, 2010).

#### 4. Criminal Investigation, Prosecution and Sentencing of Child Offenders in Iran

Other than the issue of the minimum age of criminal responsibility of a child, another concern regarding child offenders is the investigation, prosecution and sentencing of children in Iran. Discussions in this section will look at the following: (i) the types of punishments and their applications to children; (ii) conduct and procedure of investigation and prosecution of children; and (iii) relevant legislative reform.

##### 4.1 Types of Punishments under the Islamic Penalties Act and the Exceptions

The Islamic Penalties Act 1991 identifies five types of punishment: *hodoud* (crimes against divine will, for which the penalty is prescribed by Islamic law), *qesas* (private disputes which allow retribution in kind), *diyeh* (compensation), *taazir* (crimes that incur discretionary punishments applied by the State that are not derived from Islamic law) and deterrent punishments, which include penalties, such as fines and cancellation of relevant licenses. Capital punishment is possible under *hodoud*, *qesas* and *taazir* crimes. *Hodoud* punishments constitute crimes mentioned in the Quran, while *qesas* punishments are equivalent to the crime. Finally, *taazir* punishments are not mentioned in Islamic Law and are therefore left to the discretion of the judge.

###### i. *Hodoud* Punishment

*Hodoud* punishments are offences that are mentioned in the Islamic scriptures. With regards to the age of puberty, no minor should be held criminally responsible for *hodoud* crimes. The age of puberty is a significant factor in the penalty for *hodoud* crimes. Article 13 of the Islamic Penalties Act provides: “*haad* is a punishment that its degree and type is not been specified in the *Shari’ah*”.

###### ii. *Qesas* Punishment

According to the opinions of Islamic law during the past 1,400 years, children would not face the *qesas*, regardless of killing children or adults. Also, under Article 49 of the Islamic Penalties Act, children are free of penal responsibility unless a judge deems it otherwise expedient to send the child to a centre for correction and rehabilitation. Therefore it is not a matter of dispute if a child may be given the *qesas* sentence or not (Baghi, 2007, p.5). Article 14 of the Islamic Penalties Act of Iran noted: “*qesas* is a punishment that should be equal to the crime (retaliated punishment)”.

###### iii. *Diyeh* Punishment

In the Islamic Penalties Act, *diyeh* is one of the punishments. *Diyeh* is blood money that is determined by the law giver for the crime committed. Article 15 of the Islamic Penalties Act provides that: “*diyeh* is a financial punishment [“Blood Money”] that is determined by a judge.”

If a minor commits a murder or an assault, payment of blood money is the responsibility of his/her paternal relatives.

#### iv. *Taazir* Punishment

Article 16 of the Islamic Penalties Act states that “*taazir* is a punishment of a degree and type not been specified in the *Shari’ah* and it is up to the decision of the judge. *Taazir* can be in the form of imprisonment, fines, or flogging (it should be less than *haad*).” Some provisions in the Islamic Penalties Act indicate that *taazir* punishment is acceptable for minors, despite the fact that Article 49 of the Islamic Penalties Act states that: “minors, if committing an offence, are exempted from criminal responsibility.

#### v. Deterrent Punishment

Deterrent punishment is a punishment that is imposed by the government in order to maintain the public order. It can be in the form of imprisonment, fines, or flogging. Legislation consistently recognizes the lack of criminal responsibility of children in deterrent punishment.

Article 49 exempts minors from criminal responsibility, but defines a child as an individual who has not yet reached puberty. There are, however, exceptions to this rule. Article 113 of the Islamic Penalties Act states that: “If a minor sexual intercourse another minor, both should be punished by up to 74 lashes, unless one of them is forced to do so.” Also, under the relevant Note to Article 295 provides: “Premeditated and unpremeditated murders caused by insane people and minors are regarded as accidental deaths”. Further, Note to Article 306 provides: “The premeditated or unpremeditated murder of a minor or an insane person are regarded as simple mistakes and payment of mulct is the responsibility of the paternal relatives [of the criminal] with the exception of women. This note regards the mulct for the murder and not the retaliation: if a crime of a child is considered as pure mistake and their guardian would be responsible for paying the blood money.

On the other hand, Article 49 also states that: “Their correction is the responsibility of their guardians or, if the court decides, by a centre for correction of minors”. While Article 49 has exempted children from criminal responsibility, its content and provisions of another articles stipulate on compensating for the crime of an immature person. For example, Article 112 of the Islamic Penalties Act that states: “If a mature man sodomizes a minor, the active party will be executed while the passive party who was consenting will receive up to seventy four lashes.” Another example is Article 147 that provides: “If a discerning minor falsely accuses another person, by the decision of the judge' he/she will be subject to corrective measurements. If a mature and sane person falsely accuses a minor or a non-Muslim he/she will be sentenced to up to seventy four lashes.”

#### **4.2 Conduct and Procedure of Investigation and Prosecution of Children**

If a child commits a crime, the criminal case is brought directly to court, without a preliminary investigation being conducted by the public prosecutor's office. Legislation in each jurisdiction has established one or more juvenile courts for the prosecution of crimes committed by children. Juvenile courts prosecute only the crimes of children and persons who are under the age of 18 years. During the prosecution of child offenders, both the preliminary investigation and the prosecution are conducted by the juvenile court. When the juvenile court begins its initial investigation of the alleged criminal act, the child is summoned by the court. While the court usually summons the child accused by contacting the guardian of the child, the court arrests the child if the guardian is absent. During the prosecution of children, the court requests that the child's guardian be present during hearings. If the guardian is not present, the child can be accompanied by an attorney during court proceedings. If the guardian is not present and does not provide an attorney for the child during the court proceedings, the court will appoint an attorney to defend the rights of the child (Mo'azzenadegan, 2004, p.139).

If the court is confident that the child will not attempt to flee and that access to the child will not be prevented during the proceedings, the court may opt not to retain the child in custody if the child's guardian guarantees the child will attend the proceedings or the child's guardian, or a third party, provides collateral for the child's release. If the child does not have a guardian and no collateral is provided for the child's release, the court temporarily takes custody of the child, placing them in a reform institution. If there is no reform institution within the court's jurisdiction, the court will determine another appropriate place to keep the child in custody. In the event that the court feels that it is necessary to hold the child in custody for investigative purposes or to prevent collusion with other collaborators, the court can remand the child into custody for the duration of the proceedings.

The prosecution of children for criminal offences occurs in closed sessions and only the parents, the child's attorney, witnesses and representatives from the reform institution are permitted to be present during the proceedings. The publication of information regarding children's proceedings, particularly the identity of the child, by newspapers, television or film is strictly prohibited by law. If an individual discloses such information, they face incarceration for a period of 91 days to one year and a fine. If the juvenile court determines the child is guilty of an offence and sentences the child to spend a period of time in a reform institution, the court has the discretion to reduce the sentence to one quarter of the original sentence, based upon reports from the reform institution. The decision of the juvenile court, however, can be appealed in the provincial court of appeals that exercises jurisdiction over the juvenile court in question (Mo'azzenadegan, 2004, p.139).

In terms of sentencing, the juvenile court is empowered to revise and reduce sentences. Some Islamic authorities such as Ayatollah Nouri believe that Islam allows flexibility in

punishment and argue that the ability to reduce juvenile sentences is permissible. Ayatollah Makarem Shirazi states that “for the sentencing of the underage adolescents, the maturity level has to be considered, in the case of any suspicion and if such sentencing would deface Islam throughout the world, within the judge’s discretion, there can be reductions in the severity of the sentence” (Danesh & Afshin Jam, 2010, p.36). In addition, Article 214 of the Criminal Procedure Code has incorporated provisions that are almost identical to Article 167 of the Iranian Constitution that provides:

“The judge is bound to endeavor to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgment on the basis of authoritative Islamic sources and authentic fatwa. He cannot, on the grounds of the silence or deficiency of the law on a particular matter, or its brevity or its contradictory character, refrain from admitting and examining cases and delivering judgment.”

### **4.3 Recent Legislative Reform Regarding Sentencing and the Limitations**

Legislative efforts have been made to make laws regarding the prosecution of child offender in Iran compatible with the requirements of the UNCRC. The present section reviews legislative reforms intended to bring the juvenile justice system of Iran into compliance with the UNCRC. The reform focuses mainly on the issue of the minimum age of criminal responsibility and the conduct of prosecution and sentencing generally.

#### **4.3.1 The Children and Juvenile Protection Law**

The Children and Juvenile Protection Law (CJPL) was enacted on 16 December 2002 and endorsed by the Council of Guardian on 2003. It was a legislative measure to protect juveniles from abuse. The enactment marks a positive step towards addressing the weaknesses of the Islamic Penalties Act for the benefit of children. The CPJL explicitly states that the protections provided by the law apply to all persons under the age of 18 years. The CPJL includes the Child Protection Code, which contains nine articles covering child abuse, sale of children, child exploitation, and the use of children in illegal actions including smuggling. While the legislation is admirable, it addresses the protection of persons under the age of 18 years rather than addressing the issue of children who are in conflict with the law. Although the CPJL extends protections to all persons under the age of 18 years, as discuss earlier in this article a minor continues to be defined as a person who has not reached the age of puberty for the purposes of the Islamic Penalties Act.

#### **4.3.2 The Bill on the Investigation of the Crimes of Juveniles**

To remedy the deficiencies in the Iranian legal system, the High Council of Judicial Development, in cooperation with UNICEF, formed a commission to prepare comprehensive legal reform package concerning children. In February of 2005, the judiciary submitted the Bill

on the Investigation of the Crimes of Juveniles (BICJ) to the government, who in turn referred it to the *Majlis*. The Bill was left in abeyance until its first reading in August of 2006. The passage in the first reading received extensive and positive coverage, but the bill was sent to a parliamentary committee for further consideration and was returned by the committee to the full House in 2007. Finally, Parliament submitted the BICJ for approval by the Council of Guardians, which has the responsibility for checking legislation for compliance with Islamic law before it enters into force. The Guardian Council has delayed its enactment on the purported basis that its provisions are in contravention of Islamic Law (Kazemi, p.225). This Bill is still waiting for Guardian Council's approval.

The BICJ mandates a reduction in sentencing for *qisas* and *hadd* crimes where the judge determines that "the complete mental maturity of the defendant is in doubt". The BICJ further requests that crimes punishable with death penalty or life imprisonment for adults be reduced to a term of imprisonment ranging from two to eight years in a juvenile correctional facility if such crimes are committed by juveniles between the ages of 15 and 18 years. Judges, however, would continue to have discretion to order executions, if the mental maturity of the defendant is not doubted (The Secretary-General's Report, 2008, p.4).

The BICJ could potentially eliminate the death (*qesas*) sentence for the persons under the age of 18. While the BICJ contains no explicit distinction on the age of criminal responsibility between girls and boys, the Government Commission on Bills added the BICJ following its examination, which states that children that commit crimes are exempted from criminal responsibility, along with a note that indicates that a child will continue to be an individual who has not yet attained puberty. The Commission continues to consider the age of religious puberty as the principle criterion for the age of criminal responsibility. Although the enacting of this Bill and its accompanying note make the BICJ ambiguous regarding the age of criminal responsibility of boys and girls and viewed to apply to all persons under the age of 18 years, BICJ will greatly reduce the possibility of severe penal sentences on children (Kazemi, p.225).

#### **4.3.3 The Amendments to Islamic Penalties Act of Iran**

A similar trend is noticeable in the latest amendments to the Islamic Penalties Act, which was approved following the Parliament's first reading in September 2008. A new draft Bill of Islamic Penalties Act was written by the Judiciary's Centre for Islamic Jurisprudential Research (*Markaz-e tahqiqat-e fiqhi qoveye qazayieh*) over the course of seven years and submitted to the Islamic Consultative Assembly on 11 December 2007. On 16 December 2009, the Assembly enacted the Act, with some significant modifications, for a trial period of five years. The Act has been undergoing a vetting process for compatibility with Islamic law by the Guardian Council since 30 December 2009 (The 3rd Periodic Report of the Islamic Republic of Iran, 2010, p.3).

According to Oates, finally, following a meeting on 18 January 2011, the Guardian Council ratified the final text of the new Islamic Penal Code and did not find any part of this Code to be

in contravention of Islamic laws and the Iranian Constitution. Passage of this Code renders the former Penal Code ineffective, providing the new and more severe Code as replacement (Oates, 2012) and it has been enforced by Parliament on 2012. While Guardian Council and Parliament have approved the new Act but it is waiting for the President's signification and will come into effect once signed by the President. So, the new law is not yet enforce in Iran (Hamshahri, 2012). The legal ban and halt on under-aged capital punishment (*qesas*) has been incorporated into this Act. In new legislation 'death sentence for all age groups of children and juveniles under 18 has been omitted'. As stated by Oates, The punishment of execution will no longer be issued for minors who were charged with certain crimes, such as smuggling narcotics. However, it is still very likely that individuals under the age of 18 who have committed murder will be sentenced to execution. Based on the new Act, minors will only be exempt from execution if they can prove that they do not have the mental capacity to understand the nature or prohibition of their actions (Oates, 2012).

The Article 146 of the new Act continues to set the age of religious puberty at 15 lunar years for boys and 9 lunar years for girls. This means that, the age of criminal responsibility is based on the age of religious puberty, while Article 145 of the new Act exempts those persons under the age of religious puberty from criminal responsibility. According to the Act, criminal responsibility is gradually applied between the ages of 9 years for girls and 15 years of age for boys, also the distinction between the attribution of criminal responsibility for girls and boys continues to remain an issue. The Act also stipulates that in the case of "*hadd* offences, pubescent children shall not receive the punishments prescribed by the Law for Investigation of Offences of Children and Young People, provided that they do not understand the nature and forbiddingness of the crime" and mental maturity may be determined by a medical examiner or other method deemed adequate by the court (Kazemi, p.225).

The new Act considered a milestone, includes principles of restorative justice; provisions for diversion of juvenile cases from the criminal system; and alternative sentences. While the new Act neither abolishes the death penalty for adolescents who cannot prove their mental inability to committing the crime, nor formally raises the age of criminal responsibility, it is an important step towards bringing the Iranian legal system in line with international standards, as the Act gives judges the possibility to reassess the mental maturity of the juvenile offenders and refrain from issuing death sentences in the first instance (Kazemi, p.225).

## 5. Conclusion

The existing and the new Islamic Penalties Act of Iran does not protect the fundamental needs of children and does not guarantee executive measures for the protection of children. The Islamic Penalties Act in regards to the age of criminal responsibility of children, is ambiguous, incomplete, insufficient, in conflict with the needs of society and in conflict with the UNCRC, particularly in Article 1 of the UNCRC that stipulated: "for the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier".

This article has demonstrate the significant issues associated with the Islamic Penalties Act and the Iranian juvenile justice system and these issues are foundation of the children's rights which should be discussed by the jurists so that various legal reforms could be established. As discuss in this article, the main issues include: the criterion of the age of puberty for determination of the age of the child; the lack of definition of the age of child; the lack of definition of the age of puberty in Islamic Penalties Act; the mismatch of the age of criminal responsibility with physical and social realities; the distinction of the age of criminal responsibility between girls and boys; and the lack of attention to intellectual maturity for determining of the age of criminal responsibility.

This article argues that puberty does not inherently indicate the attribution of penal responsibility because in many cases a person who has reached puberty is not necessarily wise and mature. Puberty is a physical change, not necessarily indicative of intellectual. The age of responsibility for criminal act is not simply subject to sexual puberty. Puberty and intellectual maturity are both to be considered in determining the age of criminal responsibility. For example, an insane person may have reached the age of puberty, but is not criminally responsible due to the lack of intellectual faculties. So the age of puberty *per se* cannot be the determining factor of the age of criminal responsibility.

## References

- Abiad, Nisrine, Farkhanda Zia Mansoor, (2010). *Criminal Law and the Rights of the Child in Muslim State: A Comparative and Analytical Perspective*. London: British Institute of International and Comparative Law.
- Al-Quran. *An-Nur* .Verses 58-59.
- Al- Quran. *An-Nisa* .Verse 6.
- Al-Quran. *Al-Anam* .Verse 152.
- Al- Quran.*Al-Araf* . Verse 146.
- Al- Quran.*Al-Baqarah*.Verse 256.
- Al- Quran, *Al-Kahf*, Verse 66
- Asghari, Abdulreza. (2002). *Sene Masoliyate Keyfari dar Hoghogh Eslam (Age of Criminal Responsibility in Islamic Law)*. Journal of theology and law. No 2:79-94.
- Baghi, Emadeddin. (2007). *The issue of executions of under-18 in Iran*. (online) <http://www.emadbaghi.com/en/archives/000924.php>>accessed (25/5 /2011).



Bueren, Geraldine Van. (1998). *The International Law on the Rights of the Child*. The Hague: Kluwer Law International.

Enforcing the International Prohibition on the Juvenile Death Penalty. (2008). A Human Rights Watch submission for the Secretary-General's report on follow-up to General Assembly resolution 62/149 on a death penalty moratorium. (online) <http://www.crin.org/docs/FileManager/HRWEnfIntProhibJuvDPenalty08EN.pdf> >accessed (17/6/ 2011).

Hamshahri Newspaper. (2012). *The New Islamic penalties Act in pending of president's signification*. (online) <http://www.hamshahrionline.ir/news-161199.aspx> > accessed (9/4/ 2012).

Initial Report: CRC/C/41/Add.5. (1998). *National law and policies on minimum ages – Iran (Islamic Republic of)*. (online) <http://www.right-to-education.org/country-node/440/country-minimum> >accessed( 07/6/2011).

Kazemi, Seyed Ali, Savadkoohi, Sam. (2009). *Masoliyat Keyfari Tadriji Dokhtaran (The gradual criminal responsibility of girls)*, Quarterly (Shoraye Farhangi Ejtemaee Zanan), Vol 28, No 45: 225.

Mansouri' Khalil. (2007). *Ghoran va neshanehayeh bolooagh jensi (Quran and signs of sexual Puberty)*. Aftab. (online) <http://www.aftabir.com/articles/view/religion/religion/c7c1180361472p2.php> >accessed(12/6/2011).

Mo'azzenzadegan, H. (2004). *Dadrasi Keyfari Vizheh Atfal Dar Hoghogh Iran (The Criminal Prosecution of Children in Iranian Law)*. Nedaye Sadegh (Journal of Jurisprudence and Islamic Law). Tehran: Imam Sadiq (as) University. No.33.

Oates, Lauryn. (2012). *Iran. Passage of Islamic Penal Code Violates Rights*. (online) <http://www.propagandistmag.com/2012/02/03/iran-passage-islamic-penal-code-violates-rights> >accessed(9/4/ 2012).

Tahirih Danesh and Nazanin Afshin Jam. (2010). *From Cradle to Coffin (A Report on Child Execution in Iran)*. The Foreign Policy Centre. (online) <http://dspace.cigilibrary.org/jspui/bitstream/123456789/26906/1/Report%20on%20child%20execution%20in%20Iran.pdf?1> >accessed (16/6/2011).

The Titi Tudorancea Bulletin. (2010). *Puberty*. (online) <http://www.titudorancea.Com/z/puberty.Htm> >accessed (08/6/2011).

The 3rd Periodic Report of the Islamic Republic of IRAN. (2010). Submission to the UN Human Rights Committee. *Death Penalty Concerns (Article 6, and Articles 7 and 15 in conjunction with Article 6) Questions recommended for inclusion in the list of issues for the consideration of the 3rd Periodic Report of the Islamic Republic of Iran.* (online) <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/NGOsubmissionELEI.pdf>>accessed (18/6/2011).

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