Gradual Penal Responsibility for Delinquent Girls

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Abstract

The age of penal responsibility has been considered among the important and challenging issues of penal laws since ancient times. The problem of gradualism or fending of penal responsibility is among these challenges. According the famous comment of Shia jurisprudence, the age of penal responsibility in Islamic penal code based on religious age of maturity is complete 9 years old (lunar) for girls and complete 15 years old (lunar) for boys. Now the question is “is that right to put the basis of penal responsibility age on religious age of maturity? Is age of maturity a worshiping issue or it is genetic issue? Is it gradual or it is fending?” In this paper, investigating the issue of penal responsibility age in girls in terms of different dimensions and criticizing the existing rules, the graduality and change in the age of girl’s penal responsibility proportional to their intellectual growth and distinguishing power is suggested; because girls are rarely matured in the age 9.

Keywords: gradual penal responsibility, delinquent, maturity, growth, age, girls.
Introduction
Evolution in penal views has had important achievements in the area of children, teenage trial and penal laws. Attention to personality features of children and juveniles, appearance of differential penal policy, adoption of appropriate reaction against their crimes with the goal of their amending, re-socialization and responsibilization are among the most important achievements that include various substantive and formal principles and laws. One of the common international principles is the determination of the minimum age of penal responsibility for juveniles. This issue has been emphasized in international documents and different legal systems, and countries have determined different ages as the minimum age of penal responsibility regarding social environment and different growth indices. In addition, most of countries have determined the age of absolute penal responsibility or penal maturity age along with determination of penal responsibility age, and have considered different social reactions for delinquent children and juveniles in the timespan between these two ages. These reactions compared to responsibility and punishment of adults diminishes and has gradual and evolutional aspect considering the rate of growth and evolution in child. Article 49 of Islamic penal law determines the age of penal responsibility in Iran as religious age of maturity which following the comment of Shia jurisconsults in article 1210 of civil law is complete 15 years old (lunar) for boys and complete 9 years old (lunar) for girls. Determination of this age presumption has resulted in various problems especially for girls. In this paper, designing and expanding this issue from different dimensions and to investigate existing perspectives and strategies and ups and downs of Iran’s legislation system in the area of penal responsibility age for girls, it has been tried to present an appropriate solution with regard to time requirements about girls’ penal responsibility.

Penal responsibility
Penal responsibility concept
“Human is bound to perform commitment and compensation of the losses in religious affairs that inserts to others. Also, human is responsible in penal issues towards undertaking the effects and consequences of his/her penal actions or omissions” (Tavajohi, 2005, 1, p. 86). Responsibility literally means “accepting the consequences and results of an action” and responsible is the person who “is questioned and is called to account” (Anvari, 2002, p. 7015). Therefore, responsibility is always together with commitment. In the area of penal laws, the content of this commitment is to accept the effects and consequences of penal actions, i.e. “tolerance of punishments that are considered for blame verbs of delinquent; but just by acting a crime, we can’t put all the responsibility on culprit’s obligation, and first the person must be known deserve to tolerance of this heavy load” (Ardabili, 2002, 2, p.74).
Indeed, penal responsibility in abstract meaning can be verified for persons before committing a crime and considering this meaning, penal responsibility means the ability or capacity of person for tolerating the consequences of penal behavior. Therefore “penal responsibility is the commitment of the person to accountability for effects and results of crime” (Mirsaeidi, 2004, 1, p. 21).

Fundaments of penal responsibility
“Fundaments of penal responsibility are: penal capacity and fault. Penal capacity is constituted of two elements perception and disposal. Perception in penal law means power and ability to understand and differentiate the nature of actions, effects and moral and social
consequences that are loaded on them” (Haman, p. 113). With this description, if the penal is not understood and free is not responsible for the act. For this reason, definition and determination of the limits of penal responsibility in penal laws is very important. “Penal responsibility has several conditions: a) the person is reached to a specific age, b) the person has no insanity and similar moods, c) The person’s freedom is not removed by the force or other factors” (Sanei, 2003, p. 483).

**Evolution of penal responsibility concept**

Since the 18th century and when personality in society became important, in penal sciences also delinquent human and his/her personality was raised as a puzzle and identification of delinquents’ personality was turned to one of the concerns of different criminology schools and new perspectives were proposed in this regard (Najafi Abarand Abadi, 2002, p. 1317). Two major evolutions were appeared because of these perspectives in the area of penal responsibility:

a) Individualization of penal responsibility: In the primitive period and even until the middle age, identity and consequently individual responsibility had no meaning. Therefore, the responsibility of crime was plural and family, clan or tribe were also included.

b) Individualization of penal responsibility: Before the 18th century, the most important characteristic of penal responsibility was its sense of physical, objective or subjective. It means that personality and spiritual directions of the delinquent was not considered; mental element of crime was not important and responsibility was realized against physical element of crime (R.K. Naeimi, 2003, pp. 82-84).

In the primitive societies, punishment was the sanction that crime creates, and its intensity was dependent on the level of disorder that crime was creating in public conscience. Thus, the result of punishment was return of disrupted order to its first state. Consequently, punishment was not considered for delinquent, but was for crime and every crime must include a punishment. Indeed, every consideration about the personality of delinquent and his/her responsibility was negated (R.K. Lui Brule, 1979, pp. 30-35).

In these systems also, there must be a distinction between the two methods: first, the method that knows the goal of punishment as delinquent amendment and punishment has a complete moral aspect. Second, the method which is inspired by thought of social security and the duty of punishment is described as “threatening” and “warning” (ibid).

In this path, penal responsibility of children also is changed and the punishment for children is partly milder than adults. However, there was no age limit for children for a long time. Classic school of penal law which appeared in the 18th century, believed that the level of delinquent responsibility is proportional to the degree of understanding and wisdom and because delinquent children have lower understanding because of lower age, therefore legislator should mild their punishment because of their lower age. The critic for this school caused the proposition of neoclassic view. They believed about the delinquent children that: a) trial has full authority and competence in determining discernment without considering the age of delinquent, b) penal non-responsibility must be clarified until a specific age in penal laws and minimum age of penal responsibility must be determined in it. Fulfillment school also doesn’t care about the factors of delinquency in children; the best way to confront with delinquent children is to determine reasons of delinquency and proper reaction with regard to
real personality of the outlaw child (Najafi Abrand Abadi, 2002, pp. 31-38). Penal laws of most countries are rewritten and corrected with regard to the scientific findings of these schools.

**The age of absolute and relative penal responsibility**

The age of penal responsibility in the specific or relative meaning is the age in that children are reached to the level of growth and maturity that can be considered as the committer of crime and naturally are followed by specific penal laws of children. This age is different in European countries and oscillates between 7 and 16; for example in Switzerland is 7 years old, 10 years old in England, 12 years old in Netherland, 14 years old in Germany and Spain and 16 years old in Portugal (Tadaion & Bagherinezhad, 2007, pp. 31-32).

Penal maturity age or the age of absolute penal responsibility, i.e. the age in that delinquent is considered as adult and is fully faced with penal law. This age is determined 18 years old almost in all European countries (Germany, Britain, Belgium, France, Italy, Netherland and Switzerland) (ibid).

**Gradual penal responsibility**

The interval between penal responsibility and penal maturity age, in the other words the ages of relative and absolute penal responsibility, is a specific and leniency period that specific trial of juveniles becomes meaningful. In this period, penal sanctions are rarely enforced to children and juveniles committed a crime and penal reactions have mostly educational and social aspect. The existence of this stage originates from accepting a few fundamental issues: first, specific situation and features of children, children’s educability and the issue that justice system must be a training system for them. Because the goal not only is not their punishment and intimidation, but is their return to society; the existence of qualities like knowing all crimes of children and juveniles private, no consequence of criminal sentence for them, the use of the responses of penal sector opportunity etc. are towards the realization of this goal. Third, supportiveness of specific trial for children and juveniles means that children delinquency usually follows the reasons and factors such as poverty and incorrect education, abuse from them etc. Therefore, shortages and limitations of person’s past that resulted in their delinquency must be eliminated using reverse discrimination and presenting facilities and more rights.

However, about gradual quality of penal responsibility, there is difference between different legal systems and some have considered specific reactions in law with phasing time interval of this period and other like legal system of Germany have considered this stage uniformly and have put the authority of selecting a proper reaction to the judge.

Also, some European countries like Germany, Belgium, France and Italy have accepted the assumption of non-responsibility about the delinquent child in this era, unless specific moods and conditions cause the children to be responsible and in contrast some countries like Britain, Spain, Netherland, Portugal and Switzerland consider the child in this period having penal responsibility and are merely believed that reactions towards children is different with delinquent adults (Tadaion & Bagherinezhad, 2009, 18, pp. 31-34).

**Gradual penal responsibility of girls in international documents**

In this discussion, the problem of age, criteria of authentication and gradual state of penal responsibility for girls are investigated in international documents. Before this investigation, it must be noted that in international documents, the issue of age in penal responsibility of girls
is considered general and without considering gender, and assumption of all international document is that as the basis for penal responsibility age is the realities related to emotional, mental and intellectual maturity, therefore gender is not involved in.

The necessity of specific trail for juveniles and gradual penal responsibility is declared in clause 4 article 14 of covenant of civil and political rights enacted in 1966: “specific trail of the juveniles who are not still adult in terms of criminal laws, must be in a way that observes age, benefit and their rehabilitation” (a selection of most important international documents of human rights, 2002, p. 23).

First specific international document of children is “Declaration on the right of the child” of Geneva that was enacted in five principles in 1924 by League of Nations. This declaration without pointing the age of child, recommended in clause 2 related to penal responsibility: “delinquent child must include appropriate rehabilitation”. Clause 5 assigns: “Child must be trained and grown in a way that knows he/she is responsible”. This article doesn’t clarify gradual state of penal responsibility, but the manner of their adjustment is in a way that this issue can be inferred from them.

On November 29, 1985, minimum standard regulations of united nation for specific trial of juveniles called Beijing rules was enacted by statement 40/33 of general assembly; in parts “b and c” of clause 2-2 of these rules, by defining outlaw juvenile “child or juvenile that under special judicial arrangements is treated different with adults” emphasizes on specific trail for juveniles and gradual penal responsibility of juveniles, and in the case of minimum gradual period of penal responsibility without considering gender, it is written in clause 41 of these regulations: “In legal systems that concept of penal responsibility age is officialized for juvenile, the beginning of this age will not be determined at very low age levels with regard to the realities about emotional, mental and intellectual maturity”. In addition, in some ascents of this document, implicitly the issue of gradual penal responsibility is pointed; including in clause 1-5 of Beijing rules, it is emphasized that juvenile judicial system must be based on the benefit of juvenile and it must be ensured that reaction against juvenile delinquents must be always with their conditions and the type of crime. In part a of clause 1-17 also it is suggested to judges that the adopted reaction must be proportional to the conditions and level of crime and the conditions and needs of juvenile and society needs (R.K. set of international regulations related to specific juvenile trial, 2007, pp. 1-18).

Convention on the rights of the child as the most important international binding document in the area of right of child was enacted on 20 November, 1989, by United Nations General Assembly and on 2 September, 1990 was enforceable after the enactment of 20 countries. This convention was the first human right document that was signed by IR of Iran in 1990 and was enacted by Iran’s Islamic Consultative Assembly in 1993 and was approved by Guardian Council on March 2, 1994.

Article 1 of convention, affected by the comments of psychologists like Erik Erikson (1902-1994) and Jean Piaget (1896-1980), knows child as every human younger than 18 years old. “Unless there is lower legal age determined according dependable law about him/her”. Gradual penal responsibility in convention is extracted from sum of clause 1 and part “a” of clause 3 article 40 of convention which includes specific trial principles for children. According these two clauses, graduality of child penal responsibility is realized in the period between minimum age of penal responsibility and childhood age; but about minimum age of
penal responsibility, no specific criterion is determined by convention and the problem is left to internal rules of countries. However, it is emphasized, in clause 1 of article 37, that in two cases i.e. crimes punishable with depriving life or life imprisonment, the committers below 18 years old are excused of this punishment and another punishment is considered for them. Guide principles for action about children in penal system which was enacted according statement no. 1997/30 of united nations’ economic and social council, also recommends in part “c” of clause 14: “No child beneath criminal responsibility age must be subjected to penal accusation” and in part “a” of clause 11 also one of the goals of policy making and reforms related to children is mentioned as attention to their age, growth level and their rights (Set of documents, standards and norms of united nation, 2009, pp. 115-128).

“Covenant on the rights of the child in Islam” was enacted as regional document of Muslim countries in the area of child rights in 1426 (Ah), according 2005, in thirty-second foreign minister meeting of organization of Islamic cooperation in Sana, Yemen and was opened for incorporation of member states” (Mosafa, 2007, p. 513). This covenant in article 1 defines child as a human that: “based on applicable law about him/her, is not reached to maturity age”. Thus, this covenant without considering age presumption for child, contrary to convention, has assigned maturity age in laws of Islamic country as childhood age. Article 19 of Islamic covenant also similar to article 40 of convention has stated the principles governing on specific trail of juveniles. Part “g” of clause 3 article 19 of this document assigns: “The minimum age that below it the child cannot be trialed must be determined”. Summing this article and article 1 of covenant, it can be understood that there must be a period considered between the age of penal responsibility and childhood age i.e. the age of maturity, and gradual penal responsibility of child manifested in this period. Therefore, the difference of this document and convention is that the age of penal absolute responsibility in convention is 18 and in this document, it is maturity age in the laws of membered Islamic countries.

Therefore, in all international documents, regardless of gender, the issue of the age of penal responsibility and its graduality has been under consideration and penal responsibility of girl is due to intellectual evolution and growth like boys.

Gradual penal responsibility of girls in jurisprudence

Article 49 Islamic penal code has accepted popular opinion of Shia jurisprudence that the ages complete 9 and 15 years old (lunar) in girls and boys is the maturity age and essentially is the basis of person’s duties including worship, penal actions and marriage. In this section, it is necessary to investigate the possibility of changing the age of penal responsibility for girls that has two main objections of being leap and inappropriate with situation of girls by jurisprudential study.

Nature and criteria of maturity

Maturity literally means “completeness of everything” (Anvari, 2002, 2, p. 1021). But in phrase it means “the end of childhood and entering duty” (Moradi, 2008, 53, p. 59). Maturity is the beginning of duties and many religious sentences and laws to every Muslim, but in juridical sources, no specific definition of maturity is presented and only its realization conditions and signs are expressed. With regard to the definitions of juriscunsults from maturity, “maturity is the age in which human’s sexual activities begin and tangible evolutions are appeared in body and mind of girls and boys” (Tavajohi, 2005, 1, p. 89).
The first problem in maturity nature is that is maturity a religious fact and worship issue like pray and fast as its connotation and religious legislature has assigned it and is not changeable or it is a developmental, normal and customary that is not related to religious lawgiver? Some people consider maturity age has worshipping aspect (Moradi, 2008, 53, p. 59). Some other consider it as a developmental and natural issue (Mahrizi, 2001, p. 150). In Quran verses, “Bologh Al-Helm” (Noor,59) and “Bologh Al-Nekah” (Nesa, 6) are mentioned that means reaching the age of autoerotism and marriage, and autoerotism of human is a normal and physical issue. “Most of Shia juriscuntsals also have treated maturity as sexual maturity that is a natural issue and can be found via external evidences and signs” (Tavajohi, 2005, 1, pp. 89-90). Saheb Javaher also considers natural maturity (Najafi, 1412 (Ah), 9, p. 236).

This issue is certain by jurisprudence; “When a sentence of religious is based on natural and external reality and result, that natural issue must be first obtained, then the sentence must be put on, in the issue of maturity which is similar to sunrise or sunset or observing Ramadan moon, an external and natural phenomenon, it must be first observed based on reasons, evidences and its common natural and scientific methods, then the sentences related to maturity must be set” (Rahami, 2002, 58, p. 156).

Another problem is sudden or graduality of maturity. The requirement of accepting maturity is accepting scientific comments about maturity quality. Psychologists know maturity as a gradual process that is the interval between childhood and adulthood. Having this definition, maturity age is the time when gradual changes are completed and maturity is completely appeared. In Islam Sharia also jurisconsults have mentioned based on distinguishing criteria for periodic childhood: a) From birth to 7 years old, the child of this period is called “Sabi Gheir Momayez” and they believe the child in this period has no penal responsibility absolutely and is not allowed to be punished. b) From 7 to maturity, the period is called “Sabi Momayez”. However there is disagreement about maturity age. In this period, child is included for punishment. The implication of “Marahegh” child in jurisprudence indicates the end of this age period in maturity process. It means the child who is near to maturity. c) From maturity age onwards, the person has complete responsibility (Moosavi Bojnoordi, 2009, pp. 21-24).

Another point in maturity nature is its intellectual or physical aspect. “Intellectual maturity which is anticipated as “growth” is happened often after physical maturity; juristic believe growth as spiritual perfection and its holder can distinguish advantage and disadvantage of “civil growth” or goodness and badness of “criminal growth” and such person is called Rashid (mature)” (Jafari Langaroodi, 1977, p. 334). “Physical maturity is mostly known as sufficient requirement for worshipping issues, but it is the necessary requirement for civil issues, unless maturity and growth are jointed; common comment of jurisconsults is growth is merely about financial issues and is not involved in criminal issues. While growth is against Sefeh that means tact, intellectual ability, distinguishing goodness and badness of actions and is general for penal and civil issues” (Hashemi, 2004, 33, pp. 255-256). In holy Quran, together with autoerotism and marriage that are the physical criteria the issue of “maximum maturity” is mentioned in eight verses of holy Quran including Anam 152, Osara 34 etc. However some jurisconsults believe that: “maximum maturity is between 18-60 according verses 22 Yousef, 15 Aghhaf, and its application is for prophets, but Seihkh Toosi and Sheikh Tabarsi have mentioned its usage for other ages including 18-20 and some other like Alameh Tabatabaei and Mola Fathollah Kashani have anticipated maximum maturity as 18 years old, using a narrative from Imam Sadegh” (ibid, pp. 259-260).
Therefore, with regard to verses, narratives and jurisprudence quotes, because of lacking a strong reason for rejecting genetic maturity or conformity of legislative maturity on genetic maturity, the good is considering genetic, intellectual and gradual maturity in girls. Admission of this issue means that maturity of girls must be observed using scientific tools and in two areas of physical and intellectual growths, and since ensuring time, 9 years, has not these elements, inevitably this age must be changed.

The age of penal responsibility and maturity

Physical maturity and intellectual growth are two different phenomena and reaching sexual maturity does not mean reaching intellectual maturity; as reaching to sexual maturity does not mean reaching penal responsibility. Therefore, intellectual growth is different from sexual maturity and penal responsibility is realized when the person is evolved in terms of metal poser and has awareness and can distinguish between good and evil and advantage and disadvantage, and so is mature in terms of penalty. In the other words, observing intellectual growth is necessary for meeting penal responsibility. Now, even if we assume physical maturity age as intellectual growth age, further we can’t consider 9 years old as penal responsibility age for girls, because according various performed researches rarely girls reach growth age in 9 and there is no rational reason to accept 9 as the beginning of penal responsibility; unless the subject is accepted worship-like which this admission for age is a fault.

Scientific and practical problems of accepting 9 as the age of girls’ penal responsibility caused the presentation of different comments including intra-religious and ultra-religious for solving this problem and despite the variety of these comments, the common point of them is attention to criterion of intellectual growth for meeting penal responsibility. Here, the most important views are mentioned:

a) “Some jurisconsults including Feiz Kashani and Ayatollah Makarem Shirazi have separated maturity and belief that its age is different proportional to duty and maturity is distinguished between the age of duty in worshiping issues and economic, financial and criminal issues. Some jurisconsults like Saheb Javaher and Sheikh Ansari have not accepted this comment” (ibid, pp. 276-277).

b) Ayatollah Sanei accepts the validity of age in meeting maturity and increases it from 9 to 13 in girls. He knows religious obligations function of maturity age, but distinguishes about penal responsibilities and knows execution of Hadds a function of maturity age and other punishments a function of criterion, and he believes that if maturity is with ambiguity, it must be lowered to Tazir (Sanei, 2005, 2, pp. 615-618). Therefore, in his perspective, both the age of worship maturity is changed and he sets distinction between the age of religious maturity and the age of penal responsibility by setting distinction as the criterion of meeting penal responsibility.

c) Some other without validating a specific age in maturity, by accepting the gradual and genetic nature of maturity, believes that maturity age must be determined based on the situation and conditions of time and position and by relying on scientific findings. Therefore, even if the age of religious age is specified with scientific tools, in the case of the age of penal responsibility, he knows necessary meeting intellectual growth in addition to physical maturity (Moosavi Bojnordi, 2001, pp. 231-235; Meibodi, 2001, pp. 269-280).
Origin of the phrase of delinquency in girls
Cybulskkey stated: “The phrase of juveniles’ delinquency (in French: Delinquance Juvenile and in Britain: Juvenile delinquency) was stated in Britain, 1815, for the first time, and this phrase was used in some countries like USA in wider implication later”.
It has been said that the reason for proposing this subject in Britain was that in 1814, five children between 8 and 12 were sentenced to death by the famous trial of Old Bailey in London. Due to this event, one of British benevolent persons named Peter Bedford established an association for preventing children’s crimes and its goal was to research about the reasons of increasing this phenomenon in Britain. Eight years later in 1823, similar efforts and innovations were performed by some American benevolent coaches Massachusetts. Since that time, the phrase of children crimes were gradually spread all over the world.
Since this time, gradually punishments for children were prevented in most countries and in criminal laws of different countries, specific supportive regulations for children were enacted and specific references were appeared for dealing the crimes of children.

Relativeness of the implication of “girls’ delinquency”
The implication of girls’ delinquency phenomenon like many social phenomena is a relative issue and its meaning range differs in different times and places. The implication of children delinquency phrase both in terms of delinquency definition and also child definition is a credit and relative implication, and presenting a unique definition is almost impossible; therefore, about delinquency of children, the definition that can attract the view of all and meets all eras and societies and/or in the other words is independent of time and position, is not yet presented.

The importance of girl delinquency
If anyone had a doubt in the importance of the issue of girl delinquency before the current century, now such doubt is no longer valid, children in each society are the hopes of future and their proper training ensures the health of future society.
The studies in the prison Ensisheime of France showed that one third of ex-prisoners sentenced to hard labor started their primary crimes before reaching 18 and even one of them performed in the age 9.
The rate of committed crimes by girls during current century has been considerably increased in all countries and especially in industrial countries and also in our country has attracted the attention of pundits during the last three decades and has stimulated their concern. Moreover, another concern is the type and quality of child committed crimes.
For this reason, one of the most important issues proposed in international congresses of law experts in the recent years is the issue of children delinquency and the ways for prevention.
Thus, the first international congress of criminal laws and criminology that was established in 1955 by the innovation of United Nation Organization for discussing about preventing crime and amending criminals in Geneva, suggested in the final declaration: “Commission of social issues must as soon as possible reconsider regulations related to preventing crimes and amending laws and training delinquent children another time, after consulting with commission of human right and approval of governments and other interested institutions” and international organization for child protection stated in a short clear and general sentence that: “if we want to have a peaceful life, we should begin with children”.

Gradual penal responsibility of girls in internal laws
Before Islamic Revolution
General punishment rules
General punishment rules affected by classic school and criminal laws of France 1810 and also inspired by Islamic courses was compiled and approved on January 13, 1926. This law compensated the inattention of penal trial regulation of 1951 for children, and for the first time in Iran’s legislation history, took a differential approach towards outlaw and delinquent children and juveniles in chapter 3 section 3. Chapter 8 of this regulation is allocated to conditions and obstacles of punishment and articles 34-36 of this chapter address the issue of child’s penal responsibility. In this regulation, all people beneath 18 are called child and were in three levels of indiscerning (below 12), indiscerning adult (12-15) and adult (15-18). Moreover, following Shia jurisconsults, 15 years old was considered in this regulation as maturity age, but contrary to the common comment, there was no difference between girl and boy. Minimum age of penal responsibility in this law was 12 and full penal responsibility age was 18 years. Criterion of penal responsibility for children in this law was having distinguishing power instead of maturity age.

The system established in general punishment rules in terms of determining the age of penal responsibility and graduality of responsibility, was considered as a very progressive action in the time section that no international document were enacted about children and juveniles and many countries were lacking specific rules in this area. However, the criticism of this law was the determined punishments for children especially girls was harsh and suppressive, and had not proportionality with their physical and mental situation and the penal response about them should be in the type of supportive, reforming and recovering actions. This criticism was obviated by enacting the law of establishing the court of delinquent children in 1959.

According article 4 of this rule, enacted in December 2, 1959, all crimes of the children who have the age between 6 and 18, are attended in children court. This law compared to the law of 1925, reduced minimum age of penal responsibility from 12 to 6 and didn’t name age categories. Moreover, in this law by deterministic reception of the criterion, distinguishing the age of penal responsibility for girls and boys was considered as a unit issue and with regard to this criterion, divided children including girls and boys into three categories in terms of gradual responsibility:

a) Children below complete 6 years old are not prosecutable (article 4).

b) Children between 7 and 12 years old that were sent to parent or supervisor for training and discipline, and if they are not competent, were sending to correction and rehabilitation center for 1-6 months (article 17).

c) In article 18, in addition to distinction of age stages 12-15 and 15-18, some punishments were specified for both groups, however punishment was more severe for the second group. Relying this validity, this law indeed categorized children in terms of punishments and reactions into four age groups (Shambati, 2004, pp. 54-62).

After Islamic revolution

After Islamic revolution, fundamental changes were appeared in Iran’s judicial and legal system.

Bill of constituting general courts

The remark of article 12 for this law enacted in October 2, 1979 mandated that: “Children’s crime will be attended in criminal court as stipulated in laws of constituting delinquent children court” (Saeidini, 2006; p. 173). Thus this law approved implementing the law of constituting delinquent children court.

Law of penal procedure
According article 194 of the law of penal procedure which was enacted in 1982, penal courts were divided to 1 and 2. Articles 198 and 217 of this law considered the qualification of each one of penal courts 1 and 2, regardless of culprit’s situation and features. Therefore this law abrogated formal rules of the law of constituting delinquent children court enacted in 1959. 

The law related to Islamic punishment

This law that was enacted in 1982 replaced the criterion of distinguishing by the criterion of the age of religious maturity; the system of gradual penal responsibility was destroyed and responsibility leap was substituted with. Hence, no children categorization also exists in this law and also common jurisprudence classification about children including discerning, in discerning and juvenile was not observed about outlaw children and only separates in some regulation supervising on children victims of crime such as remark 2 and 1 article 211 of Islamic Penal law in the case of reluctance to murder and article 306 of Islamic Penal law between discerning and in discerning children. 

The key article about children penal responsibility in this law is the article 26 that stabilized the age of penal responsibility on criterion of religious maturity without considering a specific age for it. This article ordains: “children are innocent of penal responsibility in the case of crime commitment and their training is on children parents and if necessary children correction and training center by the comment of court. Remark 1: a child is the person who is not reached to the limit of religious maturity”.

But there is disagreement about who is considered a child. On December 29, 1982, article 1210 of penal law was corrected for testing, growth evidence of 18 years was removed from and the age of religious maturity i.e. complete 9 years old (lunar) for girls and complete 15 yours old for boys were set in the form of adjoined remark (Civil Set, 2004, p. 459). Judicial procedure refused generalizing remark of article 1210 penal law to article 26 of law regarding Islamic punishment and had ambiguity towards it. Therefore, supreme judicial council was asked in this area: “With regard to clarity of corrected article 1210 of penal law and its remark 1, is complete 9 years old (lunar) the age of penal, legal and worshiping responsibility for girls or they must reach higher age for penal and legal responsibility? Answer: “According remark 1 article 26 of law regarding Islamic punishment, child is the person who is not reached to maturity and according remark 1 corrected article 1210 of penal law, maturity age of boys is complete 15 years old (lunar) and for girls complete 9 years old (lunar)” (Supreme Judicial Council, BT, p. 8, question 7). Thus, interpreting theory of this council considers the age of penal responsibility of girls 9 years old (lunar) and this theory governs Iran’s rules also on the subject of girls’ penal responsibility.

Thus, regulations of general punishment laws about penal rights of children and the law of constituting the court of delinquent children was abrogated and the period of special juvenile trial in Iran was begun. 

Meantime, the unity vote number 6 for removing disagreement between judges about the qualification of penal court 1 and 2 in the investigation of children and juvenile crimes was enacted on May 12, 1985 in supreme court; because in the cases in which a child was committed to a crime, the judges were considering exclusive qualification referring to article 26 Islamic penal laws for penal courts 2; unity board of supreme court procedure assigned: “In the case of committed crime by children (the person who is not reached to religious maturity), procedural rules related to adults must be observed in penal courts 1 and 2” (Saeidinia, 2006: pp. 332-333). This vote of Iran’s judicial criminal policy confirmed the complex confused trial of juveniles.
Islamic penal code
This code which was enacted in November 28, 1991, continued the legal path regarding Islamic punishment about the age of penal responsibility with repetition of the contents in article 26 of the mentioned laws in the text of article 49, and also insisted on 9 years old (lunar) to be the age of penal responsibility for girls, but in the book of Hudud, just the age of maturity is not sufficient for applying Hadd, and in most cases, observing wisdom, authority and even in some cases awareness on decree and subject is also mentioned along with maturity; such as: article 64 IPC (Adultery), 111 IPC (sodomy), 130 IPC (lesbianism), 136 IPC (panderism), 146 IPC (extrusion), 166 IPC (wine), clause a 189 IPC (fighting), 198 IPC (stealing) etc. However it must be considered that the purpose of being wise in these cases is usually a quality against insanity, but using a developed anticipation it can be considered as lack of intellectual growth. Also in some cases like article 113 IPC about the Hadd for sodomy and 147 IPC about the Hadd for curse is derogated exceptionally from the criterion of the age of maturity and in the first case, not-matured children are entitled to Hadd without any criterion, but in the second case, only discerning children (between 7 to maturity age) is entitled to punishment (Shahri et al, 2007, pp. 831, 857). In some cases like articles 147 and 211 IPC also using the term of discerning child shows case affectability of legislator from Shia jurisprudence in graduality of maturity and as the result the age of penal responsibility.

Penal trial regulations of general courts and the revolution courts
Iran was enlisted to the treaty of child laws in 1993. Thereafter, legislative, executive and judicial criminal policy of country followed a positive approach towards child laws. In the area of special juvenile trial, the most important action is enacting penal trial regulation of general courts and the revolution courts in penal issues in 1999; in the articles 219-231 of this law, in addition to allocating specific courts for dealing with the crimes of children and juveniles, some regulations are also anticipated about the method of dealing with their crimes (Khajeh Noori, 2007, 4,113-133). However this law about the age of penal responsibility has emphasized on the previous procedure in remark 1 article 21. This issue caused the appearance of a conflicting view in terms of gradual penal responsibility; because in this law for the children below the age of religious maturity that lack penal responsibility, trial regulations are complied, but juveniles i.e. the people between the age of religious maturity and 18 years that are indeed the main holders of specific trial of juveniles, are considered to have differential regulations in terms of dealing with their crimes in children courts, and otherwise knows them to follow general laws and regulations bot in substantive and procedural issues.

The bill of addressing the crimes of children and juveniles
In order to remove the existing shortages in Iran’s legal system, the supreme council of judicial development of judiciary system with cooperation of UNICEFF, constituted a commission in order to compile a general regulation about children and presented the bill of addressing the crimes of children in 2002 including 5 chapters and 55 articles and it was sent to Islamic Consultative Assembly in 2004. Because of the articles 32-33, this bill divided the age stages and its proportional reactions as following: a) until 9 years old, exempt of penal responsibility; b) 9-12 years old, training and correctional responses; c) 12-15 years old, training and punishing responses; d) 15-18 years old, reduced punishing responses. In these reactions, no difference exists between girls and boys. In the first bill, the criterion of distinction either in Tazir crimes (articles 32-33) or in Hadd and retaliation crimes (article 35) take the place of the age of maturity. In the investigation of this bill by bill commission of...
government, article 2 which considers the criterion of the age of religious maturity was added to it that confused its anticipated system and put the issue of penal responsibility for girls in ambiguity and disorder.

**New bill of Islamic penal code**

This bill was presented by judiciary system and via government to assembly with regard to the end of testing time of Islamic penal code in 2008. In the primary text of the bill by the comment of Ayatollah Shahroodi, head of judiciary system in the time, some changes were performed about penal responsibility of children and in the article 141-1, children were defined as the persons younger than 18 and were categorized into three classes of indiscerning immature (lower than 7), discerning immature (immature above 7 and below the age of religious maturity) and adult (adult below 18), and immature children were excused of penal responsibility in article 141-2.

In this bill, in order to remove specific trial problems of juveniles, such as general punishment law 1304, children up to 18 years were divided to different categories and inspired by jurisprudence views, each category was named; moreover, gradual penal responsibility was also accepted in age period 7-18 and the criterion of distinction was used in determining age stages in article 141-1. Nevertheless, since the compilers didn’t make superior this criterion completely on penal responsibility and in article 141-2, maturity age was made the criterion, the problem of penal responsibility for girls was still unsolved.

The existence of the bill for addressing the crimes of children and juveniles, and the bill of Islamic punishment with two different systems, caused the judiciary and legal commission to decide to integrate the substantive part of the bill for addressing the crimes of children and juveniles in the book of the generalities of Islamic penal code and its procedural section in the bill of penal trial regulation. However this issue caused the creation of an integrity in penal responsibility of children, but it raised the question that is it correct to integrate the bill of addressing the crimes of children and juveniles in two other bills? Because the nature of punishment law is punitive and based on correction and each one has its own mechanism. Indeed, integration of these two is similar to integration of the rules of ministry of education and ministry of higher education. Hence, countries like Germany avoid of integrating juvenile’s trial law and general punishment laws.

By the way, positive steps were taken in new punishment bill about the age of penal responsibility which include: determining the period of penal responsibility between complete 9 and 18 years old (Shamsi), dividing children to three age groups complete 9-12, 12-15 and 15-18 years old (Shamsi), graduality and not-fending state of penal responsibility for children, determining social reactions proportional to their age and finally equalization of penal responsibility for girls and boys in Taziri crimes.

In article 143 of new bill, it is assigned that: “immature persons have no penal responsibility”. In article 144 of new bill is written: “maturity age for girl and boy is 9 and 15 years old (lunar) respectively.” In order to remove the objection for article 49 IPC about discrimination between girl and boy for minimum age of penal responsibility, article 145 assigned: “about immature persons above 9, security and corrective actions will be applied based on the regulations of this law”. Articles 87-88 assign social reaction or punishment determination for children and juveniles proportional to their age.
Criticism and investigation

Unfortunately, the procedure of legislation in some sections of our country legal history is not progressed parallel to benefits and interest of children and juveniles especially girls, and has got far from social realities and scientific achievements. This issue caused both ambiguity of laws and confusion of judicial procedure and deprived girls from gradual penal responsibility proportional to their growth in an unfair framework, and they are considered having responsibility in very early age in which they are considered incompetent to other legal issues such as financial and non-financial. Legislator based on the age of penal responsibility for girls on complete 9 years old, transfers them from lacking complete penal responsibility to complete penal responsibility. In addition, boys are immune of penal responsibility until complete 15 years old (lunar). Even they are not restricted to this value and the evidence of 9 and 15 years old (lunar) is obviated opposite to “obviation rule”, and without considering minimum age and without explaining accurate mechanisms and regulations, gave an extended and strange authority to judges for punishing the children blow religious maturity age. For this reason, the judges are also facing with confusion and ambiguity confronting these cases and some of them are reflected in advisory comments in judicial legal office and judicial sessions of judges; including can courts intervene about delinquent children? Subject of comment no. 7/4747-November 11, 1997, is it necessary to issue indictment against delinquent children? Subject of comment no. 7/652-May 5, 1991, how much is the duration for holding children in correction and training center? Should the court determine the duration in its decree? If not what to do? Subject of comment no. 7/6356-January 21, 1987 (Shahri, 199, pp.280-293). Is that necessary to take penal security for children below maturity age? Subject of comment no. 7/1315-June 19, 1984 and 7/2748-August 2, 2008, is that necessary to make understood the child about accusation? Subject no. 7/3375-August 24, 2008 (Education Department of Judiciary Power, 2009, pp. 270-272; Education Department of Judiciary Power, 2007, 4, pp. 328-340). It is obvious that there are many conflicting or non-logical viewpoints in responding these questions because of theoretical ambiguity.

For this reason, it has been frequently observed that the children below growth age that are committed to a crime, by the excuse of discipline and unregularly are hold in correction and training centers or prisons and perhaps their correction duration is more than the assigned legal punishment. Now if minimum age of penal responsibility for girls was based on distinguishing power and growth, did not the outlaw juveniles including girls and boys have more judicial security and more fair judicial rights by legal system that remark 14 principle 3 of constitution bounds Islamic government to supply and ensure?

Indeed, compilers of bill of new IPC, have selected a practical solution without taking a theoretic solution or based on new jurisprudence comments and presented scientific solutions for exiting from current problems of the age of penal responsibility for girls and specific juvenile trial; however, some problems in this area is obviated, but unfortunately many other problems still exist and they caused conflictions some of them are:

a) In the field of the age of penal responsibility the terms of article 49 IPC is further used and maturity ages of 9 and 15 years old (lunar) are accepted as the age of penal responsibility. While, in the application of penal reaction, it has been tending towards gradual responsibility system and common law.

b) In order to remove the objection of unfairness for the decree of article 49 IPC and establishing unique legal system between girls and boys, according article 147 and remark 2 article 87of bill, either about Taziri crimes or the crimes with nemesis or wergild, penal
reactions are considered for boys between 9 and maturity age, and in the articles 87088 it is operated with the term of training and security actions. In fact, compilers got far from legal principles in order to remove the problem of the low age of penal responsibility for girls and presenting a solution, because the thing which is considered as Tazir or punishment for girls, is applied for boys as training and securing, and also security actions that are the result of person’s dangerous situation is put instead of punishment which is the result of committing crime and penetration of criminal personality in the person.

c) In the Taziri crimes and the crimes with nemesis and Hadd, new dual military bill for penal responsibility is accepted; i.e. while in the articles 87-88, gradual penal responsibility is accepted in Taziri crimes by accepting distinguishing power and gradual growth, but in the crimes of Hudud and nemesis, with regard to article 90, remark 2 articles 87 and article 227 put the ages 9 and 15 as criterion, and the fending and fending responsibility is considered for the girls with 9 years old (lunar) and older. According article 90 of the bill: “in the crimes with Hadd or nemesis, when mature person is lower than 18, and don’t understand the nature of committed crime or its sanctity, or their growth or wisdom is with doubt, in the case, they will be sentenced to the anticipated punishment in this chapter with regard to their age. Remark: court can use the comment of forensics or other solutions which is known to be right”. Regardless of the existing ambiguity in the word wisdom completeness and objections on the methods of identifying wisdom growth, it can be observed that this decree has an exceptional aspect and the girls between 9 and 18 are yet subjected to hard punishments. In remark 2 article 87, this bill assigns: “When immature person is committed to a Hadd- or nemesis-entitled crimes, if he/she has 12-15 years old (lunar), will be sentenced to one of the acts assigned in clause d or e, and otherwise one of the acts assigned in clauses a to c will be taken about them”. If immature with regard to articles 145-146 is supervisor on boys, minimum age of penal responsibility for boys with regard to article 87 of the bill, is 9 years old, but if it is absolute i.e. girls below religious maturity age are also included in these punishments, ambiguity of this article still makes the age of penal responsibility for girls into objection.

d) Considering religious maturity age as the basis of penal responsibility has created other interesting points in the bill including in the article 145, people below religious maturity age i.e. 8 years and 9 months for girls and 14 years and 7 months (lunar) for boys are immune of punishment, while in article 87 of penal reactions, it is considered based on 9 and 15 years old (Shamsi). Now it is not clear that how the girls between religious maturity age and Shamsi age must be behaved?

**Suggestion for law modification**

With regard to the proposed issues for amending new bill of Islamic punishment and removing the existing problems and conflcitions in it in relation with penal responsibility of girls and establishing the system of gradual responsibility based on distinguishing power and wisdom growth, it is suggested to:

a) With regard to the article 139 of the bill which considers one of the element of penal responsibility as maturity during crime commitment, removing articles 145-146 not only enters no disorder to the bill, but also makes more ability for fair anticipation of law; because in this article, besides maturity, the cases like wisdom and authorization are considered necessary for realizing penal responsibility and since most girls reach to maturity and growth in 13, and this maturity is together with intellectual maturity, the problem of prosecuting and
punishing girls in very early ages is obviated. In addition, a situation can be created in which the existence of physical maturity and intellectual growth both together are not required for authenticating penal responsibility, by changing the word wisdom to intellectual growth or adding the word “distinguishing power” to this article or adding a remark for explaining wisdom implication.

b) About the objection of remark 2 article 87, firstly its elimination with regard to the rule “fending” is recommended, and in the case of insisting on its preservation, its correction is suggested as following: “remark 2: when juveniles 9-15 commit a Hadd or nemesis- entitled crime, judge can sentence them to one of the assigned actions in clauses “a” to “e” for in case discipline. As this method is attended in civil issues and Iran’s regulation has distinguished between civil qualification in financial issues and sexuality maturity.

c) The relation between sexual maturity and intellectual growth and distinction of sexual maturity from penal growth must be considered by legislature. As this method is considered in civil issues and Iran’s regulation separates between civil qualification in financial issues and sexual maturity.

d) literally it is suggested that because of verbal dispersion in the penal rules of Iran, the word child is used for the people below 9 years that are immune of penal responsibility and the word juvenile is used for the people between 9-18.
References


