Criminal protection of children in the light of new developments in the Code of Criminal Procedure

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Abstract

Children, in particular, are in need of special support in terms of physical and mental characteristics in the environment and in the face of events around them. Some support for when the child is in any way into the judicial system. Juvenile criminal proceedings from the children's contact with police and judicial authorities are so important, in terms of acts against to the Criminal Code, terminating an investigation into allegations, or the need to provide anti-crimes preventive and corrective procedures. The most important point to consider is that the draft of new criminal procedure law approach is consistent with the view of supporting and lack of a coherent and comprehensive legislation on the preliminary investigation. So the creation of juvenile police, filing and handling character, verdict and sentence in the case of children and juvenile justice have been largely resolved. Justice strategies as well as new innovations in the bill are an attempt of the judges and officials to make it possible to be able to use restorative justice approaches. In another chapter to handle juvenile criminal cases, number of juvenile court officials has been held. Other innovations of the new draft Code of Criminal Procedure predict civil society in the proceedings of children and adolescents. Also on the bill, there are not only criminals, but victims who were also taken into consideration as well as the creation of specialized juvenile police in law enforcement.

Keywords: criminal protection, child, Criminal Procedure, new law.
Introduction

Childhood is the future of human societies and it has an increasingly important position in nowadays social and global order. The child is an adult in the process of formation and growth. Children are more vulnerable to victimization by other members of society.

Children are specific age groups that are subject to criminal acts against the law. Hence, they expect the legislator to protect them through the passage of specific legal protection more than the laws that actually exist. Law has to take into account the specific physical and intellectual nature of children. This would be a crucial support to children. Crystallization of this support can be seen particularly in the trial stage. A fair trial is now a principle in the law of most countries that accepted the principle of ensuring that there are more features of interest for offenders.

Therefore, in this article without the intention of withdrawing from discussions about civil proceedings, the special protection of children in the criminal justice process is suggested. If a child is trapped in the commitment of an offense into the justice system, the justice system is in need of principles and methods to warn the child's first and second stop him persisting forward and remove the field of recidivism. In fact, the child can become a professional criminal. Thirdly, justice system has to prevent the child from harm and risk of immune adversary to the criminal justice system. The justice system is just one example of Human Rights and the International Covenant on Civil and Political Rights and other human rights instruments that also explicitly focused on and accepted that the children's special effects and special features. Paragraph 4 of Article 14 of the International Covenant on Civil and Political Rights provides that procedures must comply with the age and interests of young people. Interests of the Convention on the Rights of the Child on the occasion of the mentioned concept are universal. In this regard, the observance of fair hearing of offenders requires a different and differential policy compared with adult offenders. It predicts certain entities with special procedures to deal with child victims of criminal law as recognition of justice system for children. Legal bill, "Crimes of children and adolescents" who recently spent some years in the approval process can be implemented with innovation and related forms of crimes and juvenile justice can represent some way of dealing with fair criteria to be offenders. The same can be done with handling formalities that include forecasts of prosecutors and special courts for children and teenagers. Also there should be giving a preliminary investigation to prosecutors and law enforcement to prevent juvenile prison, fix their criminal work. This required the presence of a lawyer in serious crimes.

Concepts

- Criminal Procedure:

The words "justice", "trial" and «Trial» in Persian, Arabic and English are used together as equivalent in legal terms, but they literally looks different. The Persian word "justice" is composed of two words "right" and "access", which means to achieve justice and to address
up after the hearing or appeal to the person to whom is addressed (Amid, 1363: 2188). The investigation into the criminal case arising from the crime branch of public law, civil and criminal procedure is only binding on domestic courts (Akhoondi, 1388: 14)

- Children:

In most dictionaries and legal texts the words "child" and "minor" means a child, as opposed to the Great used (modal, 1381: 1312). Scholars "child" or "minor" to the individual in terms of age, physical and mental capabilities necessary for social life is not achieved (Ebadi, 1375: 98).

In international documents, the expression "children" or "Teen" is used. 1989 UN Convention on the Rights of the Child defined a child as a person who is not 18 years old, unless they are based on the domestic law binding that is detected below the age of puberty.

In Article 11 of the UN Rules for the protection of children deprived of liberty, the term "juvenile" is used to mean all persons under 18 years of age. Council of Europe Convention on Action against Trafficking in 2005 introduced the individual child as less than 18 years old. In terms of law, "minor child or someone who has the age to physical and mental development is not necessary for social life" (Ebadi, 1387: 135).

In terms of criminal law, children and teenagers who lack maturity refer to the physical, mental, moral and social responsibility as well as the emotional and mental aspects of the child. Age of children and adolescents in the acceptance of moral and social responsibility, especially in the field of criminal matters must be determined in the legal system so that the child can be held responsible for his/her behavior.

- Delinquency

An offense or crime literally means the small error (Moein 1386: 170). From the perspective of criminology, criminal acts or harmful deeds to any individual or group are socially disruptive and contrary to human dignity, even though it is not the way against the Penal Code (Key nia, 1386: 18). Notably, what is important not to focus on the definition of crime from the perspective of criminal law and criminology, or to punish the motives behind it. It is rather to consider the causes and the motives that led to that crime.

- Juvenile criminal justice:

Criminal justice in general, the manner of crime detection, investigation, preliminary investigation, trial and through appeal to the views of criminal justice and the quality of execution of judgments apply to the competent authorities. But the specific psychological and social situation of children and adolescents requires that a preliminary inquiry and trial for their distinctive adult are considered.
That is why the criminal justice system, juvenile justice laws and regulations have been developed a separate syntax and specific jargon. The juvenile justice refers to a coherent set of rules that in the field of crime detection, investigation, preliminary investigation and the trial must first contact with law enforcement officials and the judiciary about the children and adolescents who committed unlawful acts. This is to terminate the investigation of concerned charges and meet the higher interests of children (Moazen zadegan, 1393: 140).

2. Criminal supporting legal perspective

Offenses of juvenile offenders require a special procedure. Only if there is a special procedure that antisocial behavior in children and adolescents is considered.

Nature of this crime is that the elements of the characters and their transition from childhood to adolescence and youth stage are related. So on the one hand, juvenile delinquency is to be understood, on the other hand, it is has to be given the sensitivity of the situation. There is a need to disclose prediction of a justice system. The development and establishment of special procedures for children and adolescents have a long history. History of such proceeding must be related to 1899 (1278 Solar) when the Cook County Juvenile Court (Cock County) in Chicago (United States of America) was established. Gradually the hearing into other countries and the important role assumed of set of international rules on juvenile justice adopted by the United Nations quickly spread.

Among the most important documents of the United Nations is Standard Minimum Rules for the Juvenile Justice (Beijing Rules) 1958. It notes and explains the principles and purposes of the juvenile justice institutions and procedures introduced. The Beijing Rules considers juvenile justice and children and acts focus on their interests and ensure that any reaction to juvenile offenders is always in proportion to terms with their condition and the type of offense.

Iran's first juvenile court and juvenile law was passed in 1338. It provided the context of the establishment of a justice for children and adolescents. The law also created special institutions in addressing juvenile crime and correcting them. Special procedures were anticipated. These included the establishment of juvenile courts in every city, as well as the creation of Correction and Rehabilitation Center near the courts. Juvenile justice in some of the provisions in this law is different from the trial of adults as the hearing closed. Non-disclosure of the identity of the child, a ban on publication of trial by media and cameramen, are considered. However, the feasibility of establishing juvenile courts and juvenile law until 1347, 10 years after its adoption coincided with the time presented at the seminar speeches juvenile, Tehran, 2,3 Esfand 1378. It was published by the Department of education and research and UNICEF judiciary where correctional executive regulations were prepared. After preparing, the juvenile institutions were formed only in cities such as Tehran and Mashhad. This law until 1364, the date of issuance of precedent No. 6 dated (64/02/23), the age to juvenile legal delinquency (9 lunar years for girls and 15 for boys lunar year) was determined. Such age would make them legally responsible for their crimes as adults. Thus, the court of
law enforced action to stop children Grdyd.az then only with the entry into force of the Law of Public and Revolutionary Court Hearing Procedures in Criminal Matters (adopted in 1378) that dealing with juvenile delinquency within the competence of some public court had been assigned to deal with all juvenile delinquency.

However, branches do not initiate formation of justice for children and adolescents because, they serve only to neutralize and evade some international pressures especially those of the United Nations and the commission of the children’s rights.

Iran condemned the violation the Rights of the Child (to which Iran was joined in 1372). In this regard, the drafters of the Code of Criminal Procedure Act of 1378 fought against juvenile delinquency and many regulations were allocated. Branches have to be dedicated to deal with juvenile delinquency of persons less than 18 years age, in this chapter some provisions that deal with juvenile delinquency are mentioned. They are inspired by the children's court criminal law 1338. However, the mere existence of these branches cannot impose such regulations, although that is an important step to be assessed under this rule.

Realization of a juvenile justice is possible on the one hand. Special institutions of the trial in accordance with international rules on juvenile justice are established and other procedures are considered to be special for children and adolescents. Their rights are fully respected and interest guaranteed. This is an important bill for juvenile crimes trial of children and adolescents. The Islamic Penal Code of Criminal Procedure is considered. So the "special institutions" and the other "specific provisions trial" young children are predicted (Mousavi Tabar, 1392: 65).

In recent decades, many of the documents and human rights meetings also discussed the rights to supply the child's best interests, duties and obligations imposed on governments and families. Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Islamic Declaration of Human Rights (1990), the United Nations Millennium Declaration of the various topics, all of them have raised children's rights.

Also, there are the documents that are related to children's rights. These documents include the Universal Declaration of Rights of the Child (1959), the United Nations Minimum Rules for the Administration of Juvenile Justice desirable (Beijing Rules, 1958), the United Nations Rules for the Protection of juveniles deprived of their Liberty (1990), and the United Nations Guiding Principles. They attempted to prevent juvenile delinquency.

3. Victim sociological perspective

Lawyers and criminologists use different terms and understandings of the concept of “victim”. Different books reflect different perspectives and definitions. For example, in Oxford Law Dictionary, “victims” in the legal culture are defined as "the victim as person
who is directly affected by the risk. And only victims have the right to complain "(Oxford Law Dictionary, 2006: 565).

Also victims are defined as "victim who has a definite loss, damage has been caused to his personal integrity and most people would acknowledge this problem" (Lepz and Filizoula, 1388: 96). Or, "a person who witnessed physical injury, mental, emotional pain, or their fundamental to their fundamental rights suffered financial loss or damage." (Raijian Asli 1384: 16).

With regard to the definition described above, we obtained the dual role of victims of crime. The victim's dual role has created a new criminological approach. This new approach has enormous impact on the attitudes of criminologists, lawyers, legislators and officials who have created legal and judicial communities. This new approach of victims (cognitive reason) and of the secondary victim (support) had great influence in the world of criminology and criminologists. This classification produced different effects on legal opinion. The cognitive causes the victim must be considered in various dimensions. Victims are to be seen as essential in the process of crime.

The victims of the crime are affected by severe physical injuries, emotional, sexual, abuses. This should be sought as far as possible. Victim’s right of redress should not be ignored. They have to be compensated (Rayejian, 1381: 19).

To this injustice, victims can suffer a fourth injustice. The disproportionate sentence can place them in a "special situation"; the situation is such that it is possible to undergo additional sacrifices (sexual problems and sexual exploitation, maintenance problems in a closed position, mental problems, and most importantly, unwittingly teach their criminal techniques) (Sekhavat, 1387: 204).

4. The human rights perspective

The adoption of the Universal Declaration of Human Rights proclaimed by the United Nations guarantees individual human rights in the non-sectarian, gender, religious, cultural, political, economic, ethnic sectors or other types of discrimination. According to the United Nations Universal Declaration of Human Rights, the protection of children's rights has to be a top priority. Family and the community structure have to contribute to the development of the personality of children. Children need to grow up with family full of love, understanding and respect.

At the global level, the United Nations improves the administration of justice in the case of children. Many attempts have been made to prevent crimes and protect children deprived of their liberty. In this regard, the United Nations has produced and accepted four important documents that are concerned with the fate of the children and juvenile offenders. They have important effects on the global level. The four documents are: 1. The United Nations Standard Minimum Rules for the Administration of Justice's criminal known as "The Beijing Rules" 2.
The United Nations guidelines for the prevention of juvenile crimes known as "Principia Mathematica" 3. UN Minimum Rules for the protection of deprived children 4- Convention of the rights of child (1989). Examining carefully these documents, we find that they are all trying to get quick overview outcomes: first, prevention of violations of the law by children and young people, second, how to deal with juvenile accused or suspected to violate law. Third, the protection of children and adolescents deprived of freedom by preventing aggression and delinquency which improves their morale helps them start a new life.

5- Types of criminal protection of children

Protecting the victims is conceivable primarily in three stages: A- the protection of victims of crime immediately after the pre-Darcy. B- Protection of victims in the proceedings. C- Protection of victims and compensating for losses (post-trial). The support over the proceedings (court), should not be ignored. If so, it may cause many problems including the incidence of delinquency and crime of the secondary victimization. The initial police dealing with children and adolescents in conflict with the law and with specific suppliers are very important. In this respect, children and adolescents, and their personality have to be kept safe from the harmful consequences of the criminal military intervention. The presumption of innocence that makes up the final disposition of the charge to the citizens of any restrictions to their freedom needs research.

In support of victims in the proceedings, with the adoption of the new law of criminal procedure, the courts specialize in the children and adolescents. Separate courts considered different materials in detail to prosecute children's conditions.

The last step is to consider the post-trial stage criminal justice in recent years. In fact, the post-trial stage in the rehabilitation of offenders is generally considered in the prevention of recidivism and in the necessity to support the people affected, after the withdrawal justifies care measures (Najafi Abrandi Abadi, 1389: 64). At this stage, the role of legal protection or punishment of child offenders is noted by a number of agencies.

Conclusion

The extent of the offense from kids expands in today's world. Also efforts in finding solutions to protect the rights of children and the prevention of criminal offenses committed by them have been increased by scholars and experts. Now the majority of criminologists, sociologists, psychologists and experts in juvenile crime believed that the criminal justice process should support children and juvenile crimes have to be separate from other offenders. The particular situation of offenders has to be taken into account by the series of laws and regulations developed and implemented in a timely manner.

Secondly, governments and authorities should strive to enact new laws and regulations through the provision of necessary facilities and the issue of "protecting the rights of criminal children" are seriously implemented. It must be understood that common opinion among
experts on juvenile crime in most countries and the best way to prevent juvenile delinquency is that the new legislations to combat these crimes have to be created. Some new facilities for children and adolescents and their withdrawal from "anti-social behavior" are to be a priority of the governments and the authorities. It seems that due to the sensitivity of the issue of criminal responsibility for children and the branches of the discussions on jurisprudence, innovations initiated by Islamic Penal Code when put into force, resolved many of the problems. Many changes were initiated. The most important of these changes are: determination of nine lunar years as the age of entry into the criminal system, removal punishment of minors, failure to take responsibility for subscription growth for mature people under eighteen years. Offenses juvenile offenders require a special procedure. Only if there is a special procedure that antisocial behavior in children and adolescents is considered.

The special nature of this crime is that the elements of the characters and their transition from childhood to adolescence and youth stage are related. So, a correct understanding of antisocial behavior of children and adolescents given the sensitivity of their position is necessary. The need to provide a justice system that realizes a juvenile justice is possible. Moreover, special institutions of the trial in accordance with international rules on juvenile justice are to be established to fully respect and guarantee kids’ interest. So the "special institutions" and the other "specific provisions trial" young children have been predicted.

The success of children and juvenile justice depends on the establishment of certain institutions. These institutions are subject to the principles and objectives of the trial and follow the same procedure. The new Code of Criminal Procedure and the criminal policy of Iran have changed. Delinquent children and young people within substantive criminal law and procedure are included.

Children in the areas of criminal law and substantive issues related to the question of criminal liability and varied responses intended for crime of child are considered. In this area, due to its relationship with the legal provisions, the drafters of the bill changed the legal standards relating to the responsibility of appeal. However, they have tried through the classification of children and proportionate measures with their age, the low age of criminal responsibility in Iran to prevent negative consequences. To be clear, the determination of age as the age of criminal responsibility for children and young people exposed heavy punishment such as the death penalty, life imprisonment, etc. as well. In addition to this lack of foresight, response commensurate with the gradual growth of children and adolescents, the grounds for the criminal acts of the same answers were provided for them.

Hearing the children was also tried to with regard to international in Iran. Despite the store or incarceration in a juvenile institution, the indoor center field for some potential damage to children and adolescents was made. While the approach of restorative responses education in society come into force, restoration measures in the bill are discussed and are important.
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