The Criminal Policy of Iran Confronting the Phenomenon of Child Abuse and the Preventive Strategies

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Abstract

Today, one of the concerns of the criminologists is the violence against the children, since the children, as a vulnerable group, are always exposed to several harassments, threats, and crimes from the adults due to lack of power and independence, physical and intellectual weakness and dependence on family. Every day, the children rights are being ignored by many and some children are tortured and harassed at their home, without these facts being reflected or them having smallest social supports. Today, the main issue against the children is the issue of domestic violence whose range, scope, and forms have been vastly diversified. On the other hand, one of the ways to prevent the offences and their repetition against the children is reforming the laws encouraging the child abuse by the parents and eliminating the gaps and legal binds through criminalization of certain acts, changing certain elements of crime, intensifying the punishments or changing their type. It seems during the recent years, there have been considered some laws and regulations for improvement and promotion of the legal system in connection with the child abuse, in the criminal policy of Iran. The current thesis aimed at evaluation of the criminal policy of Iran facing the phenomenon of child abuse and the preventive strategies.

Keywords: Child abuse, criminal policy, prevention, victim.
Introduction

The child abuse has been manifested in several forms and sometimes, the family has been the place for the outbreak of violence and suffering against the children (Aghabeigluei, 2002). With child abuse, we mean any behavior that involves any types of physical, sexual, neglect, and emotional abuse of the children (Khoushabi, 2004). Any kinds of neglect or misprision or committing the any acts that endanger the child's physical and mental health and/or may distort it is considered as the child abuse (Khazravi, 2003). Today, the child abuse is taken as one of the social, health, and curative priorities and problems of several countries worldwide. The child abuse, in any kinds such as physical, sexual, emotional, and neglect, is condemned by different societies and it is crime in many countries with legal consequences for one who has committed it (Dorostkar, 2010). The issues related to the prohibition of the child labor are among the most widespread manifestations of the exploitation and child abuse. The extent of the children use in the today's world (both quantitatively and qualitatively) has caused the prevention of child exploitation to be an important aspect of children rights protection. From exploitation to the most feared and painful aspects of social and sexual exploitation are all included in and defined by this subject. This has led to the fact that during the recent years, the politicians and the major policy-makers of the world become especially sensitive about this issue both in the international and domestic levels. This sensitivity can be clearly manifested in ratification of the Convention or, concords, and even some domestic laws (Irvanian, 2004). The child is the most delicate flower of humanity and Islam has also paid special attention to it. Therefore, the phenomenon of child abuse is an ominous phenomenon that hurts the human feelings. One of the most heartbreaking news that shakes the heart of every human being, is the growing number of child abuse. In Iran also, several factors has gathered to increase the child abuse. According to the statistics published by the Society for the Protection of Children's Rights, the child abuse has been increased by 3.5% in 2008, compared to 2007 (Taremi, 2011). The child abuse is any acts or giving up any acts by other people, especially adults, including parents and non-parents that cause lasting psychological and physical consequences for the child. Some of these effects can be hidden, including: preventing attendance in classes, depriving him of food, imprisonment in the bath or basement, humiliating him among his peers, lack of attention to his urgent and primary needs and demands and ... these are all forms of child abuse which are hidden. Child abuse is not related to a particular class so that the cultural poverty as well as poverty can also be a cause of child abuse and that is why child abuse is also prevalent among the educated people who have a good economic situation (Kavianfar, 2011). This is obvious in the performance of judicatures of several regions in the country. The lack of current practices in dealing with the phenomenon of child abuse, inconsistency in the cases filed for child abuse, lack of specific branches predictions for the mentioned crimes, and tens of other factors, which will be dealt with in this section as the performance of the legal system, clearly denotes the lack of such a strategy in the country's judiciary system, since if there is such a thing, many of the problems mentioned above are not fulfilled or at the beginning of fulfillment, would be solved by a serious response from the judiciary (Irvanian, 2011). Rahimi (2006) in a study on the prevalence of child abuse in two regions of Tehran, indicated that the prevalence of child abuse with a 95% confidence level, is 37% to 46% in the region 20, and 16% to 24% in the region 3. The perpetrators of abuse were mothers in the region 20, and equally mothers and fathers are in the Region 3. The children in
primary and secondary school who also had unemployed father were at higher risks of abuse (Rahimi, 2004). Ghonche Raheb, Eghlima, Abbasi Kamroodi, And Kafshgar in a study (2010) titled “the psychological-social effects of child abuse and the role of police in preventing it” indicated that the children are more abused in childhood compared to adolescence. The physical, emotional, and sexual abuses are the most frequent, respectively. The age of the children and the teenagers who were abused was related to the type of abuse and these children had difficult social, economic, and familial conditions. The abused children and teenagers suffer emotional, behavioral, learning, social, and personality complications. The police interventions with community-based approach are effective in preventing the occurrence and incidence of child abuse in Iran, however there are challenges for preventing such incidents in Iran, parts of which related to the cultural, legal, and protective issues of children in Iran (Raheb et al, 2010). Irvanian (2011) in a study titled “protection of children against economic and sexual exploitation” firstly prepared that detailed the statistics of the abused and exposed children. Regarding the obtained information, a long-term and major plan must be prepared for omission of these social abnormalities. As the second step, all the parallel involved people and organizations should be omitted and all the material and cultural facilities should be provided for the organization, and through supporting the NGO’s, public donations should be attracted. Without such a plan, any activities against child exploitation will be a failure and only a show. Irvanian, Mikaeili, and Zamanlou (2013) in a study titled “an evaluation of the prevalence of child abuse and predicting it through analysis of parents’ depression and anxiety, attachment styles and mental health of adolescent boys” indicated that overall, 14.85% of the subjects were exposed to higher than average child abuse and the emotional child abuse was the most common. Also, child abuse can be predicted through parental depression and anxiety, attachment styles and children's mental health. On the other hand, regarding the devastating effects of child abuse, by doing research and identification of its predictive factors, we can take the necessary interventions to prevent it (Mikaeili & zamanlou, 2013). Ogatonuz (1997) in his studies showed that most of the victims of child abuse were boys. It can be justified that the families are usually more gracious and emotional towards the girls rather than boys. Also, more expectation from the boys to progress and their being noisier leads to higher abusing the boys (Ogatonuz, 1997). In Harter and Taylor (2000) study, people with having childhood abuse background filled in the Mental Health Questionnaire (SCL-90). These people had higher paranoid and psychotic symptoms than others. The physical and sexual abused showed higher symptoms of obsession, anxiety, and somatization.

The First Issue of Criminal Policy

Criminal Policy

This new field of study was first introduced by the German professor Futherbach. By criminal policy we mean the entire criminal, economic, social and cultural policies, procedures and practices complying with the political system of each country, aiming to prevent and fight the crime (Pika, 1992). Fonlisth asserts the criminal policy as a discipline that aims to provide the best useful scientific and practical criminal theories and prevent the crime considering the philosophical, scientific and historical data (Mazluman, 1975).
Types of Criminal Policy

Generally, the criminal policy is categorized in two models (types): state criminal policy and participatory criminal policy. They are as follows:

a) State Criminal Policy

The state criminal policy (official), involves all measures, actions and responses by the government (the whole political system) with the help of the related institutions and powers in order to prevent the crimes, fight the delinquency, and treatment of the offenders. The main characteristic of this model is the government's response to the crime through its different organizations. Criminal law and criminal procedure are usually used in this method (Lazerj, 1997).

The state criminal policy model is divided into three categories as follows:

1) Legislative Criminal Policy:

Generally, the crime confronting strategies manifested in the texts of criminal laws and regulations are called the legislative criminal policy (Akhundi, 2008).

2) Judicial Criminal Policy

The judicial criminal policy includes the measures and decisions made by the judge on the basis of laws aimed at preventing crime and confronting it.

3) Executive Criminal Policy

All the regulations, acts, circulars and decisions of the executive branch and its various organs, including the police in order to implement the legislative and judicial criminal policy or beside it which is usually supervising the non-criminal tools (Najafi Brand Abadi, 1996).

b) The Participatory Criminal Policy (Non-governmental)

It includes the policies and activities taken by people either independently or by the association of the government in an organized manner and in order to prevent and confront the crime (Najafi Abrand Abadi, 1996).

The Second Issue of Child Abuse
The Concept of Child Abuse

Aghalouei et al (2002) state that child abuse is any injuries or threats to physical and mental health and well-being and welfare of children under 18 years old by the parents or caregivers. The child abuse can be divided into 5 main categories:

1- Physical child abuse: any activities that leads to intentional physical harm to the child. These harms can be because of severe physical punishment or unwarranted punishment (such as burning, biting, cutting, pushing, twisting the limbs), torture, trauma, wound and fracture (Madani, 2005).

2- Sexual Child Abuse: it seems it is any kinds of sexual contact between the adult and the child. The child generally does not enjoy this contact and the abuser’s sexual satisfaction is the main goal (Mohammad Khani, 2002).

3- The Emotional Child Abuse: any kinds of rejection, criticism, humiliation, comparison with others, deprivation, imprisonment, threatening, and hostility to children are called emotional child abuse.
4- Neglect and Inattention: Jalili (1996) states that the neglect occurs when the family or the caregiver cannot provide the nutritional needs, clothing, housing, health and education for the child.

5- Economic exploitation: Poor Naji (2000) states that it is any use of children under 15 years for supplying the living expenses.

The Reasons behind the Child Abuse
The reasons behind the child abuse can be categorized under three categories: the mental factors of the abused children (such as abnormal children, children in difficulty, and the abandoned children), the familial factors (such as the age, the parents’ education and job, the family size, background mental illness in the family, divorce, addiction), and environmental factors (such as attitude towards the punishment), religion, economic status, place of residence, and the child employment (Madani, 2005).

The Emotional Child Abuse

With the implementation of Article 29 - which obliges the parents and community members to pay attention to the child's personality and emotional conditions and in case of the parents separation, obliges the government support the children in order to meet the children emotional needs according to the article 20- the emotional child abuse will consequently be decreased. The treaty to deal with child sexual abuse in Article 34 provides that: “all the governments accepting this treaty are obliged to protect the children against any sexual abuse or exploitation. In order to do so, the governments take international and local actions, so:

a) The children will not be forced into illegal or mandatory sexual intercourse
b) The children will not be into prostitution
c) The children are not going to be used in prostitution and/or sexual shows

Child Abuse from the Iranian Legal Perspective

From an overall perspective, child abuse can be divided into two types: the physical child abuse and the mental child abuse. According to the motives and causes of crime, child abuse is divided into different types, which are:

1- The child abuse due to physical abuse such as beating
2- The child abuse due to illegal exploitation such as exploitation for smuggling and employing the children under 15.
3- The child abuse due to failing to act such as intentionally neglecting the child’s health and hygiene
4- The sexual child abuse such as using the children for prostitution

The most explicit law that confronts the phenomenon of child abuse is the Law on Protection of Children (adopted in 2003) which includes the children under 18, however in other laws, the matter of child abuse has been occasionally and sporadically addressed and the children rights have been considered. For example, Article 2 of the Child Protection Act provides that: “any kinds of children or adolescents harassment that causes physical, mental, or behavioral harms to them is prohibited”. Based on this definition, the nature of child abuse is harassment and the perpetrator must have the intent to harass him/her. Thus, someone who has caused harm to the child due to neglect or lack of intent has not committed child abuse. On the other hand, the child
abuse is a crime bound to the result and must cause physical, mental, or behavioral harms and endanger the child’s physical and mental health. The material elements of this crime are physical harms such as injuries, the mental harms such as psychological distress, anxiety, depression, etc. It is amazing that before, the mental harms were not considered a crime in the law, so this law, in order to completely protect the children rights, considers the mental harms as crime. Thus, this law includes all the crimes resulted from the physical child abuse and also mental child abuse. Although, Article 7 of the Child Protection Act provides that: “Educational actions within the framework of Article 59 of the Penal Code, enacted 07.09.1370 and Article (1179) of the Civil Code enacted in 19/01/1314, are exempt from the provisions of Act “, among the instances of child abuse is physical abuse, physical punishment beyond the normal scope by parents or legal guardian, which constitutes a large portion of child abuse statistics in Iran and in the world. Some juristic believe that one of the reasons behind the increase in this type of child abuse is the legal uncertainties which can be investigated. According to the explanation of the law, corporal punishment leading to amputation or injury is certainly beyond the normal scope and in addition to penalties, pursuant to the Article 1184 of the Civil Code and to the sole discretion of the judge, he/she could be dismissed of guardianship over the child. However, beating the children, either by their parents or otherwise, according to the general articles 269 and 295 of IPC, is subject to nemesis and blood money (Keshmiri, 2011).

Mental Child Abuse

Among the clear instances of mental child abuse are insulting and accusing the child that according to the Article 147 of the Islamic Penal Code and the public Article 145 and 608 are punishable by up to 74 lashes. Other important instances include the non-delivery of the child's legal guardian (Article 632), abandoning the Child (Article 633), kidnapping the children (Article 631), harassment and assaults in public places (619). Of course there is also the case if the victim is a child, criminal penalties will be intensified, such as the crime of kidnapping (Article 621).

Child Abuse due to Failing to Act

It includes failing the acts that leads to endangering the children physical and mental health which are clearly addressed as a crime in some laws. For example Article 4 of the Law on Protection of Children and Adolescents prohibits deliberately ignoring the children’s physical and mental health and preventing the children from education and knows it subject to punishment (5). Among other instances of this kind of child abuse is abandoning the child while having affordability (article 642, IPS).

Child Abuse Resulted from Illegal Exploitation

In this kind of child abuse, although the actions may not endanger the child’s health, it may be against his benefit and such actions are also deemed by the legislative as the crime may be subject to punishment. The article 3 of this law explains that: “Any purchase, sale, exploitation and use of children to commit offenses such as smuggling is prohibited and the violator besides
compensating the harm, will be sentenced to six to one year of imprisonment or fined by 10 million to 20 million Rials”. In the Islamic Penal Code, the crime of children exploitation in illegal forms, in specific instances such as begging, will be fined by more serious punishments. The article 713 of this law states that: “whoever who uses a minor or immature child for panhandling will be sentenced to 3 months to two years of imprisonment and confiscation of property gained through this method”. On the other hand, the exploitation in drug-related crimes has its own punishment (Article 18 of the Law on Narcotics). In fact, according to the article 8 of the children protection law: “if the crimes subject to this law include other subjects of the law or there are more severe punishments for them in these laws, the legal punishment or the extreme punishment will be applied”. The extreme punishment will be executable in the Islamic Penal Code or anti-drug law. It should be mentioned that employing the children under 15 is prohibited according to the article 79 of employment law, however this limit does not apply to the children above 15 (Beigi, 2006).

Sexual Child Abuse

Another type of child abuse is the sexual child abuse most of its instances being mentioned in the Islamic Penal Code such as sodomy (Article 112 and 113), adultery (Note 83), pimping (article 135), sexual abuse, preparation of pornographic images of children (article 640), encouragement and guidance to prostitution (article 639 and article 640, paragraph 3) deceiving children girl and marrying her. By the way, some other crimes such as child prostitution, encouraging the children to prostitution and the like will be soon subject to the articles 13 and 14 of the cyber-crimes penal code (Taremi, 2010). The prosecutor can according to the article 1173 of IPS choose a righteous guardian for the child if his current guardian is proved disqualified. On the other hand, according to the article 5 of child protection law, “child abuse is among the public offences and does not need private plaintiff”. Thus, the prosecutor can request punishing the abuser, be it the parent or others.

In order to better explore the child abuse, the article 6 of the child protection law asserts that: “all the individuals, institutions, and centers which who are somehow involved with the protection and custody of the children, are obliged to inform the competent judicial authorities right on observing the cases of child abuse for prosecution of the perpetrators and taking the appropriate decision and abiding this duty will result to imprisonment up to 6 months and up to 5 million Rials fine”. However, it was better the legislative also oblige the clinics and medical centers to report, since one of the places the victims of child abuse refer to are clinics and medical centers (Taremi, 2011).

Child abuse from the standpoint of international law

Declaration of the Rights of the Child (ratified in 1959) in the first part of Article 9 says that: “the child must be protected against any kinds of neglect, injustice, cruelty and exploitation”. Also, at the beginning of the article 6, it puts: “the child, in order to develop a complete and balanced character, needs love and understanding and if possible, he/she should be under his/her parents’ protection and supervision and anyways, grow in a lovely atmosphere and with moral and material security”.

It is of note that Iran also has accepted this international declaration since 1994. Thus, one of the basic conditions for right execution of this treaty is familiarity of all the society’s members, especially the authorities involved with the children, parents, and caregivers tasks, and also the child himself with this agreement. According to the article 3 of the world treaty of children, the supreme rights of the child must be considered by his parents and caregivers by any actions. According to this provision, the governments are obliged to, in case the parents neglected the children, provide the needed supports and cares for them. According to the article 19 of this treaty, the member states must, in order to protect the children against the physical and mental violence and any kinds of abuse, neglect and negligence, take the necessary legal, social, and educational actions. However, the states signing the world treaty of children are obliged to take the necessary actions against illegal use of drugs, psychotropic substances, and drug trafficking. The article 24 of this treaty states about the health cares for the children:

1- The governments recognize the children rights for being healthy and using all the facilities for keeping healthy, treatment, and curing the diseases and guarantee that no children will be deprived from this right.
2- The governments in order to secure these rights, take the necessary actions such as:
   a) Reducing the number of infants and children mortality
   b) Organizing the general health care for the children and ensuring that the primary health care is provided. However, the governments will also pay attention to the mother health, pre- and post-delivery and will confront the diseases, shortages, and malnutrition. In this regard, they must prepare the food and healthy drinking water with consideration for the environment maintenance.
   c) Paying attention to education of all people, especially the children and the parents and trying to ensure that all the residents learn the principles of health and well-being. For example, they will get familiar with the benefits of breastfeeding, personal hygiene, cleaning the environment, and how to prevent accidents and will also enjoy the governments support in practice.
   d) Organizing the counseling centers for parents and providing insightful information on family planning
3- The governments will take the necessary actions in order to confront the superstitions and habits harmful to the children well-being.

Consideration for the provisions of this article by the governments will prevent the economic poverty of the families lead to child abuse due to neglect, as the governments attention to the article 28 will ensure that the children will not be prevented from minimum education. This article provides that:

1- The governments recognize the children education right and especially take the following actions for ensuring it is followed:
   a) The primary school will be mandatory and free for all;
   b) Creating various schools and professional educational centers which are cheap or free of charge for low-income people;
   c) The entry into the higher education centers will be accessible for all and they will be supported

Also, to deal with child labor according to Article 32, member states are obliged to prohibit child labor and exploitation.
Effects and Consequences of Child Abuse

These effects and consequences can be divided into physical and mental categories. One of the obvious effects of child abuse, especially the physical and sexual abuse, is harm and injury. Beating is the most prevalent type of child abuse which leads to physical injuries. The most important physical symptoms of child abuse are bruising, cuts, swelling, burns, bites, internal bleeding, eye redness, eye bleeding, tenderness and fractures (Madani, 2005).

Legislative criminal policy of Iran in the field of protection of children against child abuse phenomenon:
The Iranian legislation has not used the term “child abuse” in any legal texts (however it should be noted that we mean the texts before ratification of the Child Protection Act enacted in 2003). But in some cases, some laws are enacted to protect the children against different types of abuse and generally against the crimes. Some of these laws are as follows:
- The protection of children at the embryonic stage: in accordance with Islamic Sharia legislation the human embryos is protected.
- The protection of the child after birth: the Islamic penal code enacted in 1997 in the articles 208 (general provisions relating to murder), 220 (conditions retaliation in cases where the murderer is the father or paternal grandfather), and etc.

Conclusion

In the outbreak of any crime, it can be concluded that the cultural and social context is a completely suitable ground for emergence of the crime. Although the issues related to child abuse have been addressed in several regions of Iran, regarding the different social and cultural contexts specific to each city, it seems inevitable to re-investigate the issue of child abuse. The girls and the boys have been compared in four main factors of child abuse including the physical and the mental abuse, neglect, and economic exploitation. The child abuse is almost as old as the human history and it can be common in all families (rich and poor, educated and uneducated, oversized or undersized). Regarding this issue, those are able to educate the children emotionally who have been treated well in their childhood. The all-out attention to the issue of child abuse is more manifested. According to the results of several studies, usually the abuser has not been well treated during his childhood and has been subject to child abuse (Bagheri Yazdi, 2001).
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