Analysis of the differences and privileges of female's criminal justices in Twelver Shi'a jurisprudence and Iranian law

Maryam Karami¹, Dr. Azam Mahdavi Pour²*

¹ Department of Criminal Law and Criminology, Khomein branch, Islamic Azad University, Khomein, Iran
² Department of Law and Political Science, Faculty member, Faculty of Law and Political Science, Kharazmi University, Mofatteh, Tehran
*corresponding author

Abstract

Age of criminal responsibility has always been an important and challenging issue in criminal law. One of these challenges is the problem of slow or elimination of criminal responsibility. According to Shia jurists the age of criminal responsibility in Islamic law, based on the age of maturity, is nine lunar years for girls and 15 for boys. In addition, the new Penal Code, while as before determined the age of criminal responsibility for girls 9 lunar years, has tried to create practical solutions for overcoming the problems of the present age of criminal responsibility for girls and juvenile justice. Therefore in this law, a dual order is accepted for criminal responsibility, which means that while in discretionary punishment the age of criminal responsibility is 18 solar years and criminal liability is gradually, but in hudud and qisas the age of 9 and 15 lunar years is to be counted and the same holds for girls of 9 and above. Therefore, in this study the criminal responsibility of girls considering the origin and cause is investigated and the differences and points of criminal justices and the rights of women in Twelver Shi'a jurisprudence and Iran low reviewed. The method of the study was analytical-descriptive. Also the gender differences in substantive and procedural criminal law, physical and psychological characteristics, different roles of women in family and community, support for women and keep them from criminal processes have been investigated. It became clear that underage girls in various crimes of hudud, taazir, qisas and so on, are free from criminal responsibility because of not reaching the legal age.

Keywords: criminal responsibility, maturity, criminal law, jurisprudence, Islamic Penal Code.
Women through the centuries and in different schools and sects and communities embodied the creativity of God, had been always the essential element in family formation and the status and identities, and they had always ups and downs. Sometimes they had been as low as a product and, on the other hand, the other times had mentioned as a sign of God. The Islamic Republic as a system derived from the text of Islam and most prestigious political, cultural, social, legal and economic document that matches with the criteria of Islam and Shiite jurisprudence, has a special attention to the women – both from criminal and natural and formal point of views – so that the followings are a few examples:

- From the substantial point of view: Blood money, qisas, the punishment and so on differences between men and women
- From formal dimensions: In terms of how audits and investigations, evidence, particularly the testimony and qasamah about how to implement the delay in carrying out the punishment.

In general we can say that the review and explaining of the differences and points of difference between men and women according to the legal rules and tenets of Islam and Shiite by religion and philosophy, and the attempt to find out why there are these differences will be considered. In the main issues of criminal justice, a series of differences between men and women and there might be advantages for women. Gender is an undeniable fact that divided the human beings from the beginning of creation into two groups, male and female. This old distinction, on the one hand has been the founder of the human life chain and on the other hand, the ground for confrontation and a sustain compare which its end will never come (Hashemi 1383). Effect of Gender in criminal science can be considered in two distinct categories: first, its role in delinquency and the second, in criminal law. The first one is related to criminology and raised from the differences of men and women in crime and its causes. But criminal law is a discussion of the differences between men and women. In the latter one it seems that the topics can be investigated in three parts: the topics of crime, in the sense that some of the crimes are just related to men and some of them just to women (Azmayesh 2005); the second criminal responsibility and criminal liability about it and; the third part is devoted to punishment. In each of these categories, the role of gender can be investigated once in crime and again in victimization. According to the principle of equality before the law, legal inherently is impersonal. Therefore the legislator when defining the crimes and determine punishment does not use a double standard (Najafi Abrandi Abadi, 2005). However, in exceptional cases, as a privilege and support for someone this principle becomes violated. One of these exceptions is based on gender and supporting women. However, this difference in penalties is due to differences in the natural structure of creation and the difference between the duties of men and women respectively. In other words “in establishing rules, the only issue is the difference of nature, which doesn’t mean a gender is lower than the other one” (Mehrpour, 2005). So, the focus of documents and national regulations is on the equality of men and women. Investigating the origin and causes of the differences and privileges of women in the criminal law is the subject of this study:
2- Research literature
A - Concepts
- Criminal responsibility
Criminal liability is the responsibility of the person who commits crimes stipulated in the law. Also, it is the responsibility that according to it, the person who commits the criminal act besides the lack of awareness should be with criminal intent and determination, the causality between the action and result of that should exist so the action could be attributed to the offender. Person who is in charge will be punished with one of the punishments prescribed by law and also must cope with the loss of private claims (Nourbaha, 200: 2012).

- Adultery
To determine the punishment for adultery, the constituent elements of the crime must be identified first. Then the kinds of adultery and finally ways of proving the crime must be examined. Of course underage girls because they did not reach the legal age of responsibility, according to the reluctance of adultery on the part of profligate, are free from the charge. Adultery as the other crimes has three elements of legal, material and spiritual. Also, literally adultery is the pairing together men and women which is forbidden and illegitimate. (Amid, 2010: 576)

And legally is illegitimate sexual intercourse, whether in the penis or not. (Langroodi, 2007: 344) In the several verses in the Holy Quran the word 'adultery' or words that come from this root are exist: verse 68 of Surah Al-Furqan, verse 12 Surah al-Mumtahina, verse 32 of Surah Al-Israa and Al-nour Surah verses 2 and 3. Some commentators have classified these verses. For example, according to a division, Ahkam Quran verses about adultery are divided into two categories: First-verses that pointed to the guilt of adultery and its punishment in the hereafter; such as verse 32 of Surah Al-Asma Allah says: "And do not approach adultery that what is ugly and bad way." Or verse 12 Surah al-mumtahina that God has said: "O Prophet, when believing women come to you with their allegiance to the clauses that do not share anything with God and adultery, does not steal, nor kill their children ... So then accept their allegiance”. Two verses that were related to social aspects and dignity of adultery and worldly punishment of them. As verse 2 of surah Al-nour that God says: whip the woman and man guilty of adultery hundred times and if you believe in Allah and the Last Day, never be compassionate about them and let a party of the believers witness their punishment and present them. “Or, in verse 3 of surah Al0nour that God said: “Adulterer will only marry an adulteress and adulteress will marry only an adulterer and this kind of marital is forbidden to the believers”. (Mohaghegh Damad, 240: 1427).

However there are lots of hadiths and narrative about adultery, some of which include:
- Imam Sadiq (AS) said: "My son, do not commit adultery because if a bird commits adultery his feathers will collapse”.
- Imam Kazim (AS) said: "Avoid adultery because some day it will destroy religion”.
- Imam Reza (AS) said: "Allah forbids adultery, because it causes the death of the soul, the loss of toys, leaving the upbringing of children and corruption of inherited”.
- Imam Baqir (AS) said: “God said to Moses that not commit adultery because it makes away my light from you and the gates of heaven will be closed on your prayer”. (Hor Amely, 232: 1423)
- Sodomy and homosexual sex
The word literally means to make calls or hit sodomy or attach something to something else, and in legal terms, this word will be used to introduce the intercourse of male human with his same sex, which is a human being inters his penis inside the same sex from behind. But homosexual sex is putting the penis between the thighs and buttocks of another man without entering done. In Islam act of sodomy is the ugliest acts of the people of Lot. The story people of Lot In various chapters of the Holy Quran is mentioned, including Al-Araf, Hud, Cow, Hajar, messengers, pilgrims, poets and spiders. Promiscuous people of Sodom were so mired in corruption that were taken away from women. Lot has reached the point that if a boy were passing by through their territory, he was hard at risk of losing honor. God in the Holy Quran by bringing characters such as "corrupt," "oppressors", "Ghaber", "wasteful" and "criminals" for the wicked people of Lot, explicitly and strongly condemned and denounced their action, where says: “and I sent Lot and he said to his people: are you doing an abomination that nobody had done it until now? You leave women and lust with men; yes! You are corrupt and wicked people”. (Verses 80 and 81 of Surah Al Araf) After condemning the action of Sodom in the Holy Qur'an, God in Surah Al-Araf punished them in verse 84 and said: “A rain of purred on them Look, what are the consequences for the wicked people”. Also in verse 34 of Surah Al spider we can see: we descend severe punishment from heaven to the people of this land (people of Lot) who are rebellious and wicked”. In verse 173 of Shoara and verse 55 of Naml God says: “And they (the people of Lot) were punished with the rain of stones” (Aghaei, 132: 1424)

(B) Literature

There are books and articles about the background of the topic, but these are sporadically. So in this study, we tried to investigate the criminal charge of girls with a different view and to review its features and comply of criminal laws with Islam's penal code.

1. Dr Abbas Zeraat (1393) writes about the case: Considering the age of maturity as the basis for criminal liability, hints of other interesting issues in the IPC of 92. For example in Article 145 says that the patients under the age of puberty – i.e. 8 years and 9 months in girls and 14 years and 7 months in boys- are impunity. Whereas in Article 87 the criminal response is considered based on age of 9 to 15 solar years. However it is not clear that what should we do with the criminal girls of between ages of puberty and the solar age?

2. Dr Rajab Goldoost Jooibari (1388) writes about the principle of equitable and fair hearing: the principle is unwritten but obvious in the criminal justice principles that must be observed in all countries. In our country, although there is no legal provision which specifies the principle, but it is obvious that the judge should have ample opportunity to defend the accused and his lawyer’s”. Until a person is required to respond to crimes he did not commit, no security can not be made for him. Hence, this principle can be one of the foundations of personal security and thus considered fair hearing. The concept of this principle is that the only one who can be accused of a specific crime is one that really had done it.

1. Rahimi (1392) in an article titled age of criminal responsibility in Islamic penal code writes: age of criminal responsibility has long and challenging one of the most important issues for numerous criminal law. One of these challenges is the problem of slow or elimination of criminal responsibility. According to Shia jurists age of criminal responsibility in Islamic law based on the age of maturity, nine lunar years for girls and 15 lunar years for boys are determined. The question now is whether the rest the age of criminal responsibility to the age of maturity is correct? Does age or developmental maturity is something devotional? Or is the gradual
elimination? This paper examines the age of criminal responsibility for girls and criticizes various aspects of existing legislation, proposal to change the age of criminal responsibility in accordance with the intellectual growth and sense of discernment; they were girls because girls rarely arrive at 9 years of age.

Najafi Abrandabady (1381) also in the pleadings says that: From the 18th century onwards and parallel to the importance of personality in society, at the offenders and criminal science of human personality made him an enigma and studying criminals were converted to the concerns of various schools of criminology and new perspectives raised in this connection. In effect, two major developments in the field of criminal arose:

a. The individual criminal responsibility, in initial period and even into the Middle Ages identity and consequently had no sense of personal responsibility. Therefore the criminal responsibility was collective and extended to the family, clan or tribe members.

b. Personalization of criminal responsibility. Until the 18th century the most important attribute of criminal responsibility was its objective or subjective. Bagherinejad (2007): age of criminal responsibility is the age that children reach to a degree of maturity that they are able to commit crime. The age varies in different European countries and sometimes fluctuates between 7 to 16 years. E.g. 7 years in Switzerland, England, 10 years, 12 years Netherlands, Germany, Spain and Portugal 14 years and 16 years. Criminal or criminal liability age of puberty, the absolute (total), the age of the offenders was considered a great year and will be fully covered by criminal law. This age almost in all European countries (Germany, England, Belgium, France, Italy, the Netherlands and Switzerland) is 18 years.

3. Analysis

A. qisas offenses of criminal responsibility for girls

In 2013 an important change has occurred in the Penal Code, relating to persons less than 18 years of hudud and qisas. An issue that was in recent years one of the most controversial topics in the field of the judiciary. Lawyers and human rights activists consider this issue very progressive. It is explained in the Penal Code of 2013 that if growth in the fullest sense and be under 18 years of uncertainty about the retribution will not run for them. Also, according to the bill, mandatory prison sentences for persons under 18 years with different people over 18 years. As well as other persons under 18 are not sentenced to prison and transferred to training centers such as the Center for Education Reform. According to the new Penal Code, while as before the age of criminal responsibility for girls is 9 lunar years put, has tried to create practical solutions for overcoming the problems of the present age of criminal responsibility for girls and juvenile justice act. Therefore in this law, criminal liability is accepted dual military's crimes while in prison 18 years of solar determine the age of criminal responsibility and criminal liability attaches to accept gradual, but the hudud and qisas offenses, the age of 9 and 15 lunar year is to be counted, and the same holds responsibility for girls is 9 lunar years and above. (Zeraat: 73)

The third category is related to the punishment crimes committed by teenagers who are 15 to 18 years old at the time, and the punishments are include being in correction centers in three different time periods specified in the sense that from two to five years, one to three years and three months to a year to be kept at these centers and also pay fines in different figures have been determined. (Zeraat: 85)
B. murdered in bed
The question that arises in practice is that foreigners prove the plausibility of murdered man and a married woman in bed is the responsibility of the murderer or the victim's parents? In other words, the material of innocence and the burden of proof against the killer implies the issue that contrary to what is claimed by the victim's family of the murdered or the principle of innocence and the murderer to prove alleged charge?

By definition the right, there is a difference between the proofs, the proof of right or legal event, the realization of the actual stage and the proof of its realization in the argument. In other words, the owner must be able to prove the point, "the right is evidence" to prove his reason, the stage proved right, regardless of the actual existence of a right to its external appearance and the proof of its external appearance and it's definitive the Board is in any event correlation exists between the two stages and based on the rule of "Al-Baiienah Ala Almodaey" anyone who claims to be the fixative have to prove it because the array. In this respect, the subject matter of the Penal Code as well as any other legal process has two phases proof and proof. So the issue is done in two stages:

If the one stage on condition that they comply with applicable or material come to life on stage the fixative. Who must prove his innocence or charges to prove the opposite side of what is a positive step. In this respect, the subject matter of the Penal Code as well as any other legal process has two phases proof and proof. So the issue is done in two stages: One step that corresponds to the conditions that apply if their sum matches or material in the fixative step is carried out. Who must prove his innocence or charges to prove the opposite side of what is a positive step. Given that assumption, therefore, that provision is taken from the Islamic jurisprudence and legal history of the legislator in order to pass the note, this sentence seems necessary legal documentation review.

Among these documents is the traditions that have been entered in this chapter and jurists according to them, have to express sentence.

1) Narrations
A) The first martyr in the tradition Morsali courses on the theme of "Anne Le ecstasy polo Yzny the bulk Bamrath Qtlhma" is invoked, means that if someone, a man in bed with his wife, he would kill them both.

This narrative, a narrative that is only uttered it implies Brhkm article. To scrutinize the books that were written before the book's first martyr courses, it is clear that this tradition is not in any religious books and jurists that after the first martyr have quoted this narrative, narrative sources have put the book

Two) including Shia and Sunni traditions by scholars with Mtkhltf phrases quoted in this chapter, narrated by Sa'ad ibn Ubadah, one of the companions of the Prophet (pbuh).will you do? Saad said a strange man's neck with my sword. When the Prophet entered and asked the subject and then transported by Saad al-Saad, the Prophet (pbuh) said: O Sa'd, after the issue of four witnesses that the Lord has said, what is? Saad said: Do I Find God's knowledge is enough to put everything to one who transgresses it has also put extent. The argument to this story, this narrative as to prevent the husband from killing alien, as soon as the act of adultery by adultery and even when the husband saw his wife with a stranger and intuitive that it is necessary to prove Sharia, there, they will have the right to murder. As a result, a license to kill in order to express
stranger and wife by the husband at the time of committing adultery, just to cite this story is the notion that it will be difficult to infer such a concept of the narrative.

(C) The special protection of women as victim
Criminological and Bz-hdydshnakhty findings show that some people due to the nature of biological, psychological and social, are more likely to expose crime and potential victims against potential offenders are fragile. Women often due to the particular situation in this context are mental and physical. The special protection of female victims is a positive derogation from the principle of equality under the criminal law, in other words legislator with the safeguards provided for differential against women through specific criminalization of some behaviors and intensify the punishment of offenders is the victim of them women (such as mass Article 619 Islamic code 92) special penal policy to raise costs and prices of some victims with specific crimes and reduce the possibility of crime is adopted. However, the extent of this support criminal and regulatory limits, depending on the type of look each course is different. On the other hand spectrum of violence against women that exists in some countries and in some countries criminalize purely moral and social evil remaining in the penal reaction towards them and the legislature still has not shown but according to the subject and therefore expedient in some cases merely to calm the public's emotional response to a show behavior (Such as the criminalization of made-in-law in the audiovisual severe penalties for those who are unauthorized activity approved in 2007)

(D) The judgment of women
Women's qualification for the important issues of law and legal judgments. Although this is not a new debate, but since women qualified for the job after the Islamic Revolution judgment was negated by current law does not allow hiring female judge, this day is still controversial-attract qualified. So the question is why women qualified to judge is prohibited and what is the reason? Women's rights in all aspects, is of particular interest to the legislator. The most important of these rights, the possibility of the presence of women in public institutions or their competence for judicial or political occupations. The twentieth constitution stipulates: "All citizens, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social and cultural rights, in conformity with Islamic criteria. “In the twenty-first principle stated: "the State shall guarantee the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals: the creation of a favorable environment for growth of woman's personality and the restoration of his rights". Based on these two principles, constitution, legal developments after the Islamic Revolution was aimed at restoring women's rights, but about justice, women's rights were denied.

4. Conclusion
Age of criminal responsibility has long been an important and challenging issues of criminal law numerous pamphlets. One of these challenges is the problem of slow or elimination of criminal responsibility. According to Shia jurists’ age of criminal responsibility in Islamic law based on the age of maturity, nine lunar years for girls and 15 lunar years for boys are determined. The question now is whether the rest the age of criminal responsibility to the age of maturity is correct? Does age or developmental maturity is something devotional? Or is the gradual elimination?
From 18th century onwards as the importance of personality in society, in criminal science and criminal man and his personality and studying criminals pose an enigma to different schools of criminology became a concern and new perspectives in this regard was made by the views of two major developments in the field of criminal liability arose:

A) The individual criminal responsibility, in the initial period and even into the Middle Ages identity and consequently had no sense of personal responsibility. Therefore the collective criminal responsibility and the family, clan or tribe was also restored.

B) Podsolization of criminal responsibility. Until the 18th century the most important attribute criminal responsibility, material, object or subject of it. This means that the personality and spiritual and mental aspects-was not considered criminal, not a mental element of the offense and the responsibility of the researcher became an element of the crime. Gradual criminal responsibility of the treaty between paragraph 1 and paragraph "a" of paragraph 3 of Article 40 of the Convention which contains principles of juvenile justice is to be extracted. According to these two articles, slowness of criminal responsibility for children in the period between the minimum age of criminal responsibility and the age of the child attained. As for the minimum age of criminal responsibility, the Convention does not define criteria and subject to the limitations set forth in the domestic law laid. However, in paragraph 1 of Article 37 emphasizes that in two cases, crimes punishable by depriving life or life imprisonment without release, offenders under 18 years are exempt from these sanctions and other penalties for them to be considered. Guidelines for Action on Children in the criminal system pursuant to Resolution No. 30/1997 adopted by the UN Economic and Social Council, in paragraph 14, subparagraph (C) has recommended "no child under the age of criminal responsibility should be subject to criminal charges" and in paragraph "a" in paragraph 11 is also one of the objectives of policies and reforms related to children according to age, level of development and their rights recognized. "Convention on the Rights of the Child in Islam", as a document of the regional Muslim countries in the field of children's rights, in the year 1426 AH, corresponding to 2005 in the thirty-second meeting of Foreign Ministers of Organization of Islamic Conference in Sanaa, Yemen was approved, and for accession by Member States opened "( Mosaffa, 2007: p. 513). The ICCPR, in Article 1 child every human My¬Dand "based on the law applicable to the case he is not reached puberty" Thus the present Covenant, without such Pyman¬Namh, consider the presumption of age for children in the age of puberty the age of the child as stipulated in the laws of member countries have. Article 19 of the Covenant Islam as Article 40 principles of juvenile justice stated. Subparagraph "g" of paragraph 3 of Article 19 stipulates keeps the document "should lower the minimum age at which the child may not be tried shall be determined."

The difference between this document and the Convention is that the age of criminal responsibility in absolute Convention 18 years and in this document, puberty is enshrined in the laws of member countries. Therefore, regardless of the gender issue in all international documents it considered progressive age of criminal responsibility and criminal liability for intellectual growth and development of girls as boys they know. Article 49 of the Islamic Penal Law Shiite popular opinion that the age of 9 and 15 lunar years in girls and boys, puberty and naturally on individual assignments ranging from worship,
Punishment and considered marriage has been accepted. The essential part is that of the possibility of changing the age of criminal responsibility for girls with two fundamental problems; ejection and disproportionate with the girls, a legal study is analyzed. Maturity means being "full of anything and reach" (Anvari, 1381: vol. 2, p. 1021). But the term to mean "the end of childhood and the duty is to find a way." Early puberty and many of the rights and duties of every Muslim to consider spiritual matters flora. But legal sources provide a specific definition of maturity is not merely the fulfillment of conditions and symptoms that have been expressed. According to the descriptions that could be jurists of maturity limitations "to reach the age of puberty onset and evolution of human sexual activity of boys and girls appear sensible in body and mind" he said. The first issue is whether the nature of the maturity term maturity means such as prayer and fasting is a fact of religious and devotional practice that the god of the situation and cannot be changed or an issue of development, normal and customary conditions and forge a link to any legislator. Some "maturity to understand devotional aspects", while others considered it necessary and natural evolution of the ranking. In the verses of the Quran to "maturity Al-Helm" (Light, 59) and the "maturity nikah" (An-Nisa, 6) noted that reaching the age of autoerotism and the age of marriage and human autoerotism is a quite natural and physical. "Shia jurists maturity sexual maturation have the same meaning that it's natural and it could be achieved through external signs and Emirates realized" the gem also expressly assumes normal puberty. According to the verses and traditions and religious views, there is no good reason to refuse to mature or adaptive developmental maturity to maturity legislative development, close to the right that attaches to development, rational and gradual maturation of the girl. This means that the acceptance of puberty should use scientific instruments and be established in two areas of intellectual and physical growth, and since so sure, Age 9 years, have not these components must inevitably this age of change.

Some of the important issues of criminal law with a specific punishments for certain crimes is meant rights. The term is sometimes used to mean the distance and the border between the two things. Meaning nearly the same meaning as means and end is the end. If the meaning is the meaning of the term is highlighted in the name of stability and lack of change. It should not be violated if they are about boundaries. However, some philologists such as Ibn al-Athir said that the ban is originally meant. In the sense meant much to spend nearly the same meaning and to also be used. Even Ibn Faris, "ban" the first meaning "border" has a second meaning as mentioned. If this is the meaning of a term, word meaning somewhat more emphasis on the aspect of deterrence is had punishment.

Women's rights in all aspects, is of particular interest to the legislator. The most important of these rights, the possibility of the presence of women in public institutions or their competence for judicial or political occupations. The twentieth constitution stipulates: "All citizens, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social and cultural conformity with Islam". In the twenty-first principle stated: "The State shall guarantee the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following tasks: creating favorable Inserts for the growth of woman's personality and the restoration of his rights". Based on these two principles, constitution, legal developments after the Islamic Revolution was aimed at restoring women's rights, but about justice the women's rights were denied.
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