

**The legal –criminological analysis of Islamic penal law article 146 passed in 2013 in the light of fuzzy logic**Amir Ahmadi<sup>1</sup>, Shirzad Amiri<sup>2</sup>, Shahabuddin Naseri<sup>3</sup> Shokrollah Rezaei<sup>4</sup><sup>1</sup>. Department of law, Payame noor University, IranEmail: [Amir.ahmadiy91@gmail.com](mailto:Amir.ahmadiy91@gmail.com)<sup>2</sup>. Department of law IslamAbad Gharb branch, Islamic Azad University, Islam Abad Gharb, Iran<sup>3</sup>. Department of law IslamAbad Gharb branch, Islamic Azad University, Islam Abad Gharb, Iran<sup>4</sup>. Department of law, Payame noor University, Iran

**Abstract:** In the Aristotelian philosophy which is against the east philosophy, everything is divided into black and white and yes/no. Logical concepts and obtained results in Aristotelian philosophy doesn't have any middle state in this philosophy you can't be either honest or liar or either young or old you can't be either covered or naked. In fact in the Aristotelian logic there isn't a third aspect an mal covered or naked, while in the fuzzy logic there is no distinct border and different elements belonging to various issues and concepts is relative the present article focuses on this principle that in the real world everything lies in a space between two parts of black and white however, but it is a particular manner of extended logic the subject of the present article, by helping of the fuzzy logic wants to challenge the age of penal responsibility in the article 140 of Islamic penal which bases on Aristotelian logic, whether we can't differentiate between physiological growth steps of child's sexual and intellectual maturity, which is affected by social, economical hereditary, physiological, weather coldness and hotness and other factors and is different from different people and also we can't draw a unite border between them and we can't present an independent criterion to determine their penal responsibility key words :fuzzy logic barriers of responsibility, educative and supplementary jobs.

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**Key words:** The Handicapped, Rights, Verses, Traditions, Laws

### 1. Introduction

When in 1956, professor Lotfzade, a California, Iranian original teacher of Berkley, issued his first article about fuzzy logic named fuzzy sets. No one could believe that this article can be a spark of a new ideology in the field of mathematics and science and as a first step to introduce a new and realistic in sight of the world in a quite new frame works, but very adjustable with human nature however up to one last decade the fuzzy topic (and its creator) were faced with obvious and hared hard protesting of big numbers of scientists, mathematicians and engineers. By the advent of fuzzy logic scientific applications and science world's more familiarizing with fuzzy logic, gradually these protesting switched to applause and admiration, so that now annually more than two hundred thousand of books and thousands of articles are issued and a lot of fuzzy articles are presented in the scientific in eating all over the world these article doesn't deal with the particulars of fuzzy concepts mathematical relationships, but also wants to present the basics and concepts and base of this thinking in the format of one of the scientific issues fuzzy thinking originates from a philosophical point of view that has the precedence of thousands of years and is as old as philosophy as the divine religious philosophy matches human nature in spring by east philosophy the fuzzy

thinking, introduces the world as it is? First Page repeating lines 4 to 12 you can't be either criminal or innocent. because it's third aspect as perversion is ignored in this logic. In Aristotelian logic the borders are quite clear and defined in the fuzzy thinking there is no clear border and different elements belonging to various subjects and issues is relative so are can see that how this kind of thinking matches with human and the world up to this point it seems it mustn't have been any protest by this attitude because the fuzzy thinking introduces a new insight, in which is generalizing the. Aristotelian logic but important point is that according to this point of view the classical mathematics which bases on Aristotelian logic is questioned here we have contradictions and protesting the classical mathematics in a two –valued world is a suitable device to express different concepts but by the growth of human thought and technologic and scientific progresses the need for more suitable scientific tools to express more complicated concepts of life and human environment has been clear some concept that aren't expressible by ordinary mathematics which bases on two valued concepts. fuzzy mathematics can't answer this question need to express multi –valued concept instead of two –valued concepts need to express world's realities as it is. In the recent decades the fuzzy topic is spreading all over the world speedily it's applications

go further the circle of mathematics science and controlling engineering and stepped into another scientific majors industrial management, economy, medical engineering and industrial engineering are of scientific majors, in which fuzzy application is developing of another majors in which fuzzy issues are developing slowly but radically and basically are educative majors, sociology, ethics and law for example, sociologists are interested in fuzzy topics from this view that fuzzy view matches with sociologists attitudes toward social issues and what tells in the format of writing phrases can be expressed by the fuzzy mathematical relationship (the present article and 9a thought that establishes the fuzzy logic bases on this principle that in the reality world everything is between the space of black and white this article wants to in from the readers that although there is black and white logic, but it is an special manner of fuzzy extended logic in Aristotelian logic first and second introductory are absolute and precise phrases and resultant inference is precise too but the main drawback of this logical inference is that nothing is too absolute so that we can extract definite inferences from that also. on their hand, those, phrases which are expressed as first and second introductory are fuzzy and not certain phrases, so they obtained inferences in also an approximate deduction maybe the several changes and revolutions that take place in writing the law in order to get a justice inspired from Islamic concepts and dominant ethics on our country, justifies this point. so one of the most important topic in the domain of Islamic punishment law passed in 2013, is about children the barriers of penal responsibility, is an important topic that exists in this case and provides the topic of present article by the help of fuzzy logic generally and basically most of children which reach to the age of religious puberty don't have necessary mental and intellectual to understand penal issues and legislator duties whether to determine the age of penal responsibility in article 146of Islamic penal law says :penal responsibility of immature people and article 147of that law says: puberty age in boys and girls is complete nine lunar years (8years and 9months of solar year)and complete 15lunar years (14years and 6.5months of solar years )respectively, so, by looking at the above –mentioned materials it is inferred that this topic isn't dominant but on the Aristotelian logic fond legislators whether this logic can't cover all events and human life realities in the above mentioned cases there is no distinction between stages of children mental and physiological growth and their penal responsibility.

### 1-fuzzy logic

Science always associates with one mistake a mistake that as if all the scientists committed that I

remember unforgettable moments of a day in which I found the mistake of the science those moments in which I found out that knowledge isn't true and I knew it's mistakes know ledge as a dominant king of 20<sup>th</sup> century, wasn't dominant any more according to the know ledge principles and basics everything is included in one fixed rule that everything or false or true scientists in the past analyzed their peripheral world based on this method although they weren't always sure about being corrector not a lot of examples we can give that such a interpretation isn't out of reality for example if someone says that grass is green and not red, or, atoms, oscillate or not, or the number of rivers in mine state is even or odd each of this phenomena just have one correct answer. on the other hand in one arbitrary answer, like being red or green of grass that shows the right or wrong answer, there is no middle state, but these examples that they have just one answer shouldn't be generalized to everything generalizing is the mistake of knowledge in logic and mathematics we had this deduction, too all logical and mathematical phenol men have two states based on classic principles and basics true or false and this exactly is the same for being true or falls and this exactly is the same for being true or fall about grass color. according to that logical and mathematic subjects are generally true or false, black or white one or zero, the mistake of knowledge is because of different phenomena of mathematical or logical on the other hand knowledge's mistake.what is only true for special cases is generalized to all cases in fall we can't divide different phenomena into one of two cases of being true of false and one and zero logical and mathematical issues shouldn't be evaluated by this method but also we should evaluate everything relatively all facts and realities should be evaluated relatively and we should consider them some ratings in fact everything is true or false relatively. the most things that seems true, are true relatively. about being true or false always some levels of uncertainty is true, on the other hand the real phenomena aren't just black or white, they are somehow gray. the real phenomena are vague and imprecise somewhat just mathematics was black and white, it wasn't anything but an artificial system of signs and rules the knowledge showed the gray realities with the tool of black and white of mathematics and it seemed that all realities are only white and black this spot was the knowledge mistake so while in all over the world you even can't find a phenomenon in which it is completely true or false.

Accompanied with this mistake new doubts came to birth scientists were wrong in logic or mathematics, but they defended their ideas basely, the belief to the white and black, this two –valued system goes back to the past at least ancient Greece democrats' divided the

world in to atoms and empty spaces. plate filled his world with red –colored right angled and triangular shapes. Aristotle gave up his pupil –great Alexander to write and record whatever was about black and white logic Aristotle's binary logic led to one rule and it was that something is true or not the sky is blue or not, the sky can't be blue or not blue :it is about two millennium that Aristotle law determines something is philosophically true or not disregarding you accuracy in seeing different things some things aren't fuzzy these things come from mathematics world when we agree that two plus two equals four and it's completely true when we exit from artificial world of mathematics, the fuzzy manner make all borders and ranges vague as if our words slices the world in to polices with a dull knife the fuzzy state has an official name into know ledges or being multi-valued two –valued state has two answers for any questions true or false, one or zero :being fuzzy means being multivalve it means for any question there are 3 options or more and maybe indefinite numbers of selections rat her than two final choices that means a cues analogue state rather than binary state and in definite shadows of gray between white and black and finally the fuzzy state is all that the judge tries to avoid to be able to ask the culprit asks that if he/she accepts those accusations or not ?at first he should answer yes/no logicians in 1920 s and 1930s for the first time use the multi-valued logic to work with uncertainty principle of Hayzbnk in quantum mechanics this principle says if you measure something accurately you can't measure other things by that accuracy this with three –valued logic the (First Page repeating lines 4 to 12).

## 2-puberty

Puberty is an amazing phenomenon in which is of high importance in the human growth procedure according to the scientists puberty means trans furring from child hood.in this period physiological changes in brain and internal glands cause behavioral, mental and physical changes in this period the teenager personality shapes and fixes (musavi bojnoordi, puberty, 2002).

### A) Puberty in holy Quran

Holy Quran has some verses that clarify the puberty in the most clarified way.according to this verses puberty is formed based on fuzzy logic absolutely not a non-fuzzy or Aristotelian logic to prove and to achieve of puberty in relation to everybody those verses that express being fuzzy of age are as follow (NESA 6) and examine the orphans and if you consider them as a wise person, give them back their property:

There are lots of points in this verse also this verse is about the age of growth, and extent of growth

to give property to the children in the first part of verse it says that symptoms and signs of puberty is non-fuzzy as the religious legislator says and we explain that part of peruse that is about puberty (Affliction)means examining and (Excellence)is the plural from of orphan some believe that orphan mean someone who doesn't have father, it is true but it isn't an exhaustive definition here orphan means abandoned and disqualified, means disqualified from using the property (kolini, assole kafi-7-197)so, translating the holy verse of becomes :examine those who are abandoned from having the property it is clear that this examining is before the puberty age it means you should examine them till they become matured (حتى النكاح ازلبتوا) it means they can reach the extent of being engaged it means that person should reach that extent of sexual maturity that can engage and can fertilize someone أنس means receiving the mosses in turn mountain got the god's message. but apparently his conception is different from our comprehension any ways if you examine an orphan or abandoned from his property and found out of his transactional, sexual and legal growth and understood that he/she can recognize his benefit you have to give black his property the puberty of engagement, is the last stage of patron ship and after the puberty of engagement, if the child has got the puberty, the patron can't keep the property from this verse we conclude that if until an hour age orphans property was wasted but there wasn't any guarantee but from this moment (puberty) if the patron doesn't give back the property he is culprit, and the principle of you guarantee what you have :will be applied from this verse we can understand that any puberty that god mentions in Married maturity isn't Devotionally or Aristotelian because the puberty of engagement means having the power of sexual inter course and sexual reproduction and this manner is gradual and fuzzy issue for boy and girl laments the nature of human (whet her boy or girl )if reaches to this level of sexual and physical growth, he/she has the power of reproduction. but we have to examine the puberty of marriage for boy and girl, because they are different in reproduction scientifically man's power and woman's power is for sperm and ovulation respectively it means by auto egotism and menstruation we understand that they reach to sexual and physical puberty (نور85)unbelievers, your slaves and your immature children should get your permission in three times before the dawn prayer midday when you take off your clothes and after night prayer.

### B) Puberty in Islamic narration and hadiths

Our imams that are expressive Quran, and their speeches are Quran's inter predation and discussion, expressed a lot of hadiths about puberty, some of those

hadiths prove the our desire able issue, namely, being fuzzy.

1-isaqEBN AMIR ASKED imam reza (pbuh) about a ten year old boy if he can do the hadj ceremony imam reza (pbuh) answered if he has auto egotism, hadj will be necessary on him if a girl experiences the menstruation (Menstruation)the hadj will be necessary on her.

### **3-growth**

According to this principle that while investigating the role of age, growth has been presented in penal responsibility it is based on knowing the concept of growth, so we investigate it's conceptual definition this concept is deferent this concept is different from jurisprudence sources (Quran and tradition ) and using the word growth in law affairs is different from penal affairs.

#### **A) Growth in jurisprudence**

By exploring in to imams words we conclude that growth place in 3stages (fazelimybody, puberty from the view of legal and expertise, 28) first stage :birth to 7years old second stage :from 7to 15years told the third stage from 15to 21years old another issue of growth is wisdom and mental ability.this concept more than legal aspect alludes penal cases this concept isn't interpreted in jurist's ideas, it is necessary to be questioned elaborately this concept of growth is divided in to general and specific issues.

#### **1-A-wisdom against in sanity**

Wisdom is against in sanity in general way.some of the jurists used the growth meaning wisdom. however some of jurists and researchers ignored this point, hilly, in addition to puberty for people's penal responsibility, consider the growth (he it almokhtasar almanafuan, 249)this subject lead to give a hypothesis that alameh believes that in penal responsibility more than puberty, growth is necessary (maraashi, judicial and legal ideas about growth and puberty, 5, 21).

#### **B-growth in law**

The growth isn't defined in civil law, by growth, we mean someone has the ability to control his property in a logical way growth is a physical issue that it's effect is to correct the property and prevent it's degradation it means if someone, having this attitude, leads to use all the property in a suitable way jurists have different definitions to define the growth (maraashi, judicial and legal ideas about growth and puberty, 53)in a more extensive definition of growth we can say that growth is a state in human that prevents him /her from wasting the property and helps to improve if because of that, the growth is accepted as an independent condition from puberty in the rules for removing the shortage from the orphan, puberty

doesn't suffice and the growth should be improved, because the growth is a concept based on fuzzy logic. because of puberty, the or plans shortage and responsibility won't be removed, unless they get the growth discriminating the growth doesn't have fixed and scientific criteria and judgment should be done based on fuzzy logic for determining how the lack of growth, indulgences should be in the category of that person's attitude and repeating the crazy –like actions shows the existence of in sanity this action should be continuous so there wise doing the crazy –like action isn't an evident of sanity the independence of growth concept against puberty requires that growth of adult children needs proving the growth proving should be done by the court and on the other hand going to the court for all pubescent people seems impossible if not impossible it is very hard for avoiding these difficulties.we should determine an appointed age to use that as a criteria otherwise something wrong is proved in the court given this problem lead to prove an article in 1934about transactional growth that based on that 18years old was a criteria and also while passing a civil law also this article was repeated in parts 1209and 1210the legal criteria of growth based on 18complete year was established in all legal relationship but in a correction paper of civil law in 1982article 1209was deleted and article 1210 was expressed in this case that you can't abandon anyone after reaching the puberty age as insanity or lack of growth the age of puberty should be considered as a criteria for setting up the growth (ghasem zadeh, safaei, abandoned people and people civil law 205-206according to part 1, the age of puberty in girls is 9years, and it was determined that a 9years girl for signing the legal complicated contracts and non-financial important relationship like divorce and engagement should be abandoned in the society however in part 2 of that article in conflicting with the content expressed that property of any orphan whose puberty age is proved should be given back to him even issuing the verdict number 30in 1985hasn't made the affairs better but the awake conscious of legal society didn't tolerate article 1210and practically considers the puberty age as 15years old but doesn't consider the 15years old as a criteria of growth he/she should have certificate of puberty age before 18years old and 18years old is a criteria for growth (katoozian, 1992, 42).

#### **4-the age of penal responsibility**

##### **A-the age of penal responsibility in holy Quran**

Islamic verdicts are extracted from 4sources: holy Quran, Islamic tradition, wisdom and (Consensus) the holy Quran is the most basic source of Islamic verdicts, because not only it is the independent source of verdicts but also other sources like Islamic tradition

should be proved by Quran after looking at in Quran verses we conclude that

1-when we contemplate in some words about puberty, we conclude that puberty and getting the child to the Obligation age is a natural, fuzzy and sexual issue, that in Quran's encyclopedia it is referred as (Maximum of puberty and adolescence, marriage, maturity, patience)we mention some of the related verses like (Noor 59)when your children are in the puberty age, they should get your permission, like those people who were before them and they get permission, in this way god clarifies his verses and god is knowledgeable (Noor 58)unbelievers, your slaves and children that aren't in puberty age should get your permission in there times before the dawn prayer and at midday when you take off your dresses and after the night prayer in this way god explains you his verses and god is so knowledgeable (Nisa 6)and examine the orphan people when they get to puberty age if you consider them as having growth, give them back their property and don't use their property before their puberty age and when you give their property back have a witness, however god is enough for investigation.

### **B) The age of penal responsibility received by prophet and imams**

After contemplating the Islamic narrations received by the great prophet we can conclude that 1-about puberty and children's penal responsibility in the prophet's speeches some factors like match, cohesion, documentation and coordination with the received verses about prophet are clear (hor ameli, vasael alshia ela tahsil masael al sharieh, 1, 320)it is seen that child hood continues till auto egotism and up to this point children are exempted.it means they aren't responsible toward their actions, namely, they are free from penal responsibility in another hadith he tells imam ali that the end of childhood is establishing the auto egotism as soon as the child has auto erotism, he isn't child any more 2-in prophet's words the auto egotism is considered as a criteria for getting the puberty and there is no indication about age for getting the puberty 3-in god's words and prophet's words there is antigen criteria about establishing the puberty and being out of child hood and that is auto erotism and menstruation for boys and girls respectively of course for setting up children's penal responsibility not only but also the growth stage is necessary.

### **Discussion**

According to articles 146-147of Islamic penal law passed on 2013 and considering part 1of article 1210of civil law we can say that children before the religious puberty, namely, boys before 15years old and girls before 9years old of lunar year are free from

penal law, but two points are ignored in this cases first puberty is a fuzzy issue not non –fuzzy secondly the age of child's penal responsibility is different from his/her puberty age and in the penal responsibility in addition to the puberty, mental growth should be considered. also the word growth in holy Quran in a definition including financial and non –financial affair in used that is, in penal issues also craziness and is evident and according to some narrations, craziness and in penal issues causes reducing the punishment, namely, growth is a general fuzzy issue, that is, more than civil and financial issues it includes penal issues, too from holy verses we conclude that in civil and financial issues, not only puberty, but also growth is necessary, because growth is a general concept and in penal issues that are of high importance.growth is important, too there are different and conflicting ideas about the age of penal responsibility in related narrations, so, by considering the conflicts of narrations, we can say that due to type of duty religious or penal the age of this responsibility will be different also we conclude auto egotism and menstruation are signs of puberty for boys and girls respectively.

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