

The studying of children trial in Iran rights

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Abstract: Penal trial of children and teenagers which is processing from the beginning of its contact with judicial members for doing against the law of retribution to the end of its surveying is important because of educational and humane goal. For the necessity of this topic, this article does the correspondent study of penal responsibility age, the necessary and special situation in particular children and teenagers trial, the way of decision and sentence in the law of investigation about Afghanistan's children violations and Iranian children and teenager's investigation essay, children's rights convention and pecan regulations.

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1. Introduction

Children's trial means a set of rules which should be regarded in the fields of finding the crime, pursuance of criminals elementary investigations, the way of trial and the way of sentence specially considering educational approach from the beginning of children and teenager's contact with disciplinary and judicial members.

The ways of children and teenager's sentence and trial has a lot of differences with adult's trial.

For example; The police and judges who often or specifically work in children trial and sentence should be aware of different sciences like children psychology social working, criminology through educational periods.

Trial should not be public so it should maintain the children's territory.

Forming personality file which consists of opinions of specialists in different sciences of physiology, psychology, social working criminology with trenal file to take appropriate decision considering child's or teenager's personality is necessary.

This article studied the important principles of children's penal trial in custom rights and International do aments specially the children's right convention of International organization approred in 1989 and pecan regulations (the least standards of children's right of International organization).

Children and teenager's penal trial in rights o the countries of Iran and Afghanistan with speual regarding of "law of studing the children's riolations"

in Afghanistan and suggested essay of studying children and teenager's crimes in Iran are the important topics of this article.

It is tried to study the key parts of mentioned documents like regulations of children's penal trial in Afghan's laws and Iran and to study International documents scientifically and meticulously.

First part: children and teenager's punishment in past and Islam.

In primitive societies, law didn't enist like it's modern case.

But there was a strict regulations for dcciphning and maintaining the traditional structure of power and customary manners

The person violated from social, trial system is remoted and lelshe was villain whom devil sow places in him/her.

The head of primitive tribes punished him/her severely to save themselves from Gods rages.

Forgiving the criminals was of defects.

Revenge was the main motive for punishment.

The effects of crime was not personal but it consisted the tribe and family of criminal too.

One of the fashionable punishment in ancient Iran was that the child of criminal would be punished or killed severely.

Different religions and the heads of them, invite people from tribalism and racism to kindness and being affecuanate and mercy.

Because of religious thoughts, revengeful views were balanced and gave it's place to retaliation.

Retaliation was predicted in articles 195, 197 Itamurabi law and Rome laws, Greece, Egypt, Jewish religion.

In Islam retaliation is approved too.

After Islam appearance, the prophet and substitutes and family and then Muslims studied Islamic punishment laws which is taken from Quran and Islamic tradition and wisdom and as semblance.

Crime are classified as Boundaries Ro taxation, blood money according to their types.

Boundaries, are penal which define as God's law in Quran ad Islamic tradition and nobody could have ad widen it.

Boundaries are not forgivable or deniable except in Qazuf.

Retaliation which comes in Quran, is the punishment of a person who did a crime consciously with bad thoughts.

Retaliation should be equal to the crime completely.

Retaliation is in the area of people's if the family of victim reconciled with the killer in paying blood- money, retaliation would turn to blood-money.

Blood- money is a money which pays to the family of victim.

Discretionaries is the penal which is defined by governer like imprisonment, money punishment whipping, ...

About discretionaries, to days there are objections from anti-religiom governing.

Objects says: this principle that government does the discretionary and punishment is against the principle of legality crimes and punishment s.

It could be answered as: This issue created by comparing Islamic laws with assembly approvals and rules of new western countries which tries to limited the judge just to laws.

In Islam, the governer is not, necessarily, the judge, the governer is higher than judge or he is mujtahid judge and could make law.

In both cases, he is the most knowledgeable, the most pions, the most righteous muslim so he is not the same as a judge who enters judgeing work after groduoling without being righteous.

So this person (Mujtahid), the governer, in Islam, would do the discretionaries and this shows his rightfulness too.

In other words, personalizing the crimes and formation a file of personality is the proud of contemporary western penal right systems achievements.

In Islam, one of the reason of discretionaries is because of this purpose: In discretionaries if the penal was imprisonment it is different for rid ad poor; for rich it is like punishment but for poor it is like party.

It is the governer who decides how to punish everybody and how much he/she should be punished so that the law is considered ad it caules avoiding crimes.

In Islamic laws, maturity and wisdom are the cordinens of responsibility so the criminal would be punished if he/she had these 2 conditions.

In Islam, laws are influenced by morality and the purpose of punishment is maintaining the discipline of society and retaliation causes human life revenge is replaced by society's benefit and discipline of society.

Islam considered seriously the triple aspects of crime.

This means that doing an action or forbidding it should be studied in criminology.

Ltaring bad intentions is the main aspect of a crime. But ir is not enough, the crime should be happened in reality, so will we don't have triple factors of crime with general situation of responsibility like wisdom, maturity free will, scinee, wev won't have crime and the governer couldn't do retaliation.

First discourse: the necessity of dependent children court

The principle is the equality of humans in law and the court which is the place of corresponding the law with outside reality should be equal too.

This equality principle is mentioned in International manifesto of Human Rights 1984 and International conventions which it mentioned that the equality should exist for all people in society.

But considering the benefits of rare unable over sensitive group of children and teenagers is against the law and according to the advice of International documents and achievements of crime science and criminology, special court with particular efficient of studying the accusations of children and teenagers is formed in penal trial systems of lots of countries.

The purpose of this special courts and special trial authorities is supporting the benefits of children and teenagers violated from law and returning them to the society not to increase pressure over them.

Children Right conversions 1989 the first paragraph Article 3 says:

"In all action related to children done by public or social welfare institutions, the courts or enecutive authorities or legal organs.

The benefits of children is the most important case.

In paragraph B from part 3 Article 40, the mentioned conversion

Said: they could define regulations to react these children without judicial trial if Human Rights and legal insurances is assured"

This paragraph clearly speaks about creating a special judicial process for children.

Children trial in Iran goes back to 30 decade.

Before formation the courts for children, approved 1338, an efficient independent judicial authority for studying children accusations was not predicted.

With approving the mentioned law, the court specify for children was defined.

So a special court for studying children and teenager's accusations was not predicted and even in note been of Article 8 of execution regulation, the Revolution and general courts formation law approved in 1373 lets the head of judiciary branch use general courts judges to study the teenager and children's accusations.

Article 219 law of regulation and trial of Revolution and general courts in penal cases, approved in 78 mentioned:

In each judicial area a branch or more of general courts specify to all children's crimes.

The circular 1/78/11.5 in 78,11/15, the Head of judiciary Branch to all heads of ministry of justice of all provinces to act as Article 219 and 231 shows that in judicial system of Iran, there is not specific children court.

Legislator of personal courts which study just children and teenager's accusations is not predicted and defined and this is one of the main defects of Iran judicial trial in children penal trial.

Editing the suggested essay of studying children and teenager's crimes in Iran is an important step in removing this legal vacuum.

In introduction of justified essay "studying children and teenager's crimes related to the necessity of creating specific judge, it said that: It would be done to create proper situation for children in society because of their lack of ability to distinguish completely in this group of society and the difference of the roots of their crime and creating friendship between the child and judicial authority (police or non police reaction) and finally studying their crimes considering the mentality and personality and according to the negative effects of their punishment like reinforcing their unsettlement and increasing their hostility toward society and social and moral abnormality and in executing paragraph 2 of the principle 158 from the Islamic Republic constitution and to define proper reaction considering the children's real personality correcting and educating them with below essay."

The first note been of the mentioned essay says: "All the children and teenagers whom their ago is between 6 and 18 would be studied in court.

The second discourse: the age of penal responsibility in jurisprudence and civil rights.

The age of penal responsibility in children trial and knowing and their distinguishing from adults is very important. So wear going to study this field too.

In Islamic jurisprudence resources reminds the child as small.

-"the small" means minor literally and in legal and jurisprudence expression, It means a looy or a girl who is not mature.

The first not bene of child right conversion lays: "from the perspective of this conversion the child means people who are below the age of 18 unless the less ago is defined in certain executive law.

In Aaghanestan civil law, 18 years old is the age of maturity and the age of puberty.

In Iran civil law before 1361, the small child means the child below 18 years old but by rumoring note been 1209 and correction of note bene 1201 ago of 18 is removed as a formal ago of maturity and it suffices to religious ago of maturity.

Although some factors like menstrual and dreaming and growing harsh flaw are the factors of maturity but the most jurists consider ago according to some narratives.

With this routine being comprehensive practically, the age of penal responsibility is the age of maturity.

Although there is no specific International factor for the age which could define the youth as border of wisdom and logic, child Rights conversion as the most necessary International document orders to the membered governments to define " an age at least before which children could not act against penal laws.

Third discourse: the age of penal responsibility in retribution rights.

The age topic in criminology and other parts of penal rights is the most important topic.

Although, legally the people below 18 years old to some extent are responsible and the type of their crimes and their retribution is different from adults so the state of their criminality is studies separately.

According to physical and mental situation of people, criminologists devide the life of human into 5 stages:

Child hood, adolescence, youth, adult hood, old hood.

Child hood is from beginning to 9 or 12 years which is completed with his/her mental situation and his/her personality.

In this period the child need not only physical care and nutrition but also emotional, imaginative, mental care.

Children also need emotional feelings and love and conscious and knowledge guidance.

In this period, the child of the crime less because he/she is depend on olders physically and mentally so the child is more depend on olders.

Psychologists say: In this period of age we should not prevent child's natural activities and block his/her desires and intentions.

The parents who resist the physical and mental desires of the child, they would lose their effects and penetration on him/her and it would block growing his hidden talents.

In this age poverty and instability of family bases and lack of support or lack of emotional feedings are the most important factors of creating crime in the child.

Educationally The most difficult period of life is adolescence, the age between 12 – 18 year.

The most educational problems are in this age.

It is the period of passing from child hood and step forward the long desire world, independency, sexual desires and life storming period.

The adolescence between 18 to 20, the human reach a stability in his/her personality.

The social factors, economical lacks, family situation and coeval groups play important role in changing the child in to a criminal.

Section 2: the age of penal responsibility in Iran retribution system.

The first paragraph: the age of penal responsibility in general punishment law 13.4

General punishment law 1304 attributes France retribution law

Says: "In discerning children couldn't be sentenced retributely.

Each child who is less than 12 years old is in discerning child"

So the child below 12 years is not pursued but If they do any crime even killing, The judicial authority should give them to a coach or parent or specific organization.

About children between 12-15 years, the part of that not bene says: "Even the immature discerning children do a crime they should be given to their parents l chastise and care for their good morality.

In note bene 35 of this law, the punishment of criminal children below 15 years old is just limited to 50 whips "If the immature children below 15 years old do a crime

The sentence would be between 10 to 50 whips.

But for children between 15-18 years old the sentence would more difficult, 5 years imprisonment in chaistisement place.

Second paragraph: penal responsibility of children in Islamic punishment law.

From the viewpoint of legislator 1370, If the children do a rime, they don't have penal

responsibility and their chastisement would be to their parents or educational correction center.

In note bene of article 49 of this law says: " the infant is a person who did 't reach the religious maturity"

But in mentioned law religious maturity is not defined so for defining it, civil law should be refered.

In not bene 1 article 1210 of the Iran civil law, the correction 1370/8/14 of Islamic Republic constitution says:

"the maturity age for boys is 15 years and for girls is 9 years.

9 Ghamari years equals 8 years and, months of shamsi and 15 Ghamari years equals 14 years and 7 months of shamsi.

The people over thes realms have penal responsibility and they would be treated like adult people.

It is mentionable that this reducing the age of penal responsibility based on legal responsibility was for being correspondent to law principles or jurisprudence.

One of the problems which the professors of law taken from note bene 2 Article 49 of law of Islamic punishment is that legislator didn't define the child benefit and it's amount.

In Article 5. Of the same law speaks about child's penal irresponsibility:

"If the child do killing or besting, the woman of ripe years is surety but if the crime is about financial loss, the child himself /herself is surety and the parents should pay it.

Here it would be clear that the executor is about the age of maturity and penal responsibility allowed by note bene 1 Article 1210 civil rights of Iran.

And in other words in retribution issues, the principle is the penal irresponsibility of immature child.

Paragraph 3: children and teenager's penal responsibility in essay of studying Iran's children and teenagers crimes.

General congress of united nations organization in 1989 based on 1368, approved child Rights convention to to maintain and support the child Rights. This approved child Rights convension is the most important necessary international document about children Rights.

Islamic.Republic government of Iran in 1372 approved this convension in Islamic Republic constitution.

In the direction of this convension and feeling the necessity of legal Articles about children and teenager's rights in1374, assembly of Iran high judicial court and 2 people from science council are bound to arrange a draft as formation or studying the children and teenager's crimes based on

government's commitments to children Rights convention.

It takes 3 years to edit this draft in 6 chapters and 55 Articles in 1381.

In 1382, it's producers work on it for more accuracy then gave it to government council to go to Islamic constitution as a note bene.

About the age of penal responsibility not bene of Article 2, this not bene says: "the child is who is not mature yet"

But Article 1 says: All the crimes of children below 18 years old would be studied in children and teenager's court.

The Article 32 of this not bene defines trial and retribution sentences about children between 15 to 18 years old and this is astep to taking the rights of children.

About the problem of penal responsibility age and it's solution, or Mohammad Ardabil, the prominent professor of penal rights and one of editors of studying the children and teenager's rights note bene, says: "In this draft we confront the issue of responsibility age ... We predict 3 levels or 3 periods for child or teenager between 9 to 18 years old; means 9-12 and 12-15 and 15-18 years.

For the children below, years, we count as absolute irresponsibility.

Although this viewpoint is taken from jurisprudence views.

So, we don't define any responsibility for the child below, years furthermore we don't define any solution or even support in this draft for a child below, years who does a crime. It means that this child not to entered the judge circle so he/she should be taken to his/her parents and if the child doesn't have parents the imposition would be defined by district attorney.

So there are criminal children and teenager when they should be educated.

The education of child 9-12 years old would be to his/her family and in their absence it bounds to substitute family and if they don't exist it bounds to educational and correction institution which take care of children between 9-12 years.

Children between 12-15 years, use of this benefits and they would be in correction educational centers.

Fourth paragraph: penal age responsibility in Studying law of Afghanistan Children's violations

After new changes in years after Taleban and editing Democratic constitution in Afghanistan, there were the positive changes in political, judicial structures and Afghanistan change in political, judicial structures and Afghanistan judge ministers.

Judiciary branch and judge ministers of this country did the new laws editing and the corresponding of past laws with main goals of constitution.

Editing law of studing the children violations in 1383 in 8 chapters and 60 Articlees is the most important task in this field.

About overall principles of this law, it was said in it's first Article: this law defines children in danger or children who need caring and rights provision in the process of studying and sentencing based on the values mentioned in 54 Article of constitution and regarding the International convention of supporting human rights and specially children benefits to the way of studying violated children's crimes.

Maturity age in civil law of Afghanistan, Article 39, is 18 years old According to trial law of Afghanistan is revised in 1355 in Articles 70, 71, 72, children below be penal irresponsible.

Article 70: "little is a child who is between 7-13 years old"

Article 71: "conditioned is a child who cornpletes his/her 13 years of his/her life but have not completed his/her 18 years of life."

Article 72: " A child who have completed 7 years of life would not been punished.

Part 3: the features children and teenager's judgship.

In the laws of constituting the courts of children and teenager's taking any decision and any sentence about guilty children and teenager's and changing the ways to support and guide then and avoiding the repeating of crime or doing it, belongs to the judge of children and teenagers.

So, the special judge of children and teenagers or other related organs should completely be aware of children rights, criminology, sociology, educational science, psychology and political, economical, and social issue and they should survey their social incorrespondence with kindness and affection and their blood cold temper and, supply the ways of correcting their nurturing or improving it.

Article 6 pekan Transcendents (the least standard transcendents of International organization for children and teenager's rights (1985) emphasizes: The special judge of children and teenagers should be efficient for making decisions and exporting the judgement in all processes of judgement of children and teenagers specially the preliminary pursuance or researches.

First paragraph: the position of allocated judgement of children in investigation essay about children and teenager's crimes.

I paragraph 2 of right of formation of court for guilty children and teenagers, ir was said that the judges of children courts should be chosen from

those judges who are efficient for this issue considering age and their precedents of criminal and other aspects.

But enactment of correction law of some of articles of penal trial in 1361 and then law of formation of general and Revolution court.

In 1373 and its correction in 1381 and custom rule of penal trial 1378 steps backward this case and gave the studying of children and teenager's accusations to general statutory courts and cancel the special features of judge of children.

In 219 article of custom rule of trial of general and Revolution courts it is said: In each area of judgement, one or more area of general courts specifies for studying all of the guilts of children.

But 2 notable of mentioned article was against it and said: In areas which they court is not constituted; the general courts studying the crimes of children based on the regulations of this chapter.

By knowing the these lacks in essay 6, children and teenager's studying essay producers told that: The judge of the court and children and teenager's attorneys would be chosen by the head of judiciary Branch among judges who are efficient for this case with considering aspects (Being married and Having children preferably, passing educating period) and serving as judge for 5 years.

Article 7 of mentioned essay suggests that the children and teenagers court councillors are chosen among specialists of psychology, educational science, caseworkers, students and professors of universities and teachers who are familiar with educational and psychological issues of children and teenagers.

Second paragraph: special issues of children and teenagers.

Second paragraph: special judging of children in law of studying the Afghanistan's children violations:

In judiciary branch system of Afghanistan like the other reountries in neighborhood is trying a lot to improve studying the crimes of children.

Constitution and efficiency law of judiciary branch judge who defines the mechanisms and structures of courts speaks in Article 40 from specifying and independence judge in primitive step.

In article 32 of mentioned law listed the future courts in the appeal step like the special independent court for criminal children.

Discussions

At last, it could be concluded that in trial system of countries particular regulation is done for studying children and teenager's accusations in contrast to

studying the adult accusations according to scientific standards and principles.

It looks that mentioned features, preparing the benefits of children and teenagers based on reliable speech of honoring the personality and education and caring of the children is not against Islam at all so it is done in trial system.

In Iran and Afghanistan penal trial system, some features of children penal trial, like the necessity of being concealed, the maintenance of personal territory in studying the accusations, the necessity of awaring the parents about time of trial and the necessity of their presence in trial sittings if the child or teenager wants and the possibility of revision of decisions about the children or teenager's accusation in higher levels of Revision and trial which sentences, is predicted.

The last proposed essay of formation of children and teenager's court of judiciary Branch which goes to Islamic consultative Assembly for being approved widens the past lacks in order to improve children trial.

This essay could be main action if it would be matched with penal trial principles and child Right International Documents and Islamic right standards.

However the law of studying the violations of children in Afghanistan which edited in the process of judicial revision and reformations is a main step in taking the rights of the children of this country, specially this have been revised and studied by Afghanistan independent justice and judiciary Branch committee, UNISEF organization, Italian judicial project office, Head of special trial of children, knowledge ministry, instead of correction center and educating children and teenagers, high trial and the main district attorney.

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References

1. Holy Qoran
2. Penal Justice, Dr. Mohammad Ashouri, first edition, 1376.
3. Criminal children's Trial In correspondent Rights, Dr Taj Zaman Danesh, Mizan publications, Third Edition 1386.
4. The criminality of children And teenagers, Dr Houshang shambiati, 1374.
5. Sheie Issues, cover 15, Horr Ameli.
6. Judgement Book (sheie Issues), Horr Ameli.

7. Votes collection of Judgement Process Unity, Dr Houshang Naserzade.
8. Administration of edinig laws and regulations, Judiciary Branch.
9. Expanded In Rights Terminology, Dr Mohammad Jssfar Langroudi.
10. chil's Rights, Dr shirin Ebadi.
11. Formation of children And teenager's court Notebene (speech).
12. Child Abuse (speech), Dr Ali Hossein Najafi Abrand Abadi 1374.
13. penal trial In Iran Rights (Article) Dr H Moazen Zadegan, season Nedaie sadeq, number 33.
14. Rights Dialectic Magazin Number 6, 7, 8 Different Authorities.

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