

## Review of the status of children's rights in the Islamic Republic of Iran's legal and judicial sources

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**Abstract:** Considering the fact that children are among the most vulnerable communities and since they can't overcome adversity due to their young age and intellectual and physical immaturity, placing priority on their basic and natural rights is something obvious and is the natural and legal authorities' responsibility. Since all human beings are subject to the rights and freedoms enshrined in the constitution without considering their race, color, gender, language, religion, and so on, children must have particular rights because they make the country's future so that their welfare, liberty, happiness, and beliefs must be formally recognized and necessary facilities and equipments must be properly and healthily provided for their physical, mental, ethical and social growth in a healthy free environment. Children need adequate family and social security and special support including certain care before and after birth. Even children who are intellectually and physically disabled need special care and attention together with proper training appropriate to their disability status.

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### 1. Introduction

Considering the fact that children are among the most vulnerable communities, there is no doubt that they can't overcome adversity due to their young age and intellectual and physical immaturity. Therefore, placing priority on their basic and natural rights is something obvious and is the natural and legal authorities' responsibility. Since all human beings are subject to the rights and freedoms enshrined in the constitution without considering their race, color, gender, language, religion, and so on, children must have particular rights because they make the country's future so that their welfare, liberty, happiness, and beliefs must be formally recognized and necessary facilities and equipments must be properly and healthily provided for their physical, mental, ethical and social growth in a healthy free environment. Children need adequate family and social security and special support including certain care before and after birth. Even children who are intellectually and physically disabled need special care and attention together with proper training appropriate to their disability status. The basic principle that children need love and affection has been proved by psychologists. If a child is not faced with love and affection since birth, his personality won't grow perfectly or moderately and is prepared to move toward devious way and social disorder in future. Thus, in first step, parents must provide an environment full of love and affection with ethical, spiritual and material security for their children and most importantly, a child shouldn't be separated from his or her mother except in very exceptional cases. In the second step the society and related authorities are responsible to

provide a relaxing environment for children and their families without any concern, and to take good care of poor children and children without any family. If governments provide material help for poor families whose children need welfare, they not only won't lose anything, but also will benefit from these children as country's wealth who will make up any loss in future and since the field of their moral, cultural and mental growth has been provided, they will make a healthy, peaceful society. That's why it is recommended that children must benefit from free but compulsory education. Legal system reflects the rights and duties of human beings in a society, and its supreme goal is to establish law and public order. So that everyone who doesn't respect other people's privacy and dignity will be punished and no abnormality or illegal behavior is tolerated in defending their rights. But depending on his physical and mental conditions, a child has some special rights in addition to the legal rights of every human being, which make it necessary for the laws to support them which is essential for their growth and development. With the formation of modern international law, child rights appeared in this system. Convention on "the Rights of the Child" was passed by the UN General Assembly in November 20, 1989 and different countries joined the convention on "the Rights of the Child" by signing this treaty.

Islamic Republic of Iran's accession to the treaty, citing the seventy-second principle of constitution, was realized in March, 1993 with the approval of Parliament and Guardian Council. Of course, in top of the single article of this law it is stated that the provisions of the Convention in any case and at any

time must not be in conflict with domestic laws and Islamic criteria.

Article I of the convention on the Rights of the Child, defines child as all human beings under the age of 18. Thus, according to this convention everyone under 18, is called a child and is supported by this treaty. In Iranian legal system, the child is looked at differently by the convention. The legal systems of different countries and consequently according to the convention of Child Rights, a child i.e. anyone under 18, is acquitted of any responsibility. But Iranian legislator, in Article 49 of the Islamic Penal Code adopted in 1991, states that: children are acquitted of criminal charges if they commit crimes. The first note of article 49 also defines child as: a person who hasn't reached religious maturity yet. Iranian legislator, in the first note of article 1210 of civil code which has been modified in 1991, defines the age of religious maturity as: Maturity age for boys is 15 and for girls are 9 of Arabic lunar year. Considering the above mentioned articles and with regard to the contents of Child Rights Convention and top part of single article of Iran's accession to international convention of child rights, which declares that the provisions of the convention must not be in conflict with domestic laws and Islamic criteria, in any case and at any time, and also based on the rules of Iran Legal system in superiority of domestic laws to international laws and treaties, it can be inferred that In Iran In case of committing crime. Children are just acquitted of criminal charges and that religious maturity is the age of criminal charge and responsibility in Iran. However, in international law system, everyone under the age of 18 is considered as a child and therefore is free from any responsibilities and charges (Abrahamian, Ervand.2008).

Posing lack of responsibility to a child takes the right of agreeing to definite or indefinite contracts away from him according to the world convention of child rights. It includes marriage as a kind of contract.

However, according to article 1210 of civil code, children under legal age can get married with their parent permission; unfortunately, some forced marriages at young ages, especially among girls who live in rural and nomadic areas are based on this law which causes social abnormal consequences in the future. World convention of child rights in several cases, while supporting children rights and expressing governments duties in ensuring the realization of these rights, has forbidden exploitation, sexual abuse, child trafficking, torture, execution, illegal arrest and detention of children in various forms. It also supports and protects them entirely against narcotics, social reconstruction, social insurance and services, abuse, plays and leisure time, military service, custody and education, freedom of opinion and expression,

individual and group freedom, preservation of privacy, right to live, the right to use a lawyer, personal identity, citizenship and the rights related to early life and name selection. A look at Islam attitude and holy prophet, Muhammad's (Peace be upon him) and infallible Imams' lifestyles and religious orders and instructions indicates their support of child legal rights. Arabic pre-Islamic ignorance considered a female's birth a shame and embarrasses for her father and had legitimized the innocent girls burying alive.

But prophet's lifestyle which was inspired by Islamic instructions, not only saved innocent girl from being buried alive, but also granted her the right of life and even the right to receive inheritance from parents as half much as her brother. It seems that the rights which Islam has considered for a child deserves more learning and decent audiences. But the limited circle of thoughts and ideas has been incapable of introducing the significance and honor of religious instructions to the world within the context of time and space and simultaneous with the progress of human knowledge. Examples of such limited cycle could be observed in the formation of the laws ruling Iranian law system in relation to infants and children which hasn't reached adequate development and efficiency over time. Of course, the significance of new Islamic penal code, which is approved of by qualified authorities and will soon replace the previous one with a legal notice, must not be ignored. The new law, in a precious step about the age of criminal charge and responsibility, has distinguished mental and physical maturity from each other and has classified children in three age groups of up to 12, 12-15, and 15-18. Iranian legislator has also dropped the separation of girls and boys for punishment in new penal code, and has defined child as anybody under the age of 18. In fact, legislator has realized the content of the first article of child rights convention by proper modification of law, which defines child as all human beings under 18 and therefore Iranian law system in support of children is in accordance with article 37 of the world convention of child rights about the prohibition of child execution. An affair which can lead to the honor of human rights in Iranian society and will promote the image of Iranian law system appropriately in international level. Child abuse refers to any deeds or abandoned deeds which cause physical or mental hurt and which has some lasting impacts on a child. Unfortunately, this disgusting phenomenon has been one of the issues of Iranian society recently which makes it necessary to investigate it (Frost, Nick. 2004). In World Health Organization in definition of child abuse, it has remarkable and noticeable sides. According to this organization definition, child abuse is any physical or mental harm or threat to a child's physical or mental health and prosperity and welfare

by parents or anyone who is responsible for looking after him. Based on this definition, child abuse can be studied in four physical, psychological, neglect and abuse dimensions. There are various reasons for this immoral phenomenon to appear the most important among which are:

Parents' unawareness of children rights, economic and financial problems and inability to meet children's needs in family environment, addiction and its consequences, behavioral disorders and mental diseases, family problems such as divorce, problems between couples, children physical problems such as enuresis and like which mentally cause stress for parents, educational problems such as not meeting children educational needs, or children inability in achieving their parents expected successes and goals. Therefore, it must be admitted that child abuse could have negative consequences for both the child in future and the society. If serious pathological studies were done in the field of criminology on some criminals such as the murderer of children in Pakdasht in early 2001, it would be quite clear that the murderer's main incentive for murdering 26 innocent children after being raped was due to the fact that he had been raped when he was 9. It was the most tragic and brutal murder of children in the history of Iran. Unfortunately, sometimes it is observed that an addicted father, or irresponsible mother, or a step parent without ethical or moral principles, commits crime against children which irritates public thoughts and consciousness and poses some questions on how to deal with such offenders legally. We must accept the fact that our legislators, unfortunately, have not identified any limit on how to defend children's rights and stuff like this, and if there are any laws, their implementation and effectiveness are not guaranteed and cannot be responsive to current conditions. Although the law of protecting children and teenagers, adopted by the Islamic parliament in 2001, has somehow defended the rights of children and has explicitly stated in article 1 that people under 18, are supported by laws, it is not comprehensive enough to respond to public conscience and to defend children rights. The above mentioned law, which was passed in 9 articles, has forbidden any children abuse in its second article, but has not mentioned any instances of abuse or at least has not adapted it to WHO's definition of child abuse. It seems that the stipulation of this law articles in determining punishment for perpetrators of child abuse is a good deed, but it can't be a strong basis for preserving children rights in relation to child abuse.

Article five of this law, classifies child abuse as public crime which does not require a private plaintiff and the prosecutor can cite it to be raised in court, leading to the issue of verdict against criminals.

Comparative study of child abuse in terms of some developed countries laws shows that those who violate children's rights encounter serious punishments. In Germany if someone who abuses children is over 25, they will be made sterile by the verdict of the court and medical commission. In Sweden, France and Spain similar legal citations are seen for child abusing that can be effective deterrent.

Public law is a practical knowledge which determines the rights and duties of governments and people. Since it is the government duty to defend children's rights, it is proper that this branch of law, with considering all aspects and noticing experts' opinions in children affairs, propose a legislation that will pass and implement a comprehensive law about children rights so that human-oriented notion and protecting human rights will become practical in comprehensive plan of our country's development and disgusting and immoral events such as child abuse and violation of innocent children's rights will disappear in Iranian civilized and sophisticated society and the way will be paved for next generations to grow and promote better and to form a better and prettier country.

According to Iran laws, a child is a person who has not entirely grown physically and mentally to participate in social and family affairs. Therefore, it is believed that in a certain age children will grow naturally and intellectually and will be prepared physically and mentally to take part in social and family life. According to Iranian civil code, childhood ends for girls when they are 9 and for boys when they are 15 in lunar year. But this age is not the same in all legal and political affairs and the legislator has, in fact, determined a certain age, with regard to the child's understanding and recognition abilities and the importance of the matter and his action, which is actually the end of childhood for that certain issue. As it was mentioned before, physical and intellectual growth (full maturity) in all children is not the same and depends on different factors such as nutrition, environment, heredity and the way of maintenance and custody. At first and by a quick view of laws it seems that Iranian legislator considers the beginning of childhood from a child's birth, but according to the rules and regulations about protecting and taking care of fetus, which exist in Islamic laws and the laws of Iran which are derived from Islamic jurisprudence, we might believe that the beginning of childhood according to Iranian laws is another time rather than a child's birth date.

In article (957) of Civil Code, Iranian legislator has stated that a fetus which has been defined as "Haml" owns civil rights provided that he is born alive. Therefore, although Iranian legislator generally believes that a person's capability and qualification

for having certain rights is from the moment of his birth and will end with his death, □ it has applied this potentiality to the period before birth and has emphasized that a fetus is entitled to civil rights since the time of formation. The fact that a fetus inherits from his dead parents in case of being formed at the time of his parent's death and being born alive, confirms the fact that according to Iranian laws, the child's life and his childhood begins from the time when the fetus is formed (Harvey, Colin J. 2005). According to Iranian Laws, childhood begins from the time when fetus is formed. So it's necessary to determine the end of this period which is the end of children's immaturity and dependence and the deterioration of domination and authority of their parents and other guardians. After the establishment of the Islamic Republic of Iran and the necessity of harmonizing customary laws with religious norms, thanks to the legislature's decisions, some of the laws were demolished and new laws were passed instead, and or some of the former laws were reformed including some articles of Civil Code. Reforming article (1210) of Civil Code and adding Note "1" to it in 1982 in one example. In this Note it is stated that:

"The age to reach puberty is 15 for a boy and 9 for a girl in lunar year." Thus, in terms of Civil Code a girl who is 9 or a boy who is 15 in lunar year, is mature and can do all legal deeds and transactions and their criminal responsibility begins from this time. For instance, if a 10-year-old girl is involved with theft, she will be tried and punished based on the same law that a 40-year-old guy would be. Therefore, it is permissible to sentence a 9-year-old girl to death under the Iranian laws. Shiite famous jurists determine the age of criminal charges as 15 for boys and 9 for girls. The most important explanation for criminal responsibility is narrated by Hamze Ebne Hamra which was mentioned before. □ This statement (Hadith), is quoted in the book of Kafi with a little difference in context in comparison to former ones. Of course it seems that since these two statements (hadith) are quoted by the same Imam and narrated by Ebne Mahout, they have the same origin. The study of the origin of Hamze Ebne Hamran's narration indicates that those of Ahmad Ebne Mohammed Ben Essa Alghasri and Abdol Aziz Alabdi are too weak. Hamze Ebne Hamran which is in the document of Hamran's Hadith, hasn't been approved by any of exalted scholars, either. However, only Shahid Sani has approved of this narration.

There are different disagreeing opinions against the opinion of Shiite's famous scholars which, although a little different from each other, all disagree with the famous scholars' opinions. In many articles of the convention, it has been emphasized to support children's rights. In second article of this convention it

is stressed that all member countries, must respect and guarantee the rights which are considered by this convention for all children who live in their judicial realm without any discrimination of race, color, religion, language, political ideas and beliefs, nationality, ethnic and social status, property, disability, birth and or other personal characteristics of their parents or their legal guardians. They will also take all measures to ensure protection of children against all forms of discrimination and punishment, based on the status, activities, opinion expression and or beliefs of children's parents, legal guardians or family members. The significance of children's interests in this convention is such that in all measures related to children which are taken by public or private social welfare institutions, courts, administrative authorities, or legal organizations, it is one of the most important considerations and the member countries make a commitment to guarantee the required protection and care of children's welfare with regard to the rights and duties of their parents, guardians and whoever legally responsible for them. In this regard, appropriate legal and administrative measures will be taken; moreover, the engaged countries will also promise that institutions, services, and facilities provided for children care and protection will be in accord with the standards determined by qualified authorities especially in safety, health, the number of staff and the way of supervision and inspection (Bencomo, Clarisa. 2007). Above mentioned cases are among the duties of the government towards children which should be noticed in Iran, as well. A person under 18 who hangs out in the streets temporarily or repeatedly including a child who is still in touch with his family and has a shelter or one who knows the streets this home, and is in little or no touch with his family.

Thus in domestic laws and regulations the age of 18 and in some cases like the law of protecting women and children without any protector or guardian, which was passed in 1995, an older age is considered as the end of childhood which is due to intellectual growth. These points are actually in perfect harmony with the first part of article 1 of convention. Beside these cases, there is also the criterion of religious maturity in the rules and regulations of the Islamic Republic of Iran. According to Note 1, Article 1210 of Civil Code, age of maturity is 15 for boys and 9 for girls in lunar year. Articles 49 and 59 of Islam penal code states that reaching to religious maturity is adequate for punishment to be exposed. Note 1 of Article 49 is the law of "religious maturity". An important point in this matter is that whether it means "yes" or "No". Disagreements in judicial procedure, ultimately led to the issue of Supreme Court verdicts No. 13 dated 1995 and No.8 dated 2000 and No. 7.1513 dated 2001 by

the law department of State Legislature which explicitly states that “age” doesn’t matter in maturity and that it is possible to resort to other resorts to approve of a child growth. Verdict of procedure unity, No. 518 dated 1996, refers to this matter. In relation to marriage age, as well, religious maturity is applied to verify the capacity and capability of getting married. According to Article 1041 of Civil Code, the marriage of a girl before the age of 13 and that of the boy before the age of 15 in solar year depends on the permission of their guardian on condition of considering interests and with recognition of righteous court. At present, the age of marriage for boys and girls has actually increased in Iran particularly in large cities and cultural growth and development has gradually prevented marriage under the age of 18 in small towns and rural areas. The above mentioned disagreements led to the modification of related laws in the new bill of Islamic penal code. In this bill, intellectual growth and gradual penal responsibility have been applied to verify children’s penal responsibility and to determine social responses.

Article 90 of Islamic penal code, states that in crimes which require punishment or retaliation, whenever people under 18, do not comprehend the nature of the committed crime or there is doubt in the development or perfection of their wisdom, based on the crime, they will be sentenced to the punishments predicted in this chapter .

## 2. Conclusion:

Legal system reflects the rights and duties of human beings in a society, and its supreme goal is to establish law and public order. So that everyone who doesn’t respect other people’s privacy and dignity will be punished and no abnormality or illegal behavior is tolerated in defending their rights. But depending on his physical and mental conditions, a child has some special rights in addition to the legal rights of every human being, which make it necessary for the laws to support them which is essential for their growth and development.

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