Annals of R.S.C.B., ISSN: 1583-6258, Vol. 25, Issue 4, 2021, Pages. 20685-20696
Received 05 March 2021; Accepted 01 April 2021

The Historical Evolution of Drug Laws and Criminal Responsibility of Children in Iran

Samad Rahbar Banaian[1], Fereydoun Samandrof[2], Siamak Shaker Sultan Ahmadi[3], Morteza Shariati[4], Shahre Banou Aliluo[5]

[1]Ph.D., Department of Criminal Law and Criminology, Baku State University, Azerbaijan Republic

[2] Advisor and Professor, Baku State University, Azerbaijan Republic

[3] Professor, Department of Law, General Law, Meraj Science Institute of Higher Education, Salmas, Iran

[4] MA, Department of Law, General Law, Azarabadgan University of Urmia Iran

[5] MA, Department of law, Private of law, Urmia Branch, Islamic azad university, urmia Iran

ABSTRACT

The issue of juvenile delinquency is very important because, on the one hand, society should be protected from juvenile delinquency crimes, and on the other hand, effective measures should be taken to correct and re-educate juvenile delinquents so that they are no longer drawn into criminal ways. In a sense, criminal law today is based on the premise of responsibility. In this regard, children are considered unpunished due to lack of intelligence and discriminatory power and are not responsible, while in the past children were punished like adults, but although children are not criminally responsible and exempt, taking some security measures even sometimes it is necessary to carry out some lenient punishments on them. This research is intended to study the written laws in the field of the historical evolution of drug laws and juvenile criminal responsibility in Iran descriptively and analytically. Studies have shown that if children and juveniles commit one of the crimes subject to the jurisdiction of the First Criminal Court or the Revolution, their crimes will be tried in a special criminal court for juvenile delinquents and the accused will receive all the privileges which are applied in the juvenile and adolescents' court.

Keywords
Juvenile Delinquency, Drug Laws, Criminal liability

Introduction

Devoting serious effort to prevent drug-related crimes has become a serious topic of discussion and analysis in many legal systems today. Due to their special nature, these crimes always indicate serious dangers for the social system, and this has led to the more serious intervention of criminal law systems in this field. Due to its special geographical conditions, Iran has always been a place where a significant percentage of drug and psychotropic crimes are committed. This issue has caused the Iranian legislature to try to employ dynamic rules and regulations in this field for a long time so that it can control and desirably respond to them.

Legislation in the field of counternarcotic in Iran has gone through various stages. The first specific legal text in this regard is the Opium Restriction Act approved on the 12th of Rabīʿ al-Awwal in 1329 AH, in which there was no discussion about the criminality of drug use and trafficking. In 1925, when the Law on General Punishment was passed, the legislator in Article 275 considered the public use of opium or morphine or hashish a crime and subjected to punitive imprisonment from 8 days to 3 months or compensation from 10 to 50 tomans. After that, in 1928, the state opium monopoly law was passed and Article 1 of this law considered all transactions, storage, and warehousing, transportation, and export of opium, including domestic and foreign consumption, to be exclusive to the government. Article 15 obliged the government to provide the means of opium use within the country for ten years from the date of enactment of the law.

After the revolution, Article 156 of the Constitution considered the exposure of a crime, investigation, prosecution, punishment of criminals, and appropriate action to prevent the occurrence of crime and correction of criminals as the duties of the judiciary. Article 163 of the Constitution also refers to the attributes and conditions of a judge, and Article 167 of the Constitution, Article 9 of the Law on the Establishment of Public and Revolutionary Courts, and Article 214 of the Code of Criminal Procedure, the judge should not issue a verdict or decision without a logical and legal

reason but should consider the decision and the order and verdict or verdict that he issues should be documented, justified and reasoned.

What seems to have been the most overlooked and neglected issue has been the issue of criminal liability of children and adolescents for drug-related crimes. This is important in several ways. On the one hand, according to Iran's judicial policy, which is based more on punishment than prevention, by proving the criminal responsibility of children and adolescents in the field of drug crimes, heavy and future punishments will await these people, and on the other hand, in many cases makes the delinquent child and adolescent more familiar with other forms of crime.

In Iranian law, the criminal responsibility of children and adolescents has gone through various stages. The General Penal Code adopted in 1925 was the first criminal law in Iran. In essence, the reactions that the legislator has predicted about this age group have a restorative-educational aspect (Jamshidi, 2003: 73). Technically, this article implies that a child under the age of 9 cannot be the subject of any decision in the criminal justice system, even correctional and custodial decisions. In other words, these children cannot be prosecuted. In this respect, the position of the Islamic Penal Code of 2013 is different from the former Islamic Penal Code. Because according to Article 49 of that law, children were discharge of criminal liability, but their upbringing was the responsibility of the guardian of the children "at the discretion of the court" and "if necessary, the juvenile correctional center". Accordingly, the purpose of this study is to investigate the historical evolution of drug laws and the criminal responsibility of children in Iran.

Theoretical Foundations of Research

The Evolution of Criminal Responsibility of Children and Adolescents

In Iranian law, the criminal responsibility of children and adolescents has gone through various stages. The General Penal Code adopted in 1925 was the first criminal law in Iran. In this law, children were divided into several categories. Children under the age of 12 were legally considered immature and undisciplined and could not be punished in any way and would be handed over to their parents if they committed a crime.

The second law in the field of juvenile delinquency is the law establishing the juvenile delinquent court was approved in 1959. The law changed the classification of children. In this way, it has exempted children under 6 years of age from criminal liability, and for children between 6 and 12 years of age, it has provided for two cases of entrusting them to their parents or keeping them in a correctional center, depending on the type of crime. And from the age of 12 onwards, children are considered to have full criminal responsibility (Saki, 2013: 99-98).

The General Penal Code was amended in 1973, this law has adopted the same classification as the law on the establishment of juvenile delinquent courts, approved in 1959 concerning children.

The Islamic Penal Code was adopted in 1991, according to this law, children are exempt from responsibility before reaching the age of legal maturity. That is, girls before 9 full lunar years and boys before 15 full lunar years are not criminally liable, and after reaching 9 full lunar years in girls and 15 full lunar years in boys, they are fully criminally liable according to law.

The Islamic Penal Code was adopted in 2013, in the Islamic Penal Code of 2013, the criminal responsibility of children, without any difference in terms of gender, has been subordinated to the gradual system and for different age groups of children, different reactions have been considered. In the following, each of these groups is examined separately.

The Islamic Penal Code of 2013 does not provide for any reaction, even correction or education, for children under the age of 9, which means that these children cannot be prosecuted. Naturally, the legal license for corporeal punishment has also been revoked.

In the case of the age group of 12 to 15 years, the legislator has shown more strictness and has made it possible to apply some disciplinary-punitive measures in addition to the corrective reactions mentioned in the previous paragraph. According to Note 1 of Article 88, a child or adolescent 12 to 15 years of age who commits a criminal offense may, in addition to the measures mentioned in the previous paragraph, be subject to the reaction provided for in paragraphs (t) and (c) of this article. In particular, the reaction mentioned in paragraph "c", which is to be kept in a correctional facility for three months to a year, has a strong punitive aspect.

In Article 88, the legislature has used the term "children and adolescents" between the ages of 9 and 15. However, before the final approval of this law and in the bill proposed to the Islamic Consultative Assembly, only the word "children" was used in this article. Thus, in the proposed bill, Article 88 was practically subjected to boys because a girl who is between the ages of 9 and 15 years has passed the age of puberty mentioned in Article 147 and is not considered a child. But Article 88 passed by parliament, using the broader term "children and adolescents," includes both girls and boys.

After the age of 15, until reaching the age of 18, girls and boys who commit the crime of ta'zir are subject to Article 89 of the Islamic Penal Code of 2013. This article stipulates that criminals in this age group, depending on the type of crime, are sentenced to one of the punishments mentioned in that article, the most severe of which is five years of detention in a correctional center and the mildest of which is fine. In the former Islamic Penal Code, there were no special provisions for this age group (15 to 18 years old) and these people had full criminal responsibility. However, the Islamic Penal Code of 2013 provides special legal sanction for this age group and makes them subject to a different military system than adults (people over the age of eighteen). Although the legislature has not explicitly raised the age of criminal responsibility, but by anticipating a gradual system of criminal responsibility, it has expanded the scope of its correctional and educational support to include people under the age of eighteen, who cannot be called children according to jurisprudential sources (Najafi, 2015: 29-28).

Jurisprudential rules of drugs

The Holy Quran does not have a direct verse about the prohibition of drugs, except for the verses that forbid drinking alcohol. However, some scholars refer to a series of specific verses that can be used as a basis for the sanctity of materials. For example, we can refer to verse 195 of Surah Al-Baqarah:: “And spend in the path of God, and do not throw your hands into ruin, and do good, for God loves the doers of good.” According to scholars, ruin includes all its examples. Or in verse 29 of Surah Nisa, we read: This means that you should not do anything to prepare the ground for your death (Zakariaei, 2003: 30, quoting Moqaddas Ardabili, 428).

Some narrations can be used as an example of the sanctity of drugs. For example, a hadith from the Prophet has been mentioned which means "it will come to my Muslim ummah when they use something called bhang and I hate them and they hate me." They have also said: "Whoever considers the sin of Bhang to be light is one of the disbelievers." (Nouri al-Tabarsi, 1408: J 17: 86-85). Or it is narrated in another place that the Prophet saw the Bhang plant in the garden and said: "This shrub is the source of sedition, corruption, and turmoil for my Muslim ummah. God's curse on those who eat and use it "(Nouri, 1999: 136).

In the impurity section of Sheikh Karki's treatise, if hashish causes intoxication, its ruling is as forbidden as drinking wine, but in terms of impurity, its impurity has not been proven (Al-Karki, 1409, J 1: 161). Sheikh Tusi believes that "a person whose intellect disappears by drinking intoxicants and bangs and other things that destroy the intellect and his prayers are made up, he must restore what has been made up" (Tusi, vol. 1, p. 128). But if drinking is limited to drunkenness, intoxicants, shrines, and insane drugs, and is for the sole purpose of healing, it is excused and does not require restoration (ibid. Vols. 5, 52). Allama Hali has written in the chapter on forbidden food: "Its deadly and small and many poisons are forbidden, but eating its small amount (if it is not deadly) is not a problem. Like eating opium and Conium when combined with other things, but no more than one ounce is permissible, and in general, any amount that is likely to be harmful is not permissible ”(Hali, vol. 2, p. 157). According to Baseri, "Any solid thing that is harmful to the body or the mind is forbidden, such as stones, dirt, and poison, even if it is small, except for someone who is not harmed, and if intoxicants, is also forbidden." Examples of solids harmful to reason, opium in large quantities, nutmeg, amber, saffron, hashish and bhang in large quantities (Baseri, 2010: 57).

Imam Khomeini has several religious statements regarding the production, purchase, sale, and abuse of drugs: Do not let this be done. Protect the borders and do not allow smuggled goods to enter the country, especially smuggled weapons and drugs that are harmful to our people and nation (Sahifa Noor, vol. 7, p. 43). Hazrat Ayatollah Seyyed Mohammad Reza Golpayegani (d. 1993) said: The use of heroin, hashish, and injecting drugs is illegal, and opium addiction is illegal (Group of Authors, 2000: 81).

Adopted drug laws

Annals of R.S.C.B., ISSN: 1583-6258, Vol. 25, Issue 4, 2021, Pages. 20685-20696
Received 05 March 2021; Accepted 01 April 2021

Four months after the Islamic Revolution, on June 18, 1979, the statutes of the Revolutionary Courts and Prosecutor's Offices were approved by the Revolutionary Council. According to Article 2, paragraph 5 of the same law, the newly established courts and prosecutor's offices are tasked with investigating and investigating all criminal acts related to the production, import, and distribution of narcotics. According to this law, the court must preside over the sharia judge and following the special procedure, and the sentence must be executed as a final and final sentence without appeal in the appellate court, and punitive measures following Islamic law, including execution, exile, Confiscation of illegal goods and only 10 days before execution it was necessary to inform the Attorney General (Article 32).

After the victory of the Islamic Revolution and the drafting of the law restoring the powers of the judiciary and the prosecutor's office, approved in 18.06.1979, the criminal cases related to drugs were transferred from military courts to courts and tribunals. However, the courts of the Islamic Revolution and the prosecutor's office began to hear these cases, and this process continues to this day.

The draft law "Increasing the punishment of drug offenders and providing, treating and employing addicts" was approved by the Islamic Revolutionary Council on June 10, 1980. The law further clarified the control of drugs, prosecution, and detection of traffickers. Previously, some acts that were allowed and even legal were considered criminal, and poppy cultivation was permanently banned. Pre-revolutionary drug-addicted prisoners turned to rehabilitation centers following the provisions of Article 19 of the same law, thus regaining their health and returning to their families and social environments. Of course, it is worth mentioning that coward and complete identity are always found everywhere (Prosecutor, 2003: 209-208 and Piran, 2009: 56).

At the beginning of the revolution, members of the Revolutionary Council faced many problems in supplying drugs to about 170,000 addicts who had quotas, and for this reason, in September 1979, in a resolution, they legalized the sale of opium to addicts and the purchase of 100 tons of pure opium. . But after about two years and in 1980, this gentle procedure against addicts was gradually changed and the law on increasing the punishment of perpetrators of drug crimes was implemented with the approval of the Revolutionary Council. According to Article 2 of the aforementioned law, poppy cultivation was punishable by three to fifteen years in prison for the first time and, if repeated, execution. Also, for the manufacturers and sellers, keeping and hiding more than one kilogram of opium and more than 5 grams of morphine and heroin and cocaine was punishable by execution.

Article 23 also provided for appropriate criminal alternatives to reduce the number of prisoners. According to this article: "Marriage, travel abroad, government and non-government employment, employment of workers in factories, obtaining a work permit, business card, motor vehicle license was subject to a certificate of non-drug addiction (Aurang, 2010: 32-31 and Kayhan newspaper dated September 6, 1995).

Punishment of drug crimes

Society's response to the criminal phenomenon of narcotics is either in the form of punishment as reflected in narcotics regulations, including the Anti-Narcotics Act, or the form of security measures as general rules applicable to all offenses and also applicable to all drug crimes. For each crime, the legislature has determined one or more punishments, the execution of which is possible only by a final court order. The Anti-Narcotics Act provides for various types of corporeal punishment and deprivation of liberty and restriction or deprivation of property (fines and confiscation of property).

According to Article 2 of the Anti-Narcotics Reform Law, the cultivation of hemp for the production of narcotics or non-pharmaceutical industrial psychedelics, as well as the cultivation of poppy or coca:

- For the first time, a fine of ten to one hundred million Rials.

- The second time, a fine of fifty to five hundred million Rials and thirty to seventy lashes.

- The third time, a fine of one hundred million to one billion Rials and one to seventy lashes, and two to five years in prison.

- Fourth time, execution.

Of course, according to the note of this article, the punishment for engagement in this matter has also been determined. According to the Note to Article 2: "Whenever it is proved that the cultivation of poppy or coca or hemp has been carried out by the order of the owner or the tenant of the property or their legal representative, the person who ordered it, provided that he is a steward, He will be sentenced to the punishments stipulated in this article, and the steward who was in charge of cultivation will be fined 10 to 30 million Rials and will be sentenced to fifteen to forty lashes.

According to Article 3 of the Anti-Narcotics Reform Law:

1- Storing, hiding, or carrying poppy seeds or sticks or coca seeds or leaves or hemp seeds:

2- One million to 30 million Rials fine and one to seventy lashes (in the case of hemp seeds, the intention to produce drugs or non-pharmaceutical industrial psychedelics from them must be achieved).

The Anti-Narcotics Reform Law provides for various types of corporeal punishment and deprivation of liberty and restriction or deprivation of property (fines and confiscation of property). In general, the types of punishments provided for in the decree are as follows:

1- Execution (in the case of the crime subject to paragraph 4 of Article 4 (purchase and sale and distribution of more than 5 kg of opium, etc.) crime subject to Article 6 (if the total amount of drugs subject to paragraphs 1, 2 and 3 and Article 5 due to repetition reaches more than 5 kg) The crime subject to paragraph 6 of Article 8 (purchase and sale and distribution, etc. more than 30 grams of heroin, etc.) The crime subject to Article 9 (if the total amount of drugs subject to paragraphs 1 to 5 Article 8 to reach 30 grams due to repetition)

2-Imprisonment: crimes subject to Articles 2, 4, 5, 6, 8, 9, 12, 14, 21, 22, 23, 27

3-lash: crimes subject to Articles 2, 3, 4, 5, 6, 8, 9, 12, 16, 19, 20, 26, 27

4- Fines: Articles 2, 3, 4, 5, 6, 8, 9, 14, 16, 19, 26

5- Confiscation of property resulting from a crime: paragraph 4 of Article 4 and note of Article 4 paragraph 6 of Article 8 and note 1 of Article 8-12-4.

Penalties related to industrial and non-industrial psychotropic substances

According to Article 8 of the Anti-Narcotics Act: "Anyone with heroin, morphine, cocaine and other chemical derivatives of morphine and cocaine or lysergic acid diethylamide (LCD), methylenedioxymethamphetamine (MDMA) (or ecstasy), gamma-hydroxybutyric acid (GHB), flunitrazepam, amphetamine, methamphetamine (crystal) or other non-pharmaceutical industrial drugs or psychotropic substances, the list of which is approved by the Islamic Consultative Assembly import to Iran or attempt to manufacture, produce, distribute, export, send, buy or sell, or put up for sale and/or store, conceal or carry, shall be punished following the proportion and according to the number of materials as follows. (Amendment approved on 31/07/2010): (The following punishments are considered non-pharmaceutical industrial psychotropic punishments)

1 to five centimeters, from five hundred thousand Rials to one million Rials fine and twenty to fifty lashes.

2 more than five centimeters to one gram, a fine of two million to six million Rials, and thirty to seventy lashes.

3 More than one gram to four grams, a fine of eight million to twenty million Rials and imprisonment for two to five years and thirty to seventy lashes.

4 more than four grams to fifteen grams, a fine of twenty million to forty million Rials and imprisonment for five to eight years and thirty to seventy-four lashes.

5 more than fifteen grams to thirty grams, a fine of forty million to sixty million Rials and imprisonment for ten to fifteen years, and thirty to seventy-four lashes.

6 More than thirty grams, execution, and confiscation of property resulting from the same crime.

Also, according to the note one of the above article, whenever it is proven that the perpetrator of the crime subject to paragraph (6) of this article has committed this crime for the first time and has not succeeded in distributing or selling it if the amount of substances is not more than one hundred grams by considering the above conditions or the lack of intention to distribute or sell in the country, depending on the quality and route of transportation, the court will order life imprisonment and confiscation of property resulting from the same crime.

Concerning mitigation and/or aggravation of punishments for perpetrators of industrial narcotics, the court may, if there are mitigating circumstances, reduce the penalties provided for in this law to half the minimum punishment for that crime, if there is no minimum punishment, the same punishment may be reduced to half.

The reduction in life sentences will be 15 years.

Also, in the case of the death penalty, a request for amnesty and reduction of punishment will be sent to the Amnesty Commission.

All convicts who, after the issuance of the sentence, somehow cooperate with the law enforcement force or the operating organization and their action leads to the discovery of networks, the court issuing the verdict can punish him at the request of the law enforcement force or the operating organization based on the relevant documents, while amending the previous ruling, give a reduction of up to half.

Also, in the aggravation of punishment due to recidivism, in all cases authorized by this law, the sentences or records after the implementation of the Anti-Narcotics Law of 1988 are valid. Finally, all crimes related to "industrial narcotics" subject to Article 8 of the Anti-Narcotics Law and perpetrators of crimes that have the death penalty or life imprisonment in this law, if one of the following conditions are met, are considered corruptors and sentenced to death, confiscation of property resulting from narcotics or psychotropic substances; otherwise, as the case may be, "those subject to execution" shall be sentenced to the first-degree imprisonment, up to thirty years, and the first-degree fine of up to twice the minimum, and "persons subject to life imprisonment" to imprisonment; and second-degree fines in both cases for confiscation of property resulting from drug and psychiatric offenses.

Examining the basics of penalties for drug-related crimes

1- The death penalty in the Anti-Narcotics Law

In general, there are the following views on the death penalty in drug crimes:

- It is about limits in terms of corruption on earth and because the limits are not closed, so they cannot be mitigated. Therefore, Article 22 of the Penal Code cannot be applied to the death penalty in drug crimes.

It is a ta'zir and can be reduced: This opinion was raised by the Legal Department of the Judiciary.

According to this view, "the punishments approved by the Expediency Discernment Council are punishable, and the use of the provisions of Article 35 of the Law on Islamic Punishment (current Article 22) in them is without any problems." Therefore, according to this article, the judge of the court can sentence the accused to a punishment less than the minimum stipulated in the law unless it is explicitly prohibited. ” At present, the application of mitigation and its provisions are provided for in Article 38 of the Anti-Narcotics Decree.

- It is about the rules of the Sultanate

Annals of R.S.C.B., ISSN: 1583-6258, Vol. 25, Issue 4, 2021, Pages. 20685-20696
Received 05 March 2021; Accepted 01 April 2021

"Since corruption in the land poses a problem to the Islamic community and threatens the Islamic government, such as drug trafficking and the like, the Islamic ruler must deal with such elements if they are from an armed group, is subjected to belligerent issue, Otherwise they will be punished.

The Anti-Narcotics Law (Amended on 25.10.1997) mentions the death penalty in 10 cases, which are:

Article 2 of the Law on Cultivation of Poppy or Coca, as well as the cultivation of hemp for the production of narcotics, is considered a crime and, depending on whether it is the first or several times, the perpetrator is fined, lashed, and imprisoned, the amount of which in each case will increase, but in the fourth degree, perpetrator sentenced to death

According to Article 4 of Law, anyone may import or export more than five kilograms of bhang, hashish, grass, opium, opium, burnt, or pulp in any way, or export or send it in any way. He is sentenced to death for producing, manufacturing, distributing or selling, or selling.

According to paragraph 6 of Article 8 of the Law, anyone who imports more than 30 grams of heroin, morphine, cocaine, and other chemical derivatives of morphine and cocaine into the country or undertakes to manufacture, produce, distribute, export, send, buy and sell, or exposing to sale or storage, concealment or transportation is sentenced to death.

According to Article 11 of the Law, the punishment for drug trafficking the subject of this law, with the benefit of firearms is a death sentence which will be carried out in public if it is expedient.

2- Imprisonment in the Anti-Narcotics Law

The Amended Anti-Narcotics Law provides for 76 imprisonment sentences in 21 cases as the main punishment has been considered. The legislator has used three different methods in determining this punishment (Fadaei, 2006: 31-30):

1- Determining the punishment of imprisonment by specifying the minimum and maximum, in most cases, the punishment of imprisonment is determined as the minimum and maximum, and the authority to determine it between these two variables shall be borne by the judge. There is no specific order in determining imprisonment with a minimum and a maximum, and the legislator has applied different tastes.

2- The second method of determining the punishment in a definite manner without mentioning the minimum and maximum in the Anti-Narcotics Law, the punishment has been determined in this way in two places. One is Article 22, the punishment of which is twenty years imprisonment, and the other is the note of Article 22, which considers twenty-five years imprisonment as a fixed punishment.

3- Another method found in the law is to impose life imprisonment, which has always been defined as a substitute punishment for execution. Life imprisonment has never been considered as the main primary punishment. This means that wherever the death penalty is not applicable due to a lack of conditions, life imprisonment is imposed instead.

4- The lash punishment in the Anti-Narcotics Law

The legislature has acted in determining this punishment in three ways (Ghorban Hosseini, 1999: 100-99):

1. Determine a certain amount without mentioning the minimum and maximum. This method has been used only in one case, and it is in the note of Article 4 of the law that the punishment of 74 lashes has been determined.

2. Determining the punishment of lash with mentioning the maximum and without mentioning the minimum in one case has been done in this way. In one case, the penalty is up to 50 lashes (paragraph 1 of Article 4). Obviously, in this case, the minimum that is not specified will be at least 1 lash.

3. The third method, which is the most common method of the legislature and includes many cases, is to determine the lash punishment by mentioning the minimum and maximum, which has left the judge free to determine its amount. In mentioning the minimum and maximum, the legislator has not expressed any specific taste and has not followed a certain order. The maximum distance between the minimum and maximum lashes is between 1 and 70 lashes, which is mentioned in paragraph 3 of Article 2.

4- A fine in the Anti-Narcotics Law

The Anti-Narcotics Law uses four methods in determining fines:

1- Determining the fine by mentioning the minimum and maximum. This is a common method that leaves the judge free to determine the punishment in proportion to the crime committed and the number of drugs.

2- Determining the fine without mentioning minimum that this method has been used only in two cases:

Paragraph 1 of Article 4 of the law, which states: up to fifty grams, up to four million Rials fines, and up to 50 lashes

Paragraph 1 of Article 5 of the law, which states: up to fifty grams, up to three million Rials fines, and up to 50 lashes

3- In determining the fine in a way that is known as the kilogram method, which is one of the innovations of the reformed legislature of 1997. This method has been used in two places as follows:

- Paragraph 5 of Article 5 of the Law; More than twenty kilograms to one hundred kilograms, in addition to the punishment provided in paragraph 4, two million Rials per kilogram will be added to the fine of the perpetrator.

- Paragraph 6 of Article 5 of the Law. More than one hundred kilograms, in addition to the fine and lash provided for in paragraphs 4 and 5, life imprisonment and in case of repeated execution and confiscation of property resulting from the same crime.

4- It is a numerical method that is also one of the initiatives of Amending Law 76 and has been used in one case:

How to deal with crimes against children and adolescents

The Islamic Penal Code has established special rules regarding the criminal responsibility of children and juveniles, such as considering a special authority to investigate their crimes following the prescribed procedures. In the case of juvenile delinquents, it has always been believed that they are not responsible for their crimes due to a lack of proper understanding of the good and bad of their actions, in other words, "minor" is one of the factors that remove criminal responsibility. But the age of exemption from this responsibility varies in the laws of different countries. The laws of most countries, including the penal code of Iran, emphasize the application of security and educational measures against this group of criminals.

It is true that the law always looks at these criminals with a protective attitude and seeks to reduce the punishments for them, but leaving them and not paying attention to the harmful consequences of their behavior will have negative effects, both for themselves and for society. . Therefore, the Islamic Penal Code has established special rules regarding the criminal responsibility of children and adolescents, such as considering a special authority to investigate their crimes following the prescribed procedures and also imposing special punishments.

Security and educational measures as necessary measures to prevent the recurrence of crime sometimes alongside and sometimes before or after the imposition of efforts to reform and re-socialize offenders. Therefore, security measures are a series of social defense tools that are used by law and by the judge and as a result of the occurrence of crime, following the temperament, talent, character, and background of the delinquent and dangerous person to heal and adapt to society and do not repeat the crime. In these measures, the society does not seek to punish or retaliate against criminal behavior, but what is important is to ensure the security and peace of society in the face of individuals and areas that

facilitate crime. The most important characteristics of these actions are lack of moral color, indefinite duration, ability to be constantly revised, intimidating and humiliating, and not suffering (Rahmadol, 2010: 33-32).

Article 88 of the Islamic Penal Code stipulates: Regarding children and juveniles who commit ta'zir crimes and whose age at the time of their commission is not nine to fifteen full years, as the case may be, the court shall make one of the following decisions (Shambiyati, ex: 188-187).):

A) Surrendering to the parents or guardians or the legal guardian or taking the obligation of discipline and care in the good morals of the child or adolescent.

Note: If the court deems it expedient, it can, Depending on the case of the persons mentioned in this paragraph (parents or legal guardian), take the guarantee to do matters such as: the following cases and announcing the result to the court within the prescribed time limit.

1- Introducing the child or adolescent to a social worker or psychologist and other specialists and cooperating with them.

2- Sending a child or adolescent to an educational and cultural institution for education or vocational training.

3- Necessary action to treat or quit the addiction of a child or adolescent under the supervision of a doctor.

4- Preventing the harmful association of children or adolescents with persons at the discretion of the court.

5 - Preventing children or adolescents from moving to certain neighborhoods.

According to Article 1173 of the Civil Code, whenever the child's physical health or moral upbringing is endangered due to lack of care or moral degeneration of the custodial parent, the court may, at the request of the child's relatives or the request of the child's guardian or Head of the Judiciary, The judiciary should make any decision it deems appropriate for the custody of the child.

Regarding security and educational measures for children and adolescents, paragraph c. Article 88 of the Islamic Penal Code can be mentioned. According to this paragraph, the advice has been prescribed by the judge of the court; And in paragraph t. A warning and a written commitment not to repeat the crime are provided.

In paragraph C. The article refers to the detention in a correctional center from three months to one year for ta'zir crimes of 1^{st} to 5^{th} degree in children and adolescents.

Keeping children or adolescents in correctional centers is also a security and educational measure that is carried out to improve the behavior, vocational training, and social adjustment of this group of criminals. Therefore, the note states that the decisions of paragraphs (t and c) apply only to children and adolescents 12 to 15 years of age. However, the provisions of paragraph (C) are mandatory for children and adolescents subject to grades 1 to 5. Committing a crime causing hadd or qisas (revenge) by a child or adolescent 12 to 15 years old (Baligh, 2012: 69-68).

Article "91" is another innovation of the Islamic Penal Code of 2013, which has accepted the criminal development of juvenile delinquency and retaliation. This article stipulates: In crimes involving hadd or qisas, if the minor is under 18 years of age, the nature of the crime has been committed or he does not understand its sanctity or there is doubt in their development, according to their age, he will be sentenced to the punishments provided in this chapter. In its note, it also states that the court can use forensic medicine or any other way it deems appropriate to determine the development and perfection of reason. In this article, the provisions of hudud and qisas will not be applied to children under 18 years of age who are in their perfect intellect and development.

Article 95 also stipulates: Criminal convictions of children and adolescents have no criminal effects. This article is fully in line with the goals of security and educational measures. Article 89 of the Islamic Penal Code provides for the commission of a criminal offense by a child or juvenile aged 15 to 18: The following punishments shall be applied to

juveniles who commit a criminal offense and whose age at the time of commission is between 15 and 18 full solar years:

- Maintenance in the correctional center

- Fine

- Free public services.

In Article 90 of the Islamic Penal Code, the court can review its verdict once based on the reports received about the condition of the child or juvenile and his behavior in the center, and reduce the period of detention to one-third, or turn custody into a guardian or legal guardian. The appeal is made if the child has spent one-fifth of the time in the correctional center. In Note 3 to Article 88, a judge could reconsider his decision as many times as he wished in the case of the surrender of a child or adolescent to his or her parents and legal guardian or natural or legal persons.

Conclusion

The legal system of the Islamic Republic of Iran is Muslim based on the religious legal system. In the Islamic Republic of Iran, puberty is associated with the appearance of hair on the face of men or 15 years of age and for women of puberty or nine years of age. The minimum age to reach puberty in Iran (for girls and boys) is 18 years.

Following the nature of Islam, the legislation of the Islamic Republic of Iran has provided severe punishments for some crimes and milder punishments for some crimes. The Islamic Penal Code recognizes the use of corporeal punishment to educate minors, and when it is necessary to impose corporeal punishment on a child, it is recommended that you apply corporeal punishment, but it is not mandatory. Although the penal code of the Islamic Republic of Iran does not distinguish between the responsibility of minors for involvement in drug-related and psychotropic crimes, in practice it is clear that the courts prefer to impose lighter punishments on adults.

According to international law, including the Convention on the Rights of the Child, all persons under the age of 18 are considered children and should not be subject to criminal penalties. The penal system of children is separate from that of adults and has a supportive, correctional and caring aspect. The problem that exists concerning Iran and some other Islamic countries is the conflict between the concept of childhood in the international concept and the age of criminal development on the one hand and the age of legal maturity on the other. In other words, international law sets the age of 18 without discrimination between boys and girls as a criterion for entering adulthood and full criminal responsibility. While in Islamic sources, reaching the age of legal maturity is considered as a criterion for leaving childhood and entering the world of adulthood and is synonymous with full criminal responsibility. The age of religious maturity in any of the Islamic sects and schools does not correspond to the age of 18 mentioned in international standards and is different between boys and girls. Before the enactment of the new law, under Article 49 of the former Penal Code, "children" were exempt from criminal liability and their upbringing was entrusted to the Correctional Center. However, the following note of the same article, ignoring the international definition of a child, is considered a "child" as someone who has not reached legal maturity.

The amendment of the Anti-Drug Trafficking Law on 08.11.1997 marked the beginning of reforms in the Islamic Republic of Iran in this regard. And export, transportation of hashish, sorghum, grass, opium, fruit juice, burns, opium waste, and other drugs or psychedelics for non-pharmaceutical use (the list is approved by the Islamic Consultative Assembly) in any way or as a punishment for starting production, Sale, distribution or preparation of terms of sale, the words "confiscation of property, except for property which appears to violate ordinary life" were replaced by the words "confiscation of property following the crime".

Although the criminal law of the Islamic Republic of Iran does not differentiate between the responsibility of minors to participate in drug-related and psychotropic crimes, in practice the courts have given them powers (for example, Article 38 of the IRI Anti-Drug Law). Narcotics and drug trafficking). According to Article 1 of the Penal Code, the court can reduce the sentence by half

Article 18 of the Anti-Narcotics Law of the Islamic Republic of Iran provides for the responsibility of participating in a crime. Persons who, by law, work or organize, direct, assist, or invest in any person to commit drug offenses will be sentenced to life imprisonment for such offenses. Confiscated, and in other cases sentenced to the most severe punishment. The head of a bandit or criminal network is sentenced to death. . A person who forces children and adolescents under the age of 18 and people with mental disabilities to use drugs or commit related crimes, as well as a person who forces other people to use drugs or psychedelics or someone who uses these drugs by any means Injects into another person's body. The perpetrator must be punished within the limits of 1.5 of the punishments allowed by law. The sentence of life imprisonment is transferred to execution and confiscation of all property.

In Iran, punishment for crimes committed by minors is not administered by general courts but by specialized courts. These courts hear all other crimes committed by minors, except those punishable by death or life imprisonment. According to Note 2 of the said law, "Whenever the age of the accused exceeds eighteen years of age during the trial, the trial of his charge shall continue in the juvenile court following this law." If the age of the accused exceeds eighteen years of age before the commencement of the trial, the case against him shall be tried in a competent criminal court, as the case may be. In this case, the accused will enjoy all the privileges applied in the juvenile court. "In any case, convicts over the age of eighteen shall be kept in the juvenile detention center established in the correctional center. Also, according to Article 315 of the new law: "If children and juveniles commit one of the crimes subject to the jurisdiction of the First Criminal Court or the Revolution, their crimes will be tried in the special criminal court for juvenile delinquency and the accused will be granted all the privileges applied in the juvenile court.".

References

[1] Aurang, Jamileh, (2010), Research on Addiction, Tehran, Ministry of Culture and Guidance Publications.

[2] Baseri, Mohammad, (2010), Lectures on Public Criminal Law, Tehran, Amirkabir Publications, Second Edition.

[3] Baligh, Nahid, (2012), Convention on the Rights of the Child and its productivity in domestic law, Tehran, published by the Faculty of Law and Political Science, University of Tehran.

[4] Piran, Parviz (2009), Study of addiction and rehabilitation of addicts in Tehran, Tehran, published by the Welfare Organization.

[5] Jamshidi, Alireza (2003). The Discourse of Criminal Policy in the Judicial Bill of the Juvenile Court. Journal of Justice Law, No. 45, pp. 102.

[6] A group of authors, (2000), a study of drugs in Islamic texts, published by the Islamic Propaganda Organization of Tehran.

[7] Prosecutor, Parikh, (2003), Criminal Psychology, Tehran, Samt Publications.

[8] Rahmdel, Mansour, (2010), Criminal Law on Narcotics, Tehran, Publication of the Official Gazette of the Country, Vol.1

[9] Saki, Mohammad Reza, (2013), Drugs and Psychotropic from the Perspective of Criminal Science and International Law, Tehran, Jangal Publishing.

[10] Sheikh Tusi, Al Al-Mabsūṭ fī fiqh al-Imāmīyya , vol. 8, p. 170.

[11] Allameh Halli, Tabseratol Motoalemin, as explained by Sha'rani, p. 307.

[12] Fadaei, Seyed Mohammad Ali (2006), Cognition, Prevention and Treatment of Addiction, Tehran, Sayeh Publications.

[13] Ghorban Hosseini, Ali Asghar, (1999), Research in Drugs and Addiction, Tehran, Sepehr Publishing

[14] Mohaqeq al-Karki, Ali ibn Husayn, treatises of Mohaqeq al-Karki, Qom: Library of Grand Ayatollah Marashi Najafi (may God have mercy on him), 1409

[15] Najafi Tavana, Mohammad Ali, (2015), A New Basis for Determining the Age of Criminal Liability, Tehran, Mizan Publishing.

Annals of R.S.C.B., ISSN: 1583-6258, Vol. 25, Issue 4, 2021, Pages. 20685-20696
Received 05 March 2021; Accepted 01 April 2021

[16] Nouri Tabarsi, Mirza Hussein (1408 AH) Mustadrak al-wasāʾil wa mustanbaṭ al-masāʾil , Beirut, Al-Bayt Foundation for the Revival of Heritage.