

The Place of Child Victimization in Iran Penal Law and International Documents based on the Applications of Physical Persecution in the Family

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Abstract: Among the victims, minors, as the future of human race, due to being more sensitive require more support which is given through a segregating policy represented in domestic laws as special crimes in minors' rights and liberties or aggravation of punishment against them. A comparative study of international documents and domestic regulations demonstrates various gaps and inadequacies in domestic laws in such a way that current legal system cannot prevent minor persecution and victimization properly. Therefore, domestic laws should be modified in line with international enactment; to prevent crimes and collaborate with other countries, specific conventions of the crimes should be enacted and the considerations of the given crime in domestic laws should be taken into account. The present study examines the place of minor victimization in Iran penal laws and compares it with Convention of Minors' rights and other international documents at hand based on the evidences of physical persecution in the family and familial violence against minors and comparability of Iran laws with international standards. The research was done through referring library references and consulting documents available on domestic and international laws which were derived and elucidated via comparative research plan.

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Introduction

Theoretical foundations of minors' victimization should include special conditions like being under age, dependence on parents, need for love and care, family brutality, poverty, and hanging about with bad friends. Child's growing up within 36 months will include the most important part of development during which the child will acquire linguistic ability, thinking, and sensory-motor movements; also, the foundation of adulthood is structured in the given age. Therefore, parents play an important role in forming behaviour and personality of their children. Despite developments of human society in the area of individual and social rights in the modern times, minors' victimization phenomenon has variously increased. Although, several documents had already considered minors' rights and the necessity of special attention to them, International society still is in severe need of an international binding document in the late twentieth century. Subsequently, General Assembly of the United Nations enacted the convention of minor rights to improve children's situation in all countries in 1989. However, minors in Iran laws still have got an unstable condition and despite lots of changes, the convention of minor rights is not applied proper enough. This happens in the situation that all international documents of minor rights stress the necessity of paying particular attention to the matter.

Minor victimization in Iran penal law and international documents

Considering the characteristics of child victimization and perpetrators' morale and incentive in each country, the phenomenon has got various applications. Minor victimization includes any action or inaction by parents or other responsible people that hurts or threatens under-18-year-old minors' and teenagers' physical and mental health or their welfare or well-being (Jahed, 1391). Physical victimizations consists of crimes including minor's soul and body, which is sometimes so intense that concerns occurrence of death as the most crime. Of the physical victimization, the following ones are among ones are among the most noticeable ones: beating with hand, bludgeoning, singeing, burning by spoon, breaking bones, hurting, doing internal injuries like internal bleeding, pulling ear and hair, slapping, pinching, shoving, squeezing, thrashing, lashing, burning with cigarette, biting, putting chilli pepper in child's mouth, hitting head to wall, bruising child's body, and any other ways of physical damage.

Article one: "All the people who are under the age of 18 will enjoy the legal supports provided in the law". Following article 1 of the convention of minor's rights (1989) that considers the criterion of recognizing minors as being under 18 years old, the legislator has limited penal support to those who are under the age of 18 and has regulated that everybody

from birth to 18 will be supported by the law. Inattention to judicial and legal criteria of distinguishing minors from those who are not (that is judicially 9 lunar years for females and 15 for males) and replacing solar year instead of lunar one for determining age year has been one of the new innovations of the legislator for harmonizing with international standards of human rights. Two common instances of the application of child physical victimization, including murder and physical punishment in Iran penal laws and international documents are cited here.

Child murder

The law supporting minors and teenagers was enacted in 9 articles in 1391 and a crime called minor victimization with imprisonment or pecuniary penalty was added to the body of regulations. Iran criminal law does not include any special law regarding minor victimization but the one supporting minors and teenagers enacted in 1381/9/25; the applications of the given law have not been recognized and even when the victimized is an infant, lower penal support has been considered. But, the convention of minors' rights to which Iran joined emphasizes the necessity of crime recognition of minor victimizations.

Foreign law considers relaxation of penalties for child murder by mother, while domestic law considers the relaxation for a murder by the father. The foreign statute law lays down that child murder by mother is normally similar to any other murder and will be sentenced to the same punishment; but, whenever the mother commits the crime in a special situation, she will enjoy relaxation of penalty. The situation happens when the mother gives birth to an illegitimate child and commits murder for hiding her unlawful action or when a mother due to childbirth is not in good spirits and does not do of her volition (Zera'at, 1381). Iran law (Islamic punishment law) does not regulate any special law for murdering child by a mother; therefore, the penalty inflicted will be retaliation. Not retaliating father for child murder in Iran is an obvious representation of legal brutality against minors. Islamic punishment law article 20 states that "father or paternal ancestor who kills his child will not be retaliated and must pay the blood-price"; while, according to the convention, minors should be protected against any physical violence and the child's natural right for living has been emphasized (article 19), let alone murder which is the extreme brutality against minors or any other human being.

Child's and teenager's supporting law article 2 and 3 forbids physical damages and any torture and physical hurt and imprisonment or pecuniary penalty

will be inflicted on the perpetrator. But, unfortunately, article 220 of Islamic punishment law has been misused by some fathers. Honour killings, murder after sexual rape of child and other types of murder that is committed by fathers under any excuse signifies promotion of violence at the heart of the given article and requires legislators' attention and modification in favour of minors.

Physical punishment of minors

Neither criminal law nor civil law specifies the amount of punishment of minors by their parents. Under special conditions civil law part 1 of article 59 and article 1179 prescribes customary amount of punishing minors by parents, legal guardians and protectors of infants in order to train them. According to the given articles, punishing infants by parents is considered a crime, in case it is administered based on custom; but, the problem is how much punishment should be considered normal! Moreover, parents' and legal guardians' misunderstanding of the meaning of "customary amount" can be highly problematic for both preventing the crime and suing and punishing wrongdoers. It is probable that following their parents, fathers and mothers really believe what they do for punishing their children is exactly based on custom and part of their right for teaching them. On the one hand, sentencing the parents would be difficult because punishing a person who believes in the rectitude of his/her action while it is provoked by social custom would not be based on the principles of punishment; on the other hand, from the point of view of general prevention, changing this way of thinking and teaching appropriate and lawful methods of punishment would be too difficult and even impossible (Jahed, 1391).

The second article of children's and teenagers' supporting law enacted in 1381 forbids any kind of annoying and harming minors and teenagers that injure them physically, mentally and morally or threatens their physical or mental health. However, on the hand, in article 7 excludes training measures mentioned in article 59 of Islamic Punitive Law enacted in 1370/9/7 and article 1179 of civil law enacted in 1314/1/19. Nevertheless, article 37 of the convention of minors' rights requires the members not to torture or humiliate any child and article 19 entirely forbids physical brutality against children. Therefore, by excluding training measures of parents from the law supporting minors and teenagers (in 1381), the Iranian legislator has provided misusing grounds of children.

Despite forbidding several forms of child victimization, the second article of supporting law due to lack of predicting punishment for the given victimizations is subject to strong criticism and

hesitation. Essentially, what has the legislator's purpose been by enacting this article? However, the same phrase along with the punishments has been repeated in article 4. On the whole, even if the second article were not mentioned in the given law, there would not be any gap in the nature and aim of the law (Jahed, 1391).

Article 5: "Infant victimization is of general crimes and does not require complaint of a private plaintiff."

As the complainant or victimized is an underage infant or teenager who is impotent and usually under the dominance and adoption of the perpetrator, by predicting the given article, the legislator has taken a positive step toward protecting children and teenagers. Therefore, anyone can inform attorney general of witnessing child victimization so that the attorney as the sakeber will be required to make a legal claim against the wrongdoer.

As a result of the given claim, even if the private plaintiff (victimized mature infant or teenager) gives up his claim, it will not have any influence on proceeding with hearing and inflicting punishment unless settlement is considered among penalty relaxation cases.

Article 6: "All people, institutes and organizations that are in a way engaged in taking care and safeguarding infants should immediately inform righteous legal authorities of witnessing infant victimization to sue the perpetrator. Disobeying the given obligation will lead to 6 month imprisonment of 5 million IR Rial pecuniary punishment".

Contrary to common people who are not responsible for reporting infant victimization cases, everyone including any organization which is responsible for supporting children, e.g. childcare facilities, is required to report infant victimization cases to legal authorities. Forbearance of the given measures will result in imprisonment or pecuniary penalties as it was mentioned in article 6.

Of course, it was more suitable, if legislator had extended the obligation to children's parents and other organizations that have got supervisory duties regarding protecting children's rights and not merely institutes and organizations which keep and safeguard infants.

Conclusion

At the present time, attention to infants' rights is of the important areas of legal system that amounts to cultural, social, political, economical and international dimensions. Universal Declaration of Human Rights and international convention of children's rights are based on general law of human beings and specially children that is represented in the forms of educational, cultural, social and

economical rights which should be found in the infrastructure of a society and its available processes. Reducing "children's rights" and increasing penal applications results in ignoring the underlying factors and requirements. The slogans of Islamic Republic of Iran that presents itself in the second principle of constitution as a system founded on munificence, human dignity and freedom and his duty to God by disavowing any tyranny, suffering, dominance and subordination and considering respect for legitimate freedoms as one of the indispensable principles does not seem to be appropriate. Moreover, international documents that have not been appended form a body of international binding texts and codes that commits Iran government to being responsive. Regarding the substantial area of penal law, Iranian legislator is so distracted that sometimes protect the victimized while in other cases limits the scope of support. This distraction is often resulted from legislator being variously impressed by jurisprudence, custom, and international codes in such a way that referring to some of these sources in compiling a law would prevent applying supportive dimensions of other sources. For example, in special situations, gender is a discriminating factor for enjoying segregating support. In case, the amount of blood money is higher than third part of the total fine, females' blood prices would be half of males' and this happens in the situation that the damage inflicted is equal, but the females will enjoy lower redress than males. Incorrect legislations, inattention to children's requirements, unsuitability of crimes against infants and their punishments, inappropriate administration of life development programs and etc still has put children in a widespread victimization and therefore, doing "justice" has been perverted.

References

1. Abroshan, Hoshang, (1384), "Child Abuse and Child Rights Convention", Tehran: Arian.
2. Akhundi, Mahmoud, (1381), "Criminal", Qom:Eshragh.
3. Amir Arjomand, Ardeshir (1381), "International Human Rights Instruments", Tehran: Shahid Beheshti University.
4. Begay, Jamal, (1384), "Crime and injury of children's rights", Tehran: mizan.
5. Jahed, Muhammad Ali, (1391), "a new social problem of child abuse", legal blogs equity, 22 October.
6. Zeraat, Abbas, (1381), "Child Murder by Mothers' Bar Association Journal, No. 177.
7. Goldouzian, Iraj, (1383), "general criminal law of Iran", Tehran: Tehran University.

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