

## The Minimum Age of Criminal Responsibility of Children in International and Iranian Law: A Comparative Study

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**Abstract:** Research on the Minimum Age of Criminal Responsibility (MACR) of children has been quite evident in the past decade. The MACR of children is a challenge to the global perception to children's rights. The difficulties associated with ideological differences concerning concepts of the MACR by states based on social, religious and cultural structures. The concept of the MACR has evolved over history and has been interpreted in various ways with the absence of a precise definition by different worldviews. Legal framework requires putting aside different belief systems and exploring the convergence of views from different belief systems. Hence, international legal instruments such as the United Nations Convention on the Rights of the Child (UNCRC) have been framed to be adaptive to cultural and social circumstances in all states, increasing the potential ease of implementation and consider all aspects of a child's life and development, particular in regards to the MACR. In the present study, a comparison on legal framework of the MACR of children is made between two legal systems: International and Iran law. While, the UNCRC appears to assume from a theoretical standpoint that generally accepted international norms exist among State Parties regarding the MACR of children; the present study attempts to analyse the legal framework, under international and Iranian law, regarding the MACR of children as a prominent status of children's rights. The findings reflect the processes and standards existing in the two legal frameworks, particularly at the distinctions in the two legal systems. The findings also demonstrate deficiencies and lack of compliant with international legal standards in the Iranian legal systems regarding the MACR of children.

**Key words:** Minimum, criminal responsibility, children rights, international law, UNCRC, Iranian law

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### INTRODUCTION

According to Starygin, some of the most immediate steps toward legal and judicial reform were undertaken through accessions to a large variety of international human rights instruments, subsequent efforts were to follow and focused on a large spectrum of legal areas including to the criminal law (Starygin, 2009). One of the basic concepts of criminal law is the concept of MACR. Due to the overwhelming public acceptance of the substantive content of the UNCRC in criminal law the MACR has a special and important place and it can be argued that the basis of the MACR can be examined in light of relevant provisions in the UNCRC. This is emphasised in Article 1 of the UNCRC that stated:

For the purposes of the present convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier

In criminal law concerned with the MACR, the MACR of children is so important than other legal issue of the criminal law for two reasons. First, the MACR with individual rights has a strong connection with children rights and freedoms. Second, criminal responsibility in the realm of children needs to be studied since essential elements (will power and awareness) of the MACR have a vital role. International legal instruments extend protections to children's rights particularly regarding the MACR of children. The MACR of children is essentially based upon scientific findings and practical experience. The MACR has been evaluated by scientists due to the importance of this issue by legal scientists and researchers in other sciences such as Psychology, Sociology and Criminology. For instance, the achievements and findings in the development of psychological science can directly affect and create the criminal responsibility of children. It seems that criminal responsibility discussions are the fundamental point

concerning the age of responsibility of children which legal writers often note but the debate is remains unresolved. Finally, the issue of children rights and responsibilities age of children is among the most contentious provisions of international and domestic law in international debates.

In addition, during the past 2 decades since the Islamic Revolution and the pre-revolution era, the rights of child offenders in Iran has been an important and controversial issue concerning the Iranian penal system with interested parties continuously expressing concern regarding the MACR of children in Iran. According to many national and international sources, the Iran is one of the states in the world that has the low MACR of children. This is in clear breach of the international instruments (From Cradle to Coffin, 2009). Iran is party to a number of relevant treaties and conventions with regard to the treatment of juvenile offenders which include the Universal Declaration of Human Rights (UDHR) that Iran ratified in 1948. Iran ratified the International Covenant on the Civil and Political Rights (ICCPR) in 1975. The UNCRC was signed and ratified in 1994 and the Cairo Declaration on Human Rights in Islam (CDHRI) which considered by some Member States such as Iran to be the Islamic version of the UDHR (Lee, 2008).

This study compares the protections that are embedded in the legal approaches of the MACR of children under the international and Iran laws. This study concludes that the comparative study between UNCRC and the Iranian law concerning the MACR represents an international symbolic achievement for MACR which remains torn by ethnic and cultural rifts.

#### **LEGAL FRAMEWORK OF THE MACR OF CHILDREN IN INTERNATIONAL LAW**

As noted by Bueren, although the 1924 Geneva Declaration on the rights of the child was entitled the Rights of the Child, it is principally concerned with the provision of children's economic, social and psychological needs. Hence, the language is more appropriate to the field of child welfare. The 1924 Geneva Declaration reflects the unquestioned assumption that children could and should rely upon the exclusive protection of adults to ensure the exercise of their rights. This assumption persisted and is reflected in the declaration of the Rights of the Child 1959 as well as in many of the public and private international law treaties adopted in the 1960's and in the first half of the 1970's. Until 1979, the child's perspective is either absent or

assumed to be co-terminus with that of adults. The pace began to gather momentum as the United Nations came closer to concluding its drafting of the Convention on the Rights of the Child (UNCRC) 1989 in which children for the first time were acknowledged by the international community as holders of a specific body of identifiable rights. Not only in the more traditional areas of prevention, protection and provision rights but also acknowledging their participation rights (Van Bueren, 1998a).

The concept of children's rights has become a crucial aspect of our law (Fortin, 2005). But the legislative models and the legal systems of the MACR are not homogeneous (Ottendorf, 2001). Thus, the purpose of the convention is to preserve and respects the children's rights in the world and is anticipated as a catalyst for bodies implementing human rights regionally to acknowledge in practice what has been theoretically true for some time (Van Bueren, 1998b). Thus, discussions in this study contains an analytical presentation of the MACR in international law and considers UNCRC's provisions which appear to protect the interests of the MACR of the child.

**MACR under the UNCRC:** According to Buck, children's rights assume a background framework of knowledge about human rights of which children's rights can be considered a part (Buck, 2011). At the international level, the need was felt to have a document dealing exclusively with the rights of the child. The process of developing a comprehensive document on the rights of the child commenced in 1979. It culminated in the adoption of the UNCRC by the United Nations General Assembly in 1989, 4 years after the adoption of the Beijing Rules (ANPPCAN, 2011). The UNCRC entered into force in 1990 and has been ratified by all member states of the UN except for the United States and Somalia making the UNCRC the closest instrument to a unanimously accepted international convention in the UN system (Detrick, 1999). The UNCRC is a human rights treaty setting out the civil, political, economic, social and cultural rights of children. For enjoyment of these rights, Article 1 of the UNCRC generally defines child as persons up to the age of 18 years. A general principle of children's rights is that states should observe the best interests of child, a sentiment that is contained within the UNCRC. States that have ratified the UNCRC are obliged to implement the provisions and submit reports for monitoring and complaints purposes to the Committee on the Rights of the Child (CRC). The UNCRC seeks to have its provisions regarding children and criminal law,

particularly regarding the MACR, reflected in an appropriate manner in the domestic legislation of State Parties. According to Article 40 (3) (a) of the UNCRC:

States Parties shall seek to promote the establishment of laws and the establishment a minimum age below which children shall be presumed not to have the capacity to infringe the penal law

For this reason, the children who commit crimes should be referred to family and school that utilise social services and programs to adjust the child's behavior (Cipriani, 2009). This commitment emphasised in Article 37 (a) of the UNCRC, obligates State Parties to ensure that no child is subjected to cruel, inhuman or degrading treatment or punishment including a prohibition on life imprisonment and capital punishment being imposed upon individuals <18 years of age.

The governing rules on the MACR and the imposition rules of criminal responsibility for high age of children offender has been notice and directed by UNCRC. The contemporary debates concerning the criminal responsibility of children were a significant factor in determining the appropriate MACR in the text of the UNCRC. The convention is not silent as to what should be the appropriate minimum age as it contains a recommendation for the MACR in Article 1 which states:

For the purposes of the present convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier

As Nini Dusuki noted, whilst it is accepted almost worldwide that 18 is the benchmark between childhood and adulthood in accordance to article 1 of the UNCRC, there is no such general consensus in specifying the MACR for children. In absence of such general consensus, there exist disparities from one country to another ranging from as low as 7-18 years old (Dusuki, 2009). Thus, the MACR varies between countries (Nayagam, 2009). This is also a deficiency in the recommendations of the CRC for the overseeing on the implementation of the UNCRC. Review of the periodic reports from governments in recent years shows that in all cases which the MACR is <18 years, the CRC recommended to the governments for the increase of this age, without expressing what age should be imposed. For example, the CRC is concerned that the MACR set under 10 years by domestic legislation is very low and the committee recommends that the State Party should raise

the MACR (UN, 2000a). With regard to the MACR, though the committee is aware that juvenile offenders aged 10-17 enjoy a special judicial procedure; it is especially concerned about the low minimum age for criminal responsibility, set <18 years. The fact that children aged between 17 and 18 years are not considered under the juvenile justice system is also a matter of concern (UN, 2000b).

**Establishment of CRC under UNCRC:** The CRC is the treaty body that oversees the implementation of the UNCRC that was created by Article 43 (1) of the UNCRC that provides:

For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present convention, there shall be established a committee on the rights of the child which shall carry out the functions hereinafter provided

As such the committee bears the responsibility of interpreting the UNCRC's MACR provisions in the course of its deliberations as well as the two optional protocols (The two protocols are concerned with involvement of children in armed conflict and on sale of children, child prostitution and child pornography) (UNICEF, 2010). The CRC receives report from governments, civil society and children and young people about how well the convention is being observed. With regard to the status of the UNCRC in domestic law, the committee recommends that the State Party provide in its next periodic report, detailed information on cases where the UNCRC and other human rights treaties have been invoked before domestic courts (UN, 2000c). Due to this reason, one of the key areas of progress over the years is that states now take their responsibilities under the UNCRC much more seriously.

**Summary of CRC's viewpoint on MACR:** In summary, the CRC's recommendations largely affirmed over time by other instruments and bodies suggest a general convergence in international standards for states MACR and their implementation. The committee encourages a single, invariable and country-wide MACR in each State Party which is set as high as possible and which is applied uniformly to all children at all times. More specifically, the guidance developed under the CRC includes the following:

- MACR must be 18 years of age or higher. The committee strongly recommends that the State Party raise the MACR (UN, 2000d)

- The CRC believes that the same MACR must apply regardless of the seriousness of the alleged offense. It means that one MACR should be established in relation to all crimes rather than establishing one MACR for a certain set of offences and another MACR for other offences
- The same MACR must apply throughout the State Party. With regard to the implementation of Article 1 and other related provisions of the convention, the committee takes note of the existing legal studies to reform domestic legislation and harmonizes the different legal ages according to the principles and provisions of the convention (UN, 2000e)
- The MACR must refer to the age of the child at the time of the alleged offense (UNICEF). The CRC recommends that MACR be applied to the age of the individual at the time of the act and supports criminal procedures that reflect such standards
- The MACR should be covering all children up to the age of 18 years (UN, 2000f)
- The CRC has expressed concern of the laws and internal regulations in many states, where domestic definitions of the child do not comply with UNCRC'S definition of the child. In this regard, the legal MACR should be reviewed. The committee recommends that the State Party conduct a review of domestic legislation so as to ensure a consistent definition of a child and to adopt 18 years or above as the age of majority (UN, 2000g)
- The CRC also stated that MACR should be uniformly applied across a given state. States that have varying legal frameworks concerning MACR depending upon the jurisdiction in which the action was committed are in violation of the UNCRC. Due to this reason, the committee recommends that legal age should be established for the attainment of majority and the State Parties review its legislation in order to bring it into conformity with the provisions of the convention (UN, 2000a)

Jaap Doek views that implementation of the rights and standards for juvenile and children justice as enshrined in the UNCRC are supported by and elaborated in a number of Guidelines, standard and rules. With regard to the age of criminal responsibility of children Article 54 of the UN Guidelines for the prevention of juvenile delinquency (the Riyadh Guidelines) provide:

No child or young person should be subjected to harsh or degrading correction or punishment measures at home in schools or in any other institution

Further, Annex II rules 11 (a) of the Havana Rules noted that a juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law:

The Havana rules can be considered as a child-specific elaboration of at least part of international instruments rules and principles (Loeber, 2008)

#### **LEGAL FRAMEWORK OF THE MACR OF CHILDREN IN IRANIAN LAW**

In the recent decades, Iran has experiencing changes and reforms in its domestic legal framework. Unfortunately, the change and reform of historical legal perspective of criminal responsibility in Iran regarding the age of criminal responsibility of children that has occurred disregards aspects of children's physical and mental growth and is contrary to contemporary trends in the global development of children's rights and the needs of the children themselves. Iranian regulations concerning the MACR not only in conflict with the provisions of international instruments but are also inconsistent with scientific such as psychology, social sciences and criminology and legal principles. The Islamic basis of Iranian Law is expressly provided in Article 4 of the Iranian Constitution that stipulated:

All civil, penal, financial, economic, administrative, cultural, military, political and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the constitution as well as to other laws and regulations and the wise persons of the Guardian Council are judges in this matter

Islamic law is considered as the fundamental source of Islamic Penalties Act of Iran. According to Abiad and Zia Mansoor (2010), it is understood that Islamic law has precedence over any other non-Islamic jurisprudence so that the legal system recognizes international human rights standards and principles so long as they are not incompatible with Shari'ah Law. Throughout the 1,400 year history of Islam, children and insane people have been absolved of criminal responsibility. The Quran is the basic source of Islamic law and repeatedly in the Quran's verses are addressed the children in special terms. It may be said that the Islamic law gives a direct authority for protecting human beings (Zainol and Mohamad, 2012), particularly for children, according to Surah Yusuf verse 22 that stated:

When Joseph attained His full growth we gave him power and knowledge

This is emphasised in Quran:

Do not kill your children for fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin (Surah al-Isra, verse 31)

Also under Article 49 of the Islamic Penalties Act of Iran, children are free of criminal responsibility. Therefore, it is not a matter of dispute which children will have criminal responsibility or not. The dispute is about: Who is a child? When will they have criminal responsibility (Baghi, 2007). In this part, the said dispute will be reviewed as well as the historical and legal perspective of the MACR in Iran. Historical and legal perspective of MACR and its characteristics must be considered in two distinct periods in Iran: The period prior to the 1979 Revolution and the period following the 1979 Revolution.

Who is a child in Iranian law? In recent years, the children rights' issue is one of the most important issues in the domestic law of Iran because determining the MACR of children is one of the most challenging issues in the Iranian legal system. To determine the MACR in Iran, review of relevant literature and examination of Islamic law has to be made. In Iran, the Islamic Penalties Act is based on Shari'ah law (Islamic rules), so it is necessary to further examine Shari'ah law. Iranian law system divides to civil and criminal law concerning with MACR of children. The review of civil and criminal law is important in the examination of issues related to the MACR of children because of its direct relation to criminal responsibility of children. The current domestic laws of Iran divided individuals into general categories of age: Age of minority and age of majority. In accordance to initial report regarding to fiqh (Religious jurisprudence) and the law, a child or minor is a male or female offspring that has not attained maturity. Maturity is a natural and instinctive matter. One of the signs of attaining maturity is age. In fiqh and the law a person who has not reached the age of maturity is called a minor (CRC, 1998). However, the Islamic Penalties Act does not specify the MACR. The Islamic Penalties Act merely stipulates definition of the child. Due to this reason lawmakers refer to definition of the MACR of children in Civil Code of Iran. In this study, researchers will review Iranian laws (Islamic Penalties Act and Civil Code) in relation to the MACR of children in greater detail.

**The MACR under the Islamic Penalties Act of Iran:** The Islamic Penalties Act of Iran was approved by the Islamic Consultancy Parliament on 30 July, 1991 and ratified by

the High Expediency Council on 28 November, 1991. According to Article 49 of the Islamic Penalties Act:

Children shall be free from criminal responsibility and the responsibility for correction, education and disciplining is given to the guardian and if necessary the court will instruct a correction house to carry out this task (Melchiorre and IBE, 2004)

As such Article 49 of the Islamic Penalties Act provides that children are immune from prosecution for committing a crime. Additionally, Note of Article 49 defines a child as: Someone who has not reached the age of the puberty. Although, the Article's Note defines a child as someone who has not reached the age of puberty (known as *bolooagh*) as stipulated by the Shari'ah law, the Islamic Penalties Act of Iran does not offer any definition of the age of child or puberty and does not fix any chronological age and contains no definition of the precise age of religious puberty but refers to the notion of religious puberty. One of the remedies listed in Article 49 of the Islamic Penalties Act of Iran provides that age of religious puberty is based on the Quran. In Iran, religious puberty based on the Quran has been considered as the basis for criminal responsibility of individuals and differs between girls and boys. While in fact the Quran says:

And test the orphans until they attain puberty; then if you find in them maturity of intellect, make over to them their property and do not consume it extravagantly and hastily, let them attain to full age and whoever is rich, let him abstain altogether and whoever is poor, let him eat reasonably; then when you make over to them their property, call witnesses in their presence and Allah is enough as a Reckoner (Surah an-Nisa, verse 6)

The Quran draws a clear distinction between the age of maturity and puberty and identifies the age of maturity and not that of puberty as the criterion for giving punishment (From Cradle to Coffin, 2009).

The discussions describe the principle conceptualization of criminal responsibility within the Islamic Penalties Act of Iran that is based upon religious puberty. It means that in Iran age of religious puberty has been considered as the MACR of children and the criterion for a person to reach the age of responsibility is puberty and that means sexual maturity. Some scholars have argued the fallacy of using the age of puberty as the determining factor for MACR and they argue that other deciding factors must also be considered such as the age of intellectual maturity (From Cradle to Coffin, 2009). Baghi claims that the definition of the age of puberty is

ambiguous and that the age of puberty is different for each individual and can be affected by biological and external factors such as climate and nutrition (Baghi, 2007). He argues further that it has not been referenced anywhere in the Quran and that it cannot be used to determine the age at which a person is subjected to the death penalty for capital offences such as qesas and hodoud.

According to the Report on Stop Child Executions in Iran, when a person with criminal responsibility causes death or permanent harm to another person the Islamic Shari'a determines qesas (retribution) as punishment. Currently, qesas is almost only applied in murder cases in the form of execution on request of the victim's family. Shari'a jurisprudence considers qesas a personal right of the family of the victim that cannot be overruled even by the decision of the judge or any other authority. Article 294 of the Islamic Penalties Act of Iran stated: Mulet (Blood money) is a property which should be paid to a victim of murder or his/her heirs and to a victim of injury. If a boy or a girl commits a capital crime and the victim's family does not accept the compensation, under current penal law, the judge is obliged to sentence the adolescent to death (From Cradle to Coffin, 2009). This is in contradiction with the international laws, specifically Article 37 of the UNCRC which states: States Parties shall ensure that:

- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age
- No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time
- Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances
- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action

The MACR (age of religious puberty) in the Islamic Penalties Act of Iran should be links to definition of the age of puberty (religious puberty) in Civil Code of Iran. This is because there is no definition of the age of religious puberty in the Islamic Penalties Act. Practicing lawyers in Iran have been referring to the age of puberty in Civil Code of Iran because the civil code specifies a specific age of puberty.

**The MACR of children under the Civil Code of Iran:** In Iran, the start of adulthood and thus the beginning of full criminal responsibility is linked to the end of puberty (From Cradle to Coffin, 2009). The end of puberty is defined in note Article 1210 of the Civil Code (as amended in 1982) which stipulates:

The age of puberty for boys is 14 years and 7 months (15 lunar years) and for girls, 8 years and 9 months (9 lunar years). These ages are the age of religious puberty. Although, the age of puberty has been specifically established in Article 1210 of the Civil Code of Iran, it does not integrate the concept of intellectual maturity. The Civil Code of Iran draws a clear distinction between the age of intellectual maturity and age of puberty. This distinction is reflected in the provisions of Civil Code. Article 211 for example, provides in order that a contract may be valid both parties to it must be of age, must be in their proper senses and must have reached puberty

Note 2 of Article 1210 provides:

The properties which had belonged to a minor who has now reached the age of majority may be given to him only if it has been proved that he has full legal capacity

Another example is Article 1214:

Transaction and legal acts performed by a person not of age of growth are not binding except with the permission of his natural guardian or his guardian whether the permission has already been given or will be given after the transaction is made. Never the less, all kinds of possessory acts against no consideration are binding even without permission

The Civil Code of Iran places great emphasis on the intellectual maturity of an individual because under Articles 211 and 1214, transactions and taking possession of property by immature persons are not effective and the

validity of their transactions shall depend on their legal representatives. As a result, unlike the Civil Code of Iran that requires religious responsibilities, the Islamic Penalties Act of Iran does not integrate different ages alongside the concept of intellectual maturity when determining responsibility (Baghi, 2007). While, the Islamic Penalties Act utilises the age of puberty contained within the Civil Code in determining MACR, it does not similarly consider the issue of intellectual maturity.

Now what is the reason to prove the claim that a girl reaches the age of puberty at 9 and a boy at 15? The Islamic Penalties Act of Iran contains no mention of intellectual maturity when establishing the MACR. Arguably, there is gender-based discrimination in this claim. There is 6 year age gap introduces, it is from these ages that they are considered criminally responsible for their actions and subject to death penalty for capital offences such as qesas and hodoud. Among the issues related to the age requirements established in the Iranian legal system is the question of why intellectual maturity is not necessary in the determination of the MACR and why for some situations, distinction is drawn between males and females including MACR while in some situations, no distinction is drawn. Here are some situations of age requirements (Age of eligibility) in different legislations and Islamic Penalties Act of Iran:

- The age of opening bank account for girl and boy is 18 years old
- The age of opening company for girl and boy is 18 years old
- The age of marriage for girl is 13 years old and for boy is 15 years old
- The age of driving license for girl and boy is 18 years old
- The age of obtaining passport for girl and boy is 18 years old

The age of criminal responsibility for girl is 9 lunar years and for boy is 15 lunar years old. According to the above legislations, the legal age set for criminal responsibility, particularly in case of girls is far lower than the age requirement for other criteria. For example if a person is not mature enough to accept responsibility as a driver until he or she has reached 18 years of age how can the same person be held responsible to fully comprehend the consequences of their criminal decisions or action to the point of facing execution? (From Cradle to Coffin, 2009). As Report of the CRC mentioned, puberty should never mark the onset of criminal responsibility. The distinction, apparently based upon a concept of maturity is regarded by the CRC as discriminatory and unacceptable. According to the report of the CRC and with regard to the implementation of Article 1 and related Articles of the UNCRC regarding the definition of the

child, the committee is concerned about the disparities existed in domestic legislation. The committee is also concerned at the use of the biological criterion of puberty to set different ages of maturity for boys and girls. This practice is contrary to the principles and provisions of the convention and constitutes a form of gender-based discrimination which affects the enjoyment of all rights. The committee recommends that the State Party review its domestic legislation to ensure full conformity with the principles and provisions of the convention (UN, 2000).

### **THE IRANIAN RESERVATION AND THE INTERNATIONAL LAW OF TREATIES**

Iran is a State Party to a number of international instruments with provisions concerning the treatment of juvenile offenders including the UNCRC. The Iranian Government issued a reservation following its ratification of the UNCRC. The Iranian Government stated that it reserves the right not to apply any provisions or articles of the UNCRC that are incompatible with Islamic laws and the international legislation in effect. On the other hand, acknowledging in the Iranian Civil Code (Article 9 of the Civil Code of Iran: treaty stipulations which have been in accordance with the Constitutional Law, concluded between the Iranian Government and other government shall have the force of law) that all treaties must be performed in good faith and that international obligations are tantamount to national laws, Iran chose to enter a reservation against provisions that may be in contradiction to Islamic law. The issues that remain to be considered are whether the reservation itself is valid and the response of the CRC regarding the reservation.

**The validity of Iran's reservation:** Iran's reservation referred to the Vienna convention on the Law of Treaties (VCLT) and Article 51 (2) of the UNCRC that provides: A reservation incompatible with the object and purpose of the present convention shall not be permitted, both of which containing important elements which could be used to argue against the validity of Iran's reservation. The VCLT entered into force in January, 1980 and represented a much needed clarification and codification of customary international law regarding treaties between States. Iran is a State Party of the VCLT and is therefore bound to its frame work on reservations (Legality of Child Execution in Iran). According to Article 19 of the VCLT: A state may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

- The reservation is prohibited by the treaty
- The treaty provides that only specified reservations, which do not include the reservation in question, may be made

- In cases not falling under sub-paragraphs a and the reservation is incompatible with the object and purpose of the treaty

Article 19 (c) of the VCLT is repeated, virtually verbatim in Article 51 (b) of the UNCRC. No formal investigation has been conducted as to whether the international community validates the reservation but the vagueness of the reservation could be construed as working against the object and purpose of the treaty. Therefore, it should be disregarded (Legality of Child Execution in Iran). Although, during the drafting of the UNCRC the Iranian delegation remained actively involved, it chose to reserve the right not to apply any provisions or articles of the convention that are incompatible with Islamic laws and the International legislation in effect. In response to this move the CRC expressed its concern by pointing out that the broad and imprecise nature of the State Party's general reservation potentially negates many of the convention's provisions and raises concern as to its compatibility with the object and purpose of the convention (A Report on Child Execution in Iran). Iran's vague reservation to the UNCRC has resulted in a growing gap between the country's implementation of international commitments and human rights record.

**The Iranian reservation and the response of the CRC:**

The CRC deeply regrets that no review has been undertaken of the broad and imprecise nature of the State Party's reservation since the submission of the initial report. It reiterates its concern that the nature of the general reservation potentially negates many provisions of the convention and raises concern as to its compatibility with the object and purpose of the convention. In the light of Article 51 (2) of the UNCRC (A reservation incompatible with the object and purpose of the present convention shall not be permitted), the committee reiterates its previous recommendation that the State Party review the general nature of its reservation with a view to withdrawing it or narrowing it in accordance with the Vienna Declaration and Plan of Action of the World Conference on Human Rights of 1993 that is a human rights declaration adopted by consensus at the World Conference on Human Rights on 25 June 1993 in Vienna, Austria (CRC, 2005). However, Iran when ratifying the UNCRC with reservation stated that: Reserves the right not to apply any provisions or articles of the convention that are incompatible with Islamic laws and the international legislation in effect. In response, the CRC which monitors implementation of the UNCRC, expressed its concern that the broad and imprecise nature of the State Party's general reservation potentially negates many of the convention's provisions and raises concern as to its compatibility with the object and

purpose of the convention. In other words, Iran is required to implement the provisions of the UNCRC.

**CONCLUSION**

The analysis in this study demonstrates significant issues associated with the Islamic Penalties Act and the Iranian juvenile justice system. The findings of the analysis could be summarized as:

- There is distinction of the penalties between the Islamic Penalties Act of Iran and international instruments it is party to, namely the UNCRC
- The age of sexual puberty appears to be the sole criterion for determining the MACR of children
- There is lack of definition of the age of puberty in the Islamic Penalties Act
- There is distinction of the MACR between girls and boys
- There is lack of attention to intellectual maturity for determining of the MACR
- There is distinction in the contents of the Islamic Penalties Acts of Iran related to the MACR. There is contrast between the exemption of criminal responsibility for children in Article 49 and other provisions of the Islamic Penalties Act that prescribe punishment for minors including Articles 113 which provides: If a minor sexual intercourse another minor, both should be punished by up to 74 lashes, unless one of them is forced to do so and Article 295 (1) which provides: Premeditated and unpremeditated murders caused by insane people and minors are regarded as accidental deaths
- There is conflict within the provision of Article 49 of the Islamic Penalties Act. Article 49 states: Minors if committing an offence are exempt from criminal responsibility and further stipulates that their correction is the responsibility of their guardians under court's view or if the court decides by a centre for correction of minors
- There is distinction of definition of the age of child in Iranian Civil Code and Islamic Penalties Act of Iran. It seems that Civil Code according to its Articles 211 considers parties to a contract to be of legal capacity: they must be of the age of puberty, wise and legal age (Intellectual maturity) accepted the age of 18 as indication of maturity

According to these findings, it is recommended for the adoption of the age of the child provided in the UNCRC by Iran. The reformation of criminal penalties prescribed for child offenders in Iran is required because this issue is the foundation of the children's rights as been discussed by the jurists. Thus, various legal reforms and the revision of the MACR in Iran are necessary to



make them compatible to the concepts associated with maturity and distinction between childhood and adulthood under international laws.

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### REFERENCES

- ANPPCAN, 2011. International legal instruments providing for child rights and child protection: International legal instruments on children. The African Network for the Prevention and Protection Against Child Abuse and Neglect, Kenya.
- Abiad, N. and F. Mansoor, 2010. Criminal Law and the Rights of the Child in Muslim States: A Comparative and Analytical Perspective. British Institute of International and Comparative Law, London, UK., ISBN-13: 9781905221455, Pages: 395.
- Baghi, E., 2007. The issue of executions of under-18 in Iran. <http://www.emadbaghi.com/en/archives/000924.php>.
- Buck, T., 2011. International Child Law. 2nd Edn., Routledge, New York, USA., Pages: 358.
- CRC, 1998. Initial Report: CRC/C/41/Add.5, 1998. National law and policies on minimum ages-Iran (Islamic Republic of Iran). Convention on the Rights of the Child, United Nations. <http://www.right-to-education.org/country-node/440/country-minimum>.
- CRC, 2005. Concluding observations: Islamic Republic of Iran, document symbol (CRC/C/15/Add. 254), 2005 state report. (CRC/C/104/Add.3) Session(38) Huridocs Code(7327).
- Cipriani, D., 2009. Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective. Ashgate Publishing Ltd., Farnham, ISBN-13:9780754677307, Pages: 232.
- Detrick, S., 1999. A Commentary on the United Nations Convention on the Rights of the Child. Martinus Nijhoff Publishers, The Netherland, pp: 18.
- Dusuki, F.N., 2009. The convention on the rights of the child and the administration of Juvenile justice in Malaysia: An overview on the legal framework. Proceedings of the Human Rights and the Administration of Juvenile Justice: A Report of SUHAKAM's Conference Held in Conjunction with the Eighth Human Rights Day, September 9, 2008, Human Rights Commission of Malaysia, Kuala Lumpur, pp: 40-49.
- Fortin, J., 2005. Children's Rights and the Developing Law. 2nd Edn., Cambridge University Press, New York, USA., Pages: 663.
- From Cradle to Coffin, 2009. A report on child execution in Iran. The Foreign Policy Centre, <http://www.stopchildexecutions.com/updates/SCE-Appendix-A-From-Cradle-to-Coffin-Report.pdf>.
- Lee, M.Y.K., 2008. Universal human dignity: Some reflections in the Asian context. Asian J. Comp. Law, 3: 283-313.
- Loeber, R., 2008. Tomorrow's Criminals: The Development of Child Delinquency and Effective Interventions. Ashgate, Farnham, ISBN-13:9780754671510, Pages: 230.
- Melchiorre, A. and IBE, 2004. At What Age Are School-Children Employed, Married and Taken to Court? 2nd Edn., International Bureau of Education, London, pp: 76.
- Nayagam, J., 2009. Strengths and weaknesses of the protection mechanism and support system for reintegration of children in conflict with the law. Proceedings of the Human Rights and the Administration of Juvenile Justice: A Report of SUHAKAM's Conference Held in Conjunction with the Eighth Human Rights Day, September 9, 2008, Human Rights Commission of Malaysia, Kuala Lumpur, pp: 50.
- Ottenhof, R., 2001. Criminal responsibility of minors in national and international legal order. Int. Rev. Penal Law, 72: 669-673.
- Sarygin, S.V., 2009. New protection status of juvenile victims with the passage of the new criminal legislation in Cambodia. Asian J. Comparat. Law, 4: 1-34.
- UN, 2000a. Report of the committee on the rights of the child: General assembly official records fifty-fifth session supplement No. 41 (A/55/41). United Nations, New York, USA.
- UN, 2000b. Report of the Committee on the Rights of the Child, Concluding observations: Sierra Leone (Principal subjects of concern). General assembly official records fifty-fifth session supplement No. 41 (A/55/41). United Nations, New York, USA., pp: 228.
- UN, 2000c. Report of the committee on the rights of the child: Special commemorative meeting to celebrate the 10th anniversary of the adoption of the convention on the rights of the child (No.1558(h)). General assembly official records 55th session supplement No. 41 (A/55/41). United Nations, New York, USA., pp: 321.

- UN, 2000d. Report of the committee on the rights of the child. Concluding observations: Honduras (Principal subjects of concern and Committee recommendations (Definition of the child No. 671). General assembly official records 55th session supplement No. 41 (A/55/41). United Nations, New York, USA., pp: 126.
- UN, 2000e. Report of the committee on the rights of the child. Concluding observations: Grenada (Principal subjects of concern and committee recommendations). General assembly official records 55th session supplement No. 41 (A/55/41). United Nations, New York, USA., pp: 274.
- UN, 2000f. Report of the committee on the rights of the child. Concluding observations: Thailand, Principal subjects of concern and committee recommendations (No. 413). General assembly official records 55th session supplement No. 41 (A/55/41). United Nations, New York, USA., pp: 71.
- UN, 2000g. Report of the committee on the rights of the child. Concluding observations: Ecuador, principal subjects of concern and committee recommendations (No. 286). General assembly official records 55th session supplement No. 41 (A/55/41). United Nations, New York, USA., pp: 46.
- UNICEF, 2010. South Asia and the minimum age of criminal responsibility: Raising the standard of protection for children's rights. United Nations Children's Fund Regional Office for South Asia, Kathmandu, pp: 6-11.
- Van Bueren, G., 1998a. International Documents on Children. 2nd Edn., Martinus Nijhoff Publishers, The Netherland, ISBN-13:9789041104458, pp: 15-16.
- Van Bueren, G., 1998b. The International Law on the Rights of the Child (International Studies in Human Rights, 35). 1st Edn., Martinus Nijhoff Publishers, London, ISBN-13:9789041110916, Pages: 464.
- Zainol, Z.A. and A.B. Mohamad, 2012. Cybersquatting of domain names in civil law with special reference to morale right in the islamic perspective. *The Soc. Sci.*, 7: 200-208.