

BRIEFING PAPER SERIES:
RIGHTS OF THE CHILD

**AGE OF CRIMINAL
RESPONSIBILITY UNDER
IRANIAN LAW**



INSIGHTIRAN

Age of Criminal Responsibility under Iranian Law

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According to international rules, including the Convention on the Rights of the Child (CRC) and the Beijing Rules (United Nations Standard Minimum Rules for the Administration of Juvenile Justice), every human being under the age of eighteen years old is considered to be a child and the age of 18 is the standard age of entering into majority and full criminal responsibility. It is also established that the states have limited discretion to set a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. (Article 40 of the CRC)

The problem that arises in the IRI, and perhaps with some other Islamic states, is the contradiction between, on the one hand, the internationally accepted notion of “child” and age of criminal responsibility and, on the other hand, the age of maturity under Islamic Shari’a. In Islamic sources, reaching the age of maturity is deemed to be the point of leaving childhood and becoming an adult which results in full criminal responsibility. Additionally, in none of the Islamic schools is the age of maturity under Islamic Shari’a in complete conformity with the age of 18 as enshrined in international instruments and the age varies for boys and girls.

What is striking in the old and new Penal Code is that it includes an article that exempts immature children from criminal responsibility: according to article 146 of the new IPC “Immature children have no criminal responsibility”. Also, article 148 of the same law provides only correctional and security measures for immature offenders. Similarly, according to article 49 of the old IPC, “children” were exempted from criminal responsibility and, therefore, Correction and Rehabilitation Centres were in charge of correcting measures.

However, ignoring the internationally accepted definition of the child, the same laws define a child as an individual who has not reached the age of maturity under Islamic Shari'a. The only difference between the old and new Code is that, the old Code was silent on how old is "the age of maturity under Islamic Shari'a", and, in practice, it arguably referred back to the Civil Code (article 1210) which sets 9 lunar years (8 years and 9 months) for girls and 15 lunar years (14 years and 7 months) for boys as the age of maturity.[1] The new Penal Code has addressed this flaw and given this matter a separate article. Article 147 of the new IPC fixes the age of 9 lunar years for girls and 15 lunar years for boys as the age of maturity.

Despite the mandatory nature of the Penal Code, there have been many legal and religious disagreements about the age of maturity and criminal responsibility. Some Islamic jurists held different views on the age of maturity—for example some proposed the age of 13 lunar years for maturity of girls. Ayatollah Yousef Sane'i, for example, set the age of maturity for girls at 13 years old and not 9 years old. But the Penal Code has followed the fatwa by the majority of conservative clerics who deem 9 years to be the age of maturity for girls. The majority of lawyers have also believed that recognition of criminal responsibility for a girl of 8 years and 9 months old and a boy of 14 years and 7 months old is wrong, out-dated, and conflicts with the modern needs of society. In addition, the Committee had urged the IRI to set the age of majority at 18 and increase its minimum age requirements in accordance with international standards.[2]

It was, therefore, expected that the new IPC would address such criticisms and take a step forward. However, while the new IPC stipulates the age of maturity, it makes no change as of its formulation and its recognition as the minimum age of criminal responsibility. In their third Periodic Report to the CRC, the IRI authorities have alleged that "[t]he absolute criminal age has [been] increased to 18 years"[3] and that the new IPC no longer follows "the religious majority criterion"[4]. These assertions are completely untrue. The age of maturity under Islamic Shari'a is still the definitive criterion for criminal responsibility under the penal regime of the IRI; and fatwas (i.e. religious opinions) and recommendations which offered older ages are completely dismissed.

So, in fact, the hope that the minimum age of criminal responsibility would be changed (i.e. increased) in the new IPC is lost. This formulation allows girls as young as 8 years and 9 months of age and boys of 14 years and 7 months to be held criminally responsible. This clearly is a low and discriminatory standard.

1. Low Standard

The low age of criminal responsibility in Iran has been subject to legal and practical criticisms: while the minimum age for many legal affairs such as the application for a driver's license, obtaining a passport, and/or signing a deed, etc. is 18 years old, and people under the age of 18 years old are not considered as meeting the physical, mental and rational requirements for these acts, those same people, if they commit a crime, will be treated as an adult with full criminal responsibility. This is more considerable for girls as they are deemed of full criminal responsibility as soon as they become 8 years and nine months.

While the determination of a child's minimum age of criminal responsibility falls within the provenance of State Parties, it should not be "unreasonably low".^[5] Referring to the facts of emotional, mental and intellectual maturity, the Beijing Rules stresses that the beginning of the age of criminal responsibility should not be fixed "at too low an age level."^[6] More specifically, a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable."^[7] Therefore, the age of criminal responsibility in the Iranian criminal system, particularly for girls (8 years and 9 months) is "too low" and well below the international standard.

2. Discrimination against Girls

The Committee on the Rights of the Child emphasizes that the minimum ages set by States should be the same for both boys and girls in accordance with the principle of non-discrimination.^[8] The IRI's definition of a child and, subsequently, the minimum age is based on sex discrimination and is contrary to international standards. The Committee in its 2005 Concluding Observations on Iran

urged the IRI to make the age of majority and minimum age requirements “gender neutral”.^[9] This was totally ignored by the IRI when they changed the law. In the changes made to the Penal Code in 2013 the old discriminatory formula was reaffirmed.

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Footnotes:

[1] Proving maturity even before the aforementioned ages is possible under Islamic Shari’a on the basis of other physical signs. For example it is possible that a boy under the age of 15 is deemed as having attained maturity under Islamic Shari’a, if he is capable of producing sperm.

[2] Committee on the Rights of the Child, Concluding Observations on the second periodic report of Iran, UN Doc CRC/C/15/Add.254 (2005), para 23.

[3] The Islamic Republic of Iran, The Third Periodic Report on the Convention on the Rights of the Child, March 2013, p. 11.

[4] Ibid.

[5] CCPR General Comment 17, Article 24 (Rights of the child) 1989, para 4.

[6] UNGA, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), UN Doc A/RES/40/33, Rule and Commentary 4.1.

[7] General Comment 10, Children’s rights in juvenile justice, para. 32.

[8] General Comment 4, Adolescent health and development in the context of the Convention on the Rights of the Child, para. 9

[9] CRC, Concluding Observations on Iran 2005 (n 2), para 23.

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Insight Iran is a non-governmental non-profit organisation aimed to provide insight into the situation of human rights in Iran.

About Briefing Papers Series:

This legal analysis belongs to a series of briefing papers on human rights in Iran authored by the legal experts of Insight Iran. Each paper provides a human rights legal analysis and examines a distinct topic to measure the IRI's international obligations against domestic laws and practices. These briefing papers provide an accurate and analytical account of the violations in Iran from the standpoint of international law, which may offer UN human rights institutions, States, and civil society advocates a better understanding of, and tools to promote, the situation of human rights in Iran.

The first series of the briefings examines some critical aspects of the rights of the child with respect to the IRI's obligations under international human rights law including the Convention on the Rights of the Child (CRC) to which Iran is a State party.

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