



A LEGAL STUDY ON CHILDREN'S RIGHTS AND IRAN'S LAWS

EXECUTIVE BRIEF

In 2015-2016, a number of activists at the grassroots level took it upon themselves to research children's rights in Iran. Following research, comparative analysis and consultation, interviews with children as well as experts and activists working on children and their rights, this legal study was produced. The five areas of children's rights in Iranian laws include:

1. Children's education rights;
2. Children's labour rights;
3. Children's marriage rights;
4. Children's legal and judicial rights; and
5. Children's health rights.

After examining these rights in relation to theory and application of laws in Iran, the study offers recommendations for the above areas, in the hope that it will help develop appropriate legislation for children's rights in Iran at the local, national and international levels.

These recommendations include:

- In the area of children's' education rights, the laws need to be reformed to conform with the principles of the Constitution;
- In the area of children's labour rights, in addition to legal reforms, proper enforcement mechanisms are required;
- In the area of children's health rights, new laws need to be put in place;
- In the area of children's marriage rights, legal reforms and creation of suitable enforcement mechanisms are required;
- In the area of children's legal and judicial rights, legal reforms are required.

It should be noted that while legal reforms and introduction of clear, appropriate laws could prove to be very effective; it is by no means sufficient.

Improvement of family living conditions and raising awareness about the right methods of education and dealing with children and similar matters call for collaborative efforts in various sectors including economical, psychological, and sociological.

In addition, the existence of a monitoring organisation or entity to exclusively supervise the proper implementation of the laws and regulations pertaining to the children in the society could be an effective measure.

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Introduction

In today's world, the word "child" has particular importance because not only is the responsibility to protect, guard and educate children shared by parents, schools, society and the government, but all of their plans and objectives must be focused on children, for they engender the future of every society. Children in Iran are no exception. In fact, there are a number of areas in which children and their access to rights stand in need of improvement. Given the varied approach to the definition of child in the Convention on the Rights of the Child, which Iran is a signatory to, and the laws of the Islamic Republic, it is important to examine the definition of child.

Definition of Child in Iran's Law

Iranian law does not clearly define a child. The definition of a child appears differently in every law and article, using various terms such as 'minor', 'child', 'immature' and 'not of age.' For example, Note 1 of Article 1210 of the Civil Code states: "The age of maturity for boys is 15 lunar years (11 days shorter than a solar year) and 9 lunar years for girls. Therefore, boys are considered mature after reaching 15 years of age while girls are considered mature at 9 years old. This is also regarded as the age of maturity according to Sharia law."

The Age of Majority

The term Rashid (major) is used to describe a fully-grown person. The opposite term is Non-Rashid (not of age) or Safih (juvenile).

According to Article 1208 of the Civil Code: "By the term 'not of age' means a person whose methods of handling his property and financial rights are not in accordance with reason. The law defines the age of majority as 18 years; therefore, persons under 18 years old are considered not of age."

On the other hand, according to Article 1210 of the Civil Code: "No one, when reaching the age of majority, can be treated as disabled in respect of insanity or immaturity unless his immaturity or insanity is proved," which means that: whoever is mature, will be considered as major; unless his immaturity is proved. As stated earlier, the age of maturity is 9 and 15 lunar years for girls and boys respectively, while the age of majority is 18 years for both girls and boys. But in this particular law, the legislator has used these two terms interchangeably, using the terms 'major' and 'mature' as synonyms. The only explanation would be to assume that the legislator has distinguished between the age of maturity according to Sharia law and the age of majority declared by the law and that this particular Article refers to the latter. The term "minor" is also not clearly defined in Iranian law. But, the following definitions appear in the legal terminology:

In Fiqh (the human understanding of Sharia law), a minor is someone who has not reached the age of maturity. According to the Civil Code, a minor is someone who is under 18 years of age.

The term “discriminating minor” is defined as: a minor who can distinguish between beneficial and harmful financial decisions (of low importance) similar to a wise and mature person, and if he lacks this quality, he shall be regarded as “non-discriminating minor.”

Article 1212 of the Civil Code states: “The acts and words of a minor child are null and void and of no effect so far as his acts and words relate to his property and pecuniary rights. A discriminating minor child, however, can take possession of gratuitous property, such as a gift, a free transfer, or assume possession of unclaimed property.”

Therefore, a minor is someone who cannot intervene whatsoever in his property; whereas, a discriminating minor can only take possession of gratuitous properties.

Note 1 of Article 1212 defines a child as “someone who has not reached the age of maturity according to the Sharia law.” Therefore, girls below 9 years of age and boys below 15 are regarded as children. Whereas, Article 304 of the Code of Criminal Procedure states: “All offences committed by children and individuals who are under 18 solar years are investigated by the Court for Children and Adolescents.” This means that the law identifies persons under 18 years old as a child. Ultimately, it remains unclear as to how a child is defined in Iranian law and at what age children become legally responsible?

Article 91 of the Islamic Penal Code states: “In respect of crimes punishable by *hadd* and *qisas*, if the offenders, who are under 18 years old but have reached the age of maturity, do not understand the nature of the committed crime or its prohibition, or if there is doubt about their mental development and sanity, then, according to their age, they shall be subjected to one of the punishments provided in this chapter.”

This Article conveys that the child who has reached the age of maturity and who understands the nature of the committed crime is punishable by *hadd* (punishments fixed in the Quran and hadith) and *qisas* (the law of retaliation), similar to an adult.

Therefore, it is unclear exactly when the children pass from childhood to adulthood and become fully liable for their criminal actions.

Definition of Maturity

Maturity is the term used to imply sexual maturity, which is sometimes also termed “puberty,” the “marriageable age” or the “reproduction age.” Like all natural phenomena, the age of puberty is affected by race as well as environmental factors; such as distance from the equator, elevation from the sea level, humidity and other natural and racial factors which vary in different parts of the world and among different nations. But on average, puberty begins in girls around ages 9-15 and in boys between ages 13-18.

Maturity According to Sharia or Islamic Law

Generally, in the religious texts of Islam, the term ‘age of criminal responsibility’ does not appear anywhere, while the term ‘maturity’ is often mentioned. There are multiple

references of the word 'maturity' in the verses of Quran. In the sixth verse of Surah An-Nisa (women), God said: "And test the orphans [for their abilities] until they reach maturity and feel inclined towards marriage." In verse 152 of Surah Al-An'am (the cattle), He said: "And do not approach the orphan's property except in a way that is best until he reaches maturity."

Maturity is also mentioned in some religious narratives. Abdullah bin Sinan narrates in a credible narrative from Imam Sadiq (AS): "When boys reach the age of 13, their good and evil deeds will be recorded. The same is true for the girls when they reach the age of 9, as this is the age when their menstruation begins." According to this narrative, female maturity is associated with menstruation and "obviously, if a girl's menstruation cycle does not begin at the age of 9, she will not be considered mature."

Therefore, wherever maturity is discussed in the religious texts, no particular age has been agreed upon. But most Islamic jurists (foqaha) agree the age of maturity for girls is 9 and for boys 15 lunar years, and consider this the same as the age of criminal responsibility.

The age of religious obligation (when personal religious obligations such as the obligatory prayer, fasting, pilgrimage and other such duties required by the Sharia law become mandatory to the individual) is closely tied to the definition of the age of maturity for individuals. Of course, this is a specialised topic of discussion of legal/religious nature. Perhaps, the existing inconsistencies are a result of integrating and merging the age of religious obligation with the age of civil liability.

Definition of Growth in Developmental Psychology

Psychologists, in their latest studies, have suggested that the human brain continues maturing throughout the growth period until the early 20s and only becomes fully developed at the age of 25. Doctors and psychologists believe that the prefrontal cortex (located just behind the forehead), which is responsible for a variety of functions, such as logical thinking, decision-making and emotional control, is the last part of the brain to mature.

This means that adolescent behaviour and decision making may differ from those of youth in their mid-20s because in the adolescent, decision making relies on a certain part in the brain which is also the brain's emotional centre and is still underdeveloped.

British child psychiatrist, Eileen Vizard, believes in the existence of substantial evidence showing that an individual's reasoning abilities and qualifications depend on their physical, intellectual, emotional and social development. Accordingly, she suggests that 14 or 15 should be the minimum age for criminal responsibility.

Convention on the Rights of the Child and Iran

One of the legal developments in today's world is the formal recognition of the rights of children and calling international attention to it--the best example of which is the Convention on the Rights of the Child (CRC), which has been signed by 190 countries.

The government of the Islamic Republic of Iran is a state party to the Convention. The Iranian government signed the CRC on September 5, 1991 and ratified it in the Parliament in February 1994. The CRC officially came into force in Iran in July 1994.

Iran's Reservation to the Convention on the Rights of the Child

Even though Article 51 of the CRC entitles the state parties to make reservations only at the time of ratification of or accession to the treaty, the government of Iran made the following reservation upon signing the Convention: "The Islamic Republic of Iran is making reservation to the articles and provisions which may be contrary to the Islamic Sharia, and preserves the right to make such particular declaration, upon its ratification." A number of other Islamic nations have also made similar reservations upon ratification of or accession to the Convention.

Two years after signing the Convention, a bill authorising the government of the Islamic Republic of Iran's accession to the Convention was delivered to the Iranian Parliament on September 14, 1993. This bill was approved at a meeting of the Parliamentary Commission on the Legal and Judicial Affairs on December 19, 1993 and was later ratified in the Parliament's open session on January 9, 1994 with the following statement: "The government of the Islamic Republic of Iran ratifies and approves its accession to the Convention on the Rights of the Child, set out in one preamble and Article 54 but reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the internal legislation in effect."

Iran's reservation to the CRC makes the full implementation of the Convention in Iran virtually impossible as it enables the Iranian government to not only refuse implementing any law contrary to the principles of Sharia law at the time of signing the treaty, but also to reject any law pertaining to children's rights approved by the Convention in the future.

Had the Iranian government specified the exact articles or provisions in the CRC which were contrary to the Islamic laws rather than announce a blanket reservation, there would be more transparency and clarity in the area of child's rights in Iran. But the general nature of the reservation creates many problems and opens the way for ambiguity and misuse.

A point to reflect upon here is what is the object and purpose of creating the Convention on the Rights of the Child and its subsequent ratification by Iran? The main purpose of the Convention is to improve the condition of children rights in different countries and to oblige the member countries to take greater care in approving laws pertaining to children. But Iran's general reservation to the Convention "not to apply any provisions or articles that are incompatible with Islamic Laws and the internal legislation" negates many of the Convention's objectives and implies that the Iranian government is not committed to taking any steps towards improving its legislation.

The Importance and Urgency of Children's Issues

Recognising the rights of the child is a matter of prime importance because it ensures the child's physical and emotional wellbeing. Hence, it is necessary to carefully analyse whether or not the Iranian laws have addressed the issue properly.

The first step towards improving the scenario in Iran would be to determine clearly the age group that defines a child. As of now, there is no clear definition of child in either the Civil Code or the Penal Code of Iran, wherein each section offers a different definition of the child. Children's rights activist, Ahmad Latifi told the Iranian Labour News Agency (ILNA) on the shortcomings of Iran's most recent Code of Criminal Procedure that came into force in June 2015:

Under Article 66 of the new, reformed Code of Criminal Procedure, "All community-based organisations whose constitution focuses on protection of children and adolescents, women, the sick and the physically and mentally disabled, environment, natural resources, cultural heritage, public health and the citizen rights, can bring legal charges against offenders in their respective areas of activity. They can also participate in all stages of judicial procedure to present proofs of offenses and to protest the votes of the judicial authorities.

But this Article later underwent some changes and now reads: "All community-based organisations whose constitution focuses on protection of children and adolescents, women, the sick and the physically and mentally disabled, environment, natural resources, cultural heritage, public health and the citizen rights, can bring legal charges against the offenders in their respective areas of activity." As one can see, the parts allowing the community-based organisations to "present proofs of the offenses" and to "protest the votes of the judicial authorities" were eliminated in the revised version.

Therefore, the changes to the Article limit the power of the community-based organisations to support their causes, which is a step backwards. Moreover, he said, an amendment was added to Article 66, according to which, in case of crimes against chastity, the community-based organisations subject to this Article can only bring legal charges and present their proofs to the judicial authorities in accordance with Article 102 and its amendments, but are not allowed to attend the court meetings. This amendment is specifically related to children's rights activists and unfortunately bars the activists from attending children's court when such crimes take place. Noting the multitude of the cases related with physical and sexual abuse of children in Iran, he expressed hope that Article 66 of the new Code of Criminal Procedure will be restored to its previous form so that, in addition to bringing legal charges (which is still in effect), community-based organisations will be authorised to present proofs and protest the decisions by the judicial authorities.

Another important issue is that the criminal laws in Iran are drafted in accordance with the legislator's interpretation of the Sharia law. This has created many shortcomings where the two laws are not compatible, such as in defining the age of childhood and subsequently the age of criminal responsibility. A 9-year-old girl has not yet matured physically or mentally. In

today's world, a father should not be allowed to murder his own child and get away by only paying the blood money. It is also not acceptable for 13-years-old girls or younger to be forced into marriage by their parents and the court's discretion. It is not reasonable for mothers to not have any legal rights to confer their nationalities to their children or be denied the custody of their children despite being qualified.

In addition, Iran's Constitution, which is the basis for the country's legal system, makes no mention of the rights of the child; which further suggests that the issue of children is altogether neglected in the law.

Children in Iran are vulnerable. The number of working and street children is on the rise. Many underage girls are forced to marry due to poverty. Many children are detained in the correction and rehabilitation centres and many spend their days in prison, awaiting execution. Therefore, the vulnerable condition of children in Iran calls for better legal protection.

Contradictory Approaches in Law

An important issue to be considered by any legislator is to avoid drafting laws that are contradictory in their forms or nature and give way to ambiguity and abuse of law.

For example, Article 1179 of the Civil Code of the Islamic Republic of Iran entitles parents to punish their children, "as long as they do not abuse this right by punishing their children beyond the limits of correction." The Article does not clarify the "limits of correction". Also, according to Article 1170 of the Civil Code, parents who punish their child beyond the customary limit, lose the right to the child's custody. Again, the term "customary limit" is not elaborated. Article 158 of the Islamic Penal Code exempts from legal punishment, "the acts committed by parents of minors in order to discipline or protect them, within the customary and religious limits". So, on one hand, the law denies custody of the child to parents who punish their child beyond the customary limit and on the other hand, exempts from legal punishment the acts committed by parents to discipline their child within the customary limits, without clarifying these limits. This indicates an inconsistency and lack of clarity in different laws.

1) CHILDREN'S EDUCATION RIGHTS

One of the most basic rights of any human being is the right to education, but unfortunately not everyone in Iran enjoys this right. Afghan children who do not have identification documents, children who do not have birth certificates and even children living in extreme poverty cannot take advantage of their right to education because even where free education is available, there are costs associated with buying stationary and clothes that poor families cannot afford.

In interviews with experts in this area, they have stated lack of awareness among the citizens about their legal rights as well as a lack of awareness about the importance of education in life as the main problems in this area.

“Even though legally the public schools should not charge any registration fees, in practice these schools demand some fees to be paid to assist schools. This creates a barrier for the education of children from extremely poor families. These schools often pressure families to pay the fees and do not provide concessions to families facing financial difficulties. Even when schools agree to enrol the student, the pressure and the humiliation that the student has to undergo from the school authorities discourage the child from continuing his/her education.”

Despite the laws in Iran that refer to the universal right to education, according to experts, more needs to be done to implement and enforce these laws. A child’s rights activist in Iran clarifies: “Officials must be appointed to enforce the laws. But citizens must also feel responsible and work together towards improving the state of education. Therefore, in addition to making legal protection available to all strata of society to improve education, there is a need to promote social awareness and build suitable infrastructure to achieve this goal.”

Children’s Education in Iran’s Statutory Law: Children’s Education in the Constitution

Article 30: “The government is responsible for providing the means for public education for everyone up to the end of high school. It must expand free higher education until the point when the nation reaches self-sufficiency.”

Article 19: “The people of Iran enjoy equal rights, regardless of the tribe or ethnic group to which they belong. Colour, race, language, and other such considerations shall not be grounds for special privileges.”

Article 20: “Members of the nation, whether man or woman, are equally protected by the law. They enjoy all the human, political, economic, social, and cultural rights that are in compliance with the Islamic criteria.”

According to Article 19 of the Constitution, all Iranian citizens enjoy equal rights and colour, race, language and other such considerations shall not be grounds for any privileges.

A few points merit attention: firstly, this Article names a number of considerations that could be grounds for special privileges and ends the sentence with “and other such considerations.” This means that any other consideration, which is not particularly named, should also not become ground for any sort of legal privilege. One important consideration, which should have been mentioned, is “religion,” which is covered under the vague term “other such considerations”. One improvement to this Article would be to include the word “religion” in its place, because according to Article 20, all members of the nation are equally protected by the law and enjoy all human, political, economic, social, and cultural rights. Ambiguity in this law provides an opportunity for abuse of law.

Children’s Education in the Civil Code

Article 1168: “Maintenance of children is both the right and duty of the parents.”

1. Legal Definition of Right and Duty

Right: The powers bestowed upon a person by the law are his rights. In Fiqh (the human understanding of Sharia law), the word ‘power’ is used to describe the same concept. The rights, also termed as ‘legal rights’, ‘statutory laws’ and ‘positive laws’, are by definition binding and enforceable.

Duty: The legal requirements with which the law’s subjects are bound to conform, also termed as ‘legal obligations.’

Therefore, maintenance of children is both the legal right of the parents and enforceable by law as well as their legal duty. Also, the rights of protection and care of the child have historically and in every religion been considered as the customary and religious rights of the parents and no authority can take away this right and duty, unless it is found to be in the best interest of the child.

Article 1169: “A mother has preference over others for seven years from the birth of her child for the custody and maintenance of the child whose parents do not live in the same house. After the lapse of this period, custody will devolve to the father.

Amendment: If there is any dispute between the parents after the child turns seven years old, it is up to the court to determine the custody according to the child’s best interest.

(Announced by the Expediency Discernment Council on November 29, 2003).”

This Article has undergone a significant improvement. The Article originally gave women primary custody rights over their children until boys turn 2 and girls turn 7, but the age for boys was later raised to 7 as well. Moreover, after the child turns 7 years of age, the court shall determine the child’s custody in case of disputes.

But in reality the scenarios witnessed in family courts tell a different story. The woman must go through complicated procedures to claim custody of her children and even after providing sufficient proof that the father is a substance abuser or is morally ineligible, the court often rules for a compromise or grants custody to the father on grounds of better financial capabilities.

Recommendation: The law cannot do anything further in such cases. Most legal procedures do not give the woman a chance to acquire the qualifying condition to peacefully take custody of her child. Therefore, the judges of family courts are advised to handle their jobs carefully and with more awareness of family issues. Meanwhile, steps should be taken towards adding more detail and clarity to the law. For example, in case of substance abuse, the law should specify exactly when and under what circumstances substance abuse by a family member could harm or cause trauma to other family members, and so on.

Article 1170: “If the mother becomes insane or marries another man during her period of custody, the custody will devolve to the father.”

Contradiction: If a mother marries another man, she loses custody of the child. But the law remains silent about the father who marries another woman. This is a case of gender discrimination, which is in contradiction with Article 20 of the Constitution.

Article 1171: “If one of the parents dies, the custody will be the duty of the surviving parent, even though the deceased be the father and he may have appointed a guardian for the child.”

Article 1172: “Neither of the parents can refuse to maintain the child during the time when he or she is responsible for his/her custody. If he or she does so, the court must induce him or her, on application by the other party or the guardian or one of the relatives or the public prosecutor, to assume the custody. If such enforcement is impossible or ineffective, the court must arrange the custody at the expense of the father, or of the mother in the event of the death of the former.”

Punishment:

Article 1173: “If the physical health or moral education of the child is endangered as a result of carelessness or moral degradation of the father or mother who are in charge of his/her custody, the court can take any action appropriate for the custody of the child on the request of the child’s relatives or his/her guardian or the public prosecutor.”

The following conditions are defined as examples of parent’s carelessness or moral degradation:

1. Excessive addiction to alcohol, drugs or gambling;
2. Moral corruption or prostitution;
3. Mental illnesses diagnosed by the forensic doctors;
4. Child abuse or forcing the child to participate in immoral activities such as prostitution, begging or smuggling;
5. Repeated physical assault beyond the customary limit.

The fifth condition, which is “physical assault beyond the customary limit” is mentioned as one of the conditions that could lead to the parents losing custody of their child. Once again the law has failed to specify the “customary limits”, which in effect would mean that the parents are legally permitted to physically abuse their children as long as it is within certain limits, without defining these limits.

Article 1179: “Parents are entitled to punish their children but they must not abuse this right by punishing their children beyond the limits of correction.”

Article 158 of the Islamic Penal Code: “In addition to the cases mentioned in previous articles, committing conduct which is considered by law as an offense shall not be punished in the following cases: ... (d) The acts committed by parents and legal guardians of minors and

insane people in order to discipline or protect them provided that such actions are exercised within the customary and religious limits for disciplining and protection.”

Nasim, a social worker, states, “Iranian law has many defects when it comes to the physical health of children, especially considering that most instances of child abuse take place within the family and that children are often abused for many years by their parents, the parent’s partner or step- parents. For example, the law has entitled the father and the paternal grandfather to punish the child within the limits of correction. But without elaborating on ‘the limits of correction’ it is unclear whether whipping the child or knocking his/her head against the wall are acceptable methods for disciplining or not. Another defect is that the father or the paternal grandfather, who murder the child, would not be sentenced to death.

Another example is that punishing a child offender is permitted in the law as a measure to keep the child from repeating the offense. Therefore, the child offender can be punished but once again the law fails to clearly state the definition of offense, who is a child offender and up to what limit can the child offender be punished? Another area, which needs elaboration, is regarding the age for qisas (the law of retaliation) of child offenders. For example, a 9-year-old girl who commits a crime such as robbery receives similar punishment as that of a mature woman. (Of course, this law is currently under revision by the judges in children courts.) This means that currently there is a problem with the age of criminal responsibility in Iran, which is currently 9 lunar years for girls and 15 lunar years for boys. Although judges are trying to exclude children below 18 years of age who commit murder, from death sentences, this is still practiced in smaller cities. Another important issue is regarding alternative punishment.

It is not clear what should be the alternative sentence for children who deserve a qisas according to Islamic laws.

Entitling punishment rights to parents without specifying the limits of punishment and simply using terms such as “within the customary and religious limits” creates an unfavourable environment for children who do not have the means to defend themselves and their rights as a member of society.

In such cases, legislators should have applied more caution while drafting the laws. Therefore, all of the laws pertaining to the punishment of children need to be revised and improved as punishments cause irreversible physical and mental harm to children.

One example that may help clarify this point is the case of Saeed. He is a 17-year-old child worker who in response to the question “have you ever been physically abused? If so, by whom?” shared the following with us.

“I have been beaten by my father many times. Once, when he was whipping me with his belt, the belt buckle got stuck in my head, so we had to take it out with the help of a nail clipper. I have also been beaten at work. My boss has slapped me a couple of times. I have also fought on the street, but those were at least two-sided.”

Contradiction: According to Article 40 of the Constitution, “No one can claim the exercise of his right as a pretext to harm others,” however, these laws are the exact opposite of this Article because the right of the parents to punish their children causes harm to the children.

Recommendation: The law must precisely define the limits of correction and the customary limits of punishment, so as to prevent the abuse of these rights.

Article 1174: “If the parents of the child do not live in the same house owing to divorce or any other reason, either of the parents who is not in charge of custody of the child has the right to visit the child. Determination of the time and place of visit and other particulars will be decided by the court if there is any dispute between the parents about them.”

Article 1175: “A child cannot be taken from the parents or the father or the mother who is in charge of his/her custody except in cases where legal justification exists for doing so.”

Article 1176: “The mother is not obliged to suckle the child unless the child cannot be fed except with the milk of his/her mother.”

A question arises as to whether it is a mother’s right to suckle her child or not? And is it not the child’s right to enjoy the mother’s milk?

This Article needs some reflection, for here too the mother’s right not to suckle her child is contrary to the child’s right to benefit from the mother’s milk. So which one is more important? The mother’s duty is to protect and care for her child. In that light then, is suckling the child not part of the mother’s duty to protect and care?

On the other hand, this is a right entitled to the mother and it indicates that the mother should have complete freedom to choose in this matter, so no one could take this right away from her by forcing her to suckle her child.

Contradiction: If maintenance of the child is the legal and religious duty of parents, then providing the mother’s milk to the child is also among these duties; therefore, this Article is in contradiction with Article 1168 of the Civil Code.

Article 1177: “A child must obey his/her parents and must respect them at whatever age he/she may be.”

Article 1178: “Parents are bound to take necessary measures for the education of their children as much as the circumstances and their means allow. They must not let the children’s talents to remain undeveloped.”

The law binds the parents to take measures for education of their children as much as their means allow and to not leave the child’s talents undeveloped. But unfortunately, according to the interviews we conducted for this study, in families that are in extreme poverty, children are not only deprived of education, they also have to assist the family by working outside the home or taking care of younger children at home. No provision has been made for enforcing this law, which means that the parents who refuse to provide education to their children, despite having the necessary means, do not face any penalty.

Recommendation: Certain provisions are required to guarantee the enforcement of this law.

The Effects of Rights and Duties on Children's Education: Enforcement of the Rights Concerning Child's Education

This section focuses on some clauses of the "Family Protection Act" which intends to ensure the enforcement of children's right to education. Any law that is contradictory to other laws or the neglect of which has led to denying the rights of a member of the society has been analysed and studied.

Article 6: "The mother or any other person who has the custody of a minor or an incapable person due to necessity has the right to claim to receive alimony for the minor or the incapable person. In such case, the court shall first examine the claim of necessity."

Article 29: "When issuing a divorce order, the court will make decisions in accordance with the stipulations in the marriage contract and the contents of the marriage document for the fate of the dowry, mihriyyih, alimony for the wife, children and carrying and custody and maintenance of the child and its cost and method of payment, as well as the amount payable to the wife for the duration of marriage according to Article 336 of the Civil Code.

Furthermore, the court will decide the time, manner and place of visitation with the father, mother and other relatives, having in mind the emotional dependency and interests of the child. Registering divorce is dependent upon achieving the aforementioned rights, other than when the wife agrees or a definite order of insolvency or payment arrangement has been issued. In any case, if the wife agrees to be divorce without ensuring the aforementioned rights, she can request these rights through said court proceedings after the divorce is registered."

Article 40: "Anyone who refuses to carry out the court's order regarding the custody of the child or prevents its implementation or refuses to return the child, will be arrested on the request of the interested party and by order of the court that issued the initial divorce order until the execution of the order."

Article 41: "If the court decides that the agreements regarding the visitation, custody, maintenance and other matters related to the child are contrary to the child's interest and welfare or in the cases where the person responsible for having custody refuses to do the duties prescribed to custody- holders or prevents visitation of the child by the people who have visitation rights, the court can make any decision including transferring custody to someone else or appointing a supervisor with the prescribed scope of responsibilities or other such decisions that have the child's interest in mind."

Article 42: "A minor or an insane person cannot be taken away from his/her place of residence, that was agreed upon by both parties or which was his/her place of residence before the divorce took place, to be sent out of the country without the approval of his/her guardian, mother or the person who is responsible for his/her custody and maintenance. If the court agrees with taking the minor or the insane person out of the country on the

request of the interested party, the court shall take appropriate measures to ensure the return of the minor or the insane person.”

Article 43: “The custody of children whose father has died is the responsibility of their mother, unless the court decides, on the request of the children’s legal guardian or the public prosecutor that entitling the custody to the mother is not in the best interest of the children.”

Article 44: “If any of the executive bodies referred to in Article 5 of the Public Service Management Act (ratified on September 30, 1997) are required to submit or transfer ownership of any wealth or properties to a minor or other incapable person, these properties shall be given, with the discretion of the public prosecutor, to the person in charge of custody and maintenance of the incapable person within the reasonable limits of day-to-day costs; unless the court decides otherwise.”

The Family Protection Act entrusts the management of the incapable person’s properties to the person in charge of his/her custody; whereas articles 1235, 1214 and 1217 of the Civil Code entrust the responsibility of managing the minor person’s properties directly to his/her natural guardian or legal guardian, excluding the mother who might be responsible for the child’s custody. Not only has the Civil Code remained silent in this matter about the situation where the mother is in charge of the child’s custody, but neglecting this matter while dedicating three articles to the role of the natural and legal guardian in managing the minor’s properties indicates the low value given to mothers and women in the Civil Code. Article 44 of the Family Protection Act not only contradicts with the Civil Code, but it also symbolizes the gender discrimination, which is evident in each and every Iranian law.

Recommendation: The properties of the minor would better be entrusted to the person in charge of his/her protection and maintenance.

Article 1235 of Civil Code: “The protection of the person who is under guardianship as well as his legal representation in all matters relating to his property and financial rights, are entrusted to the guardian.”

Article 1214 of Civil Code: “Transaction and legal acts performed by a person not of age are not binding except with the permission of his natural guardian or his legal guardian, whether the permission has already been given or will be given after the transaction is made. Nonetheless, taking possession of gratuitous properties is binding even without a permission.”

Article 1217 of Civil Code: “The management of the property of minor children and insane and immature persons is entrusted to the care of their guardian, as is laid down in Part 3 of Book 8 and the subsequent Articles.”

Article 45: “It is compulsory to take the benefits and the interests of children and adolescents into consideration in all decisions made by the courts and executive authorities.”

Article 46: "Presence of children under the age of 15 in the proceedings related to the family disputes are forbidden, other than in necessary cases and with court permission."

Article 54: "If anyone who is responsible for the custody of the child refuses to carry out these responsibilities or prevents the visitation of the child by the person who has visitation rights, he/she will be obliged to pay a fine of the eighth category for the first time; and if he/she repeats this behaviour, he/she will face the highest corresponding penalty."

Enforcement of the Duties Concerning Child's Education: Grounds for Termination of Custody Rights

Article 1170: "If the mother becomes insane or marries another man during her period of custody, the custody will devolve to the father."

If a mother marries another man, she loses the custody of the child. But the law remains silent about the father who marries another woman. This is an example of gender discrimination, which occurs repeatedly in the law.

Article 1173: "If the physical health or moral education of the child is endangered as a result of carelessness or moral degradation of the father or mother who are in charge of his/her custody, the court can take any decision appropriate for the custody of the child on the request of his/her relatives or guardian or the public prosecutor."

The following conditions are defined as examples of parent's carelessness or moral degradation:

1. Excessive addiction to alcohol, drugs or gambling;
2. Moral corruption or prostitution;
3. Mental illnesses diagnosed by the forensic doctors;
4. Child abuse or forcing the child to participate in immoral activities such as prostitution, begging or smuggling;
5. Repeated physical assault beyond the customary limit.

Advisory Opinions on Custody

A question that arises examines whether the father of the child can terminate the mother's custody rights?

In response we find Advisory Opinion No. 1347-61/1/4 of the Legal Department that states "According to Article 1168 of the Civil Code, maintenance of children is both the right and duty of the parents and the rights and duties are not terminable or negotiable. The rights granted by the lawmaker and the legislator are obligatory and non-terminable."

A second question may be can the father prevent the mother who is morally degraded from visiting the child?

Advisory Opinion No. 7/444-62/9/10 of the Legal Department addresses this and clarifies: “Article 1174 of the Civil Code has given either of the parents the right to visit the child; therefore, the right cannot be denied from the mother who is morally degraded, but the meeting can be arranged in an appropriate place with the supervision of trusted persons.” Furthermore, can the mother obtain a passport for the child by presenting the court order that awards her the child’s custody?

Once again, Advisory Opinion No. 7/2438-29/7/59 of the Legal Department states: “Obtaining a passport for persons below 18 years old is only permissible through their natural guardian or legal guardian and the custody order is not binding in such case.”

The above clearly demonstrate a lack of respect for mothers/women’s rights. Not only does the woman need to obtain her husband’s permission for exiting the country, the child, too, cannot obtain a passport without permission from the natural guardian or legal guardian. The mother cannot obtain a passport for the minor child even if she holds a court order awarding her the child’s custody. Imagine a situation where the court has granted the mother custody because the father was found incompetent due to excessive addiction to drugs. In this case, the woman and the child have to pursue the permission of the addicted father in order to obtain a passport for the child. It is therefore advisable to enable the custodial mother to independently manage all affairs of the child including obtaining a passport for him/her or managing his/her properties.

Recommendation: The mother should also be permitted to apply for a passport for the child.

2. CHILDREN’S LABOUR RIGHTS

Economic problems, unemployment of the head of the family, cultural underdevelopment, immigration from rural to urban areas, greedy employers who employ children to pay lower wages and the children themselves who desire to earn more money by working, are some of the causes of child labour. Even though there are no accurate statistics about the number of working children, just a walk through large cities, such as Tehran, is enough to see that the number of working children, especially beggars and vendors, is on the rise. In this section, we will offer an analysis, by reviewing the provisions in the Iranian legal system, and see whether the failure of the government to address this issue is due to the legal defects and limitations or other social structures that need to be strengthened to address this problem.

Condition of Children’s Labour in Iran’s Laws

The 1989 Convention on the Rights of the Child obliges the signatory states to:

1. Set the minimum age for labour
2. Set clear regulations regarding the working hours and conditions
3. Adopt codes of conduct and other executive measures that guarantee the enforcement of the above provisions.

Some provisions in Iran’s Constitution address the issue of work and employment.

Article 28 of the Constitution states: “Everybody is free to choose whatever profession he/she wishes, as long as this profession is not against Islam, public interest and the rights of others. In considering the needs of society for different occupations, the government is required to provide favourable circumstances for the equal employment of all persons.”

Part 2 of Article 43 of the Constitution states: “Providing the circumstances and opportunities for employment for everyone with the prospect of achieving full employment; making means of labour available to everyone who can work but does not have the means; through cooperatives, interest- free loans or any other legitimate method that would not lead to the concentration and circulation of wealth in the hands of specific individuals or groups, or turn the government into a large and absolute employer. The application of these measures must take place with regard to the necessary factors; these steps must be taken with due regard for the necessities that determine national economic planning at each stage of growth.” Another part of the same Article reads: “Respect for an individual’s freedom to choose an occupation, refraining from forcing an individual to take a specific job and preventing the exploitation of another’s labour.”

The above laws are meant for all members of the society and use blanket terms such as “everybody” and “all persons;” while they remain silent about children’s labour. Unlike the Constitutional Law, the Labour Law has, in some instances, talked about labour done by persons below 18 years of age.

Minimum Working Age

Iran’s Labour Law has mentioned the minimum working age under two sections. Article 79 of the Labour Law states: “It shall be prohibited to employ any person under 15 years of age.” Article 80 immediately adds: “A worker between 15 and 18 years of age, hereinafter referred to as a ‘young worker’....” Therefore, since this Law has prohibited employment of persons below 15 years old, the term young worker has been used without any reference to the child worker.

On the other hand, an Article in the Penal Code prohibits employment of children below 12 years old on the carpet weaving workshops, stating: “Anyone who employs children below 12 years of age in the carpet weaving workshops for any purpose, shall be sentenced to imprisonment from 6 months to one year and pay a fine between 5,000 rials to 50,000 rials. In case of repetition, the offence is punishable by imprisonment up to 3 years and maximum fine of 300,000 rials for compensation.”

Contradiction: This Article contradicts Article 79 of the Labour Law, which prohibits employment of persons below 15 years old. Because when the Penal Code prohibits employment of children below 12 years of age, it automatically indicates that employing children above this age is not illegal, which is in contradiction to the Labour Law. While this Article is limited only to the employment of children in carpet weaving workshops, going against the Labour Law is in any case not justified. Therefore, since the Labour Law was ratified after the Penal Code, one can assume that the latter has become obsolete.

Moreover, in 2001 Iran ratified the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which was adopted by the International Labour Organisation (ILO) and its supplementary recommendation. Article 2 of the ILO convention indicates that all of the terms in the convention apply to “persons under the age of 18.” This is in contradiction with Iran’s Labour Law, but it must be noted that the aim of the ILO Convention is to eliminate the worst forms of child labour and not to prohibit child labour altogether. Therefore, the convention could still be aligned with Iran’s Labour Law. We shall discuss the ILO convention further in the section where we discuss the working condition for young workers.

Provisions for Improving Children’s Working Conditions

After prohibiting employment of children below 15 years of age and permitting employment of young workers between 15 and 18, the Labour Law addresses the working conditions for young workers.

Article 80 discusses the medical requirements for young workers, stating that they “shall undergo a medical examination by the Social Security Organisation prior to commencing employment.” Regarding repeating this medical examination Article 81 notes: “The medical examination of a young worker shall be repeated at least once a year, and the relevant documents shall be recorded in his service file. The physician shall express an opinion on the suitability of the type of work performed by a young worker according to his abilities. Should he consider the work to be unsuitable, the employer shall, to the greatest possible extent, reassign the worker to another position.”

Annual medical examinations would ensure that the young worker is not employed in jobs that have negative impacts on his/her health or jobs for which he/she is mentally or physically unfit. For this purpose, the employing workshops should maintain and protect the records of the workers’ annual medical examinations; but more often than not, this is ignored due to various reasons.

Article 82 of the Labour Law addresses the working hours for young workers, stating: “Daily working time for young workers shall be half an hour shorter than ordinary hours of work. Arrangements for this purpose shall be made by agreement between the worker and the employer.” As indicated in this article, only an agreement made between the worker and employer would guarantee that the young worker could enjoy a working time half an hour shorter than others. But it should be noted that this agreement sets the minimum working hours and no agreement can be signed for less working hours.

Article 83 prohibits imposing excess works to young workers: “It shall be prohibited to assign overtime work, night shift jobs, or arduous, harmful or dangerous work to young workers or

to require them to carry loads heavier than the authorized maximum weight without using mechanical means.”

Prohibiting night shift jobs for the young workers could perhaps be explained as a measure to protect them from getting involved in unethical acts or being abused.

Finally, Article 84 states: “In occupations and jobs which, on account of their nature or of the conditions in which they are performed, may be harmful to the health or morality of trainees or young workers, the minimum working age shall be 18 years. Such cases shall be determined at the discretion of the Ministry of Labour and Social Affairs.” The term “health” in the Article seems to refer to the emotional and mental health rather than the physical health.

As mentioned earlier, after ratifying the Convention concerning the Elimination of the Worst Forms of Child Labour, commentaries in the single-Article law required the Ministry of Labour and Social Affairs to prepare a list of harmful works in accordance with clause (d) of the Convention and in coordination with the Ministry of Health and Medical Education, Ministry of Industry, Mine and Trade, Ministry of Agricultural Jihad, the Employers’ Association and the Islamic Council Association.

Accordingly, an executive order was ratified in 2004, which listed the harmful works for people below 18 years of age:

- Working in the mines, including underground or above-ground mines, or working in the mines’ tunnels, passages or rigs;
- Working inside enclosed tanks;
- Working in tanning, leather production and animal intestine processing workshops;
- Working in the sewers, collection, transportation or disposal of municipal solid waste;
- Spraying pesticides in the farms and gardens, disinfecting barns and poultry farms;
- Diving;
- Working on towers, moving chambers, scaffoldings or structures at heights of more than 5 meters above the ground level;
- Working in environments with high noise level (beyond permissible limits);
- Working on power transmission lines and substations of 63 kilowatt and higher power pressure;
- Jobs related with sand blasting, tar baking and hand-laying asphalt;
- Working with high vibration equipment (beyond permissible limit);
- Digging wells, canals, sewers and underground tunnels;
- Works with long-term radiation-related health effects, including exposure to radioactive material and ionizing radiation;
- Construction works;
- Driving and operating heavy and light vehicles, road construction and agricultural machinery;

- Metal and glass moulding, handling materials to and from the furnace and working in the vicinity of porcelain and earthenware baking furnaces;
- Working in docks, power plants, refineries, petrochemical plants and other oil and gas departments;
- Working in the carpet weaving, felting, mat knitting, spinning and fabric weaving workshops;
- Working in the factories producing asbestos, cement and cement products;
- Works in the forests, forestry, cutting and transporting trees;
- Working in industrial cattle farms and slaughterhouses;
- Working with inflammable and explosive material;
- Working in asphalt production mills, stone crushing, stone cutting and road construction;
- Chlorination and purification of water tanks;
- Working in the mortuary and burial of the dead;
- Sailing or working with the ship's engine or in ship-building grounds;
- Working in electroplating industries;
- Operating hazardous equipment such as wood-working tools, injection press, blow and hydraulic moulding machines and the like;
- Working in furnaces and kilns (brickworks);
- Working with, handling and storage of glass wool material and related products;
- Insulation, production and installation of insulating material and applying roofing and flooring tar;
- Forging, welding, grinding and painting;
- Dismantling and cutting construction metals and stones;
- Working in hospitals and treatment and psychotherapy centres, elderly nursing homes, radiology and other laboratory departments;
- Working in bakeries;
- Working in workshops and factories that produce, package, formulate or store chemical and toxic materials of any kind.

Moreover, there is a regulation for the rehabilitation of street children, the third chapter of which addresses the duties of the partner organisations and institutions in rehabilitation of street children. Section 4 of this regulation lists the following responsibilities for the Ministry of Labour and Social Affairs:

- a. Granting credit facilities towards job creation for the unemployed family members of street children and children above 15 years old (with priority);
- b. Providing free vocational training to the families of street children and children above 15 years old through Technical and Vocational Training Organisation.

Law Enforcement

Some employers prefer recruiting children below 15 years of age in order to escape certain obligations defined in the Labour Law, such as in the case of firing an employee. Since children below 15 years cannot be officially regarded as workers, they are not included in the Labour Law.

Even if children want to complain, there is no authority to deal with such complaints. Moreover, their complaints would be considered unfounded because their working was illegal in the first place.

Chapter 11 of the Labour Law sets a number of regulations for protecting the workers' welfare, some of which prescribe penalties for the employers who violate these regulations. Article 171 prescribes imprisonment or fines for employers who fail to fulfil the obligations prescribed in this chapter. "Any failure to fulfil the obligations prescribed in this Code shall, as the case may be, punishable by imprisonment or a fine or both, in accordance with the following sections and taking account of the situation and means of the offender and the degree of the offence. Where noncompliance with the said statutory obligations results in bodily harm or a death of a worker, the court shall decide the case in accordance with the law applicable thereto, without prejudice to the penalties provided for in this Chapter."

Therefore, if noncompliance with the obligations on the employer's part results in bodily harm or death of a worker, the employer is punishable not only by the penalties provided in the Labour Law, but also by penalties provided in other relevant laws, including the Islamic Penal Code, for physical injuries and deprivation of life.

Article 172 addresses the issue of forced labour, stating: "In accordance with section 6 of this Code, all forms of forced labour are prohibited. Any person who commits an offence on that account shall, with due regard to his situation and means and to the degree of the offence, be subject to a term of imprisonment ranging from 91 days to one year and to a fine of between 50 and 200 times the minimum daily wage, in addition to the payment of fair remuneration for work completed and compensation for damages. Where several persons, jointly or on behalf of an organisation, cause a person to perform forced labour, each offender shall be subject to the penalties prescribed above and shall be jointly subject to payment of fair remuneration, unless the person who caused the offence to be committed is superior to the overseer, in which case such person shall be held personally responsible.

Note: Where several persons are collectively made to perform forced labour, the offender shall, with due regard to his situation and means and to the degree of the offence, be subject to the maximum penalty provided for in this section in addition to payment of fair remuneration."

Accordingly, clause 2 of the executive order issued for implementing the first and second amendments of the single-Article law ratified in regards to the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour states: "Anybody who employs children for the jobs listed in Article 1 of this regulation, shall be subject to punishments enlisted under Article 172 of the Labour law (ratified in 1990 by the Expediency Council) and once the offence has been proven in competent courts, the

Ministry of Labour and Social Affairs is responsible to introduce the offender or offenders, in accordance with the type and degree of the committed offence, to the Ministry of Health and Medical Education, Ministry of Industry, Mine and Trade, Ministry of Agricultural Jihad, the Employers' Association and other authorities in charge of trade and business licensing; which are in turn responsible for suspending the offender's business license in accordance with the following terms:

- For three months in case of first offence;
- For six months in case of second offence;
- For a year in case of repeated offences.

Therefore, according to this regulation, the employers who recruit young workers between 15 to 18 years old for prohibited jobs are subject, in addition to the punishments mentioned in this regulation, to the penalties listed in the Labour Law.

Also, Article 175 of the Labour Law imposes punishments to people who do not comply with the terms of articles 80, 81 and 82 of the Labour Law regarding young workers:

“Any person who commits an offence under a provision of sections 78 (first part), 80, 81, 82 or 92 shall, for each offence and as the case may be, remedy the offence or pay any amounts due to workers or both, within such time limit as may be set by the court in consultation with the representative of the Ministry of Labour and Social Affairs. In addition, the offender shall be subject to the following fines in respect of each worker:

- For up to 10 workers, 30 to 100 times the minimum daily wage of a worker;
- For up to 100 persons in excess of the first 10 persons, 5 to 10 times the minimum daily wage of a worker;
- For more than 100 persons in respect of the number in excess of 100, 2 to 5 times the minimum daily wage of a worker.
- In the event of a repeated offence, the offender shall be subject to 1.1 to 1.5 times the maximum cash penalty specified above or to a term of imprisonment ranging from 91 to 120 days.”

Article 176 addresses violations of other provisions of this law:

“Any person who commits an offence under a provision of sections 52, 61, 75, 77, 79, 83, 84 or 91 shall, for every offence and as the case may be, remedy the offence or pay any amounts due to workers, or both, within such time limit as may be set by the court in consultation with the representative of the Ministry of Labour and Social Affairs. In addition, the offender shall be subject to the fines prescribed hereunder in respect of each worker:

1. For up to 10 workers, 200 to 500 times the minimum daily wage of a worker;
2. For up to 100 persons, in excess of the first 10, 20 to 50 times the minimum daily wage of a worker;
3. For more than 100 persons, in excess of the first 100, 10 to 20 times the minimum daily wage of a worker.

4. In the event of a repeated offence, the offender shall be subject to a term of imprisonment ranging from 91 to 180 days.”

In addition to these terms, Article 713 of the section ‘Ta’zir and Detering Punishments’ of Book Five of the Islamic Penal Code states that: “Anyone who uses a child or an immature person for begging purposes or appoints people for this purpose, shall be sentenced to two years and restitution of all properties gained through this way.”

Recommendation: The main reason for child labour is poverty. Children often start working to earn a living or to help their poor families. While setting comprehensive and protective laws would be effective, it is also important to appoint inspecting bodies to ensure proper enforcement of the law and to closely monitor children’s working conditions. While offering recommendations for improving family living standards and creating reforms in the economic and social spheres might appear highly idealistic, it should be noted that simply imposing strict regulations that prevent children from working while disregarding the need for welfare measures, will only make life harder for children.

Therefore, creating facilities such as shelters or safe houses for working children, creating emergency telephone lines for reporting the cases, analysing and studying the issue, gathering accurate and real statistics, increasing social awareness through different channels such as television, holding seminars, educating children and their families about their rights, are all measures that could lead to effective improvement in this situation.

Jamal, a child consultant, says: “Prior to this, there were some families who could provide health insurance to their children; but this year, the Ministry of Labour and Social Affairs has undertaken to provide health insurance to children. There have been some positive improvements in this regard. Doctor Farid has reported that in the past year, 1000 working and street children have been insured as individuals and not under family plans, and can now benefit from health insurance services. The Society for Protection of Working and Street Children has also promised that it will cover more children under health insurance scheme in the coming year. Moreover, about 8,000 children are currently reported eligible for receiving health insurance but the requirements for insuring them has not yet been fulfilled.”

Meanwhile, providing health insurance to children is not the only solution because the insurance scheme only pays for part of the costs. Therefore, the number of centres that provide free healthcare services must increase.

CHILDREN’S HEALTH RIGHTS

Children’s health rights are closely related with the other legal issues described in this article. For example, one could consider the effects of child labour or early marriage and pregnancy on children’s health, or the effect of children’s education on their mental health.

Therefore, some of the legal points and the issues discussed in this section are replicated from the other sections, but with an emphasis on the children’s physical and emotional health.

General Principles for Recognition of Children's Health Rights

According to Article 29 of the Constitution: "It is a universal right to enjoy social security and have benefits with respect to retirement, unemployment, old age, workers' compensation, lack of guardianship, and destitution. In case of accidents and emergencies, everyone has the right to health and medical treatments through insurance or other means. In accordance with the law, the government is obliged to use the proceeds from the national income and public contributions to provide the abovementioned services and financial support for each and every one of the citizens."

In the regulation for Rehabilitation of Street Children, under the third chapter, which includes the duties and responsibilities of partner organisations and institutions, the Ministry of Health and Medical Education, has been trusted with the following tasks:

- a. Providing for the health needs of the street children and their immediate families and supplying the required doctors and nurses to the street children rehabilitation centres;
- b. Providing health services to level (2) and level (3) centres. Also, the Health Insurance Organisation has been tasked with:
- c. Providing and issuing health insurance for the child and his/her immediate family, in response to the applications made by the provincial Welfare Organisations.
- d. And the Social Security Organisation's tasks have been defined as: Providing free health insurance coverage and services to the child and his/her immediate family in the affiliated hospitals and treatment centres.

Book 8 of the Civil Code, which is about children, discusses some matters about the child's health under the chapters related with the child's maintenance and custody. For example, Article 1173 states: "If the physical health or moral education of the child is endangered as a result of carelessness or moral degradation of the father or the mother who are in charge of his/her custody, the court can take any decision appropriate for the custody of the child on the request of the child's relatives or his/her guardian or the Public Prosecutor."

The following are defined as instances of parent's carelessness or moral degradation:

- Excessive addiction to alcohol, drugs or gambling;
- Moral corruption or prostitution;
- Mental illnesses diagnosed by forensic doctors;
- Child abuse or forcing the child to participate in immoral activities such as prostitution, begging or smuggling;
- Repeated physical assault beyond the customary limit.

Article 1179 states: "Parents are entitled to punish their children but they must not abuse this right by punishing their children beyond the limits of correction."

The above two articles use the terms "customary limit" and "limits of correction" to define

the limit of punishment for the child by the parents, but they fail to specify clearly the acts that fall within these limits.

Another debatable article in this section is Article 1176, which states that “The mother is not obliged to suckle the child unless the child cannot be fed except with the milk of his/her mother.”

The importance of breastfeeding for the child’s health is common knowledge. Whether or not enjoying the mother’s milk is the child’s right and whether suckling the child is the mother’s duty or not are controversial issues in the field of human rights and have both their supporters and opponents, similar to the issue of abortion.

Circumcision of Young Girls

In this section, we discuss circumcision of girls at a young age, which is unfortunately common practice in some parts of Iran. There are no legal provisions in the Iranian law that prohibit female genital mutilation. But even though the law has not explicitly prohibited the practice, there are certain provisions in the Islamic Penal Code, which can be referred to for this issue. Among them is Article 664, which states: “Defloration of non-spouse in any of the following forms is a cause for liability: if the woman whose virginity was lost was immature or not consenting [to have intercourse] if the loss of virginity was through non-intercourse, the full blood-money of the woman; and if the woman’s virginity was also lost, the Mehr-ol-masal (compensation for defloration) must be added to the blood-money.”

Also, Article 706 and 707 of the Islamic Penal Code state that: “Damaging the man’s ejaculation or reproductive abilities or the woman’s ability to get pregnant or causing reduced sexual pleasure for men and women is subject to compensation,” and “Completely damaging a person’s ability to have intercourse is entitled to full blood-money.”

Introducing an explicit law in this subject could be helpful, but, in the meantime, the available articles in the laws could be used to ban the practice.

Law Enforcement

The main problem is that the Islamic Penal Code does not provide a clear definition of child abuse and thus the issue has not been criminalised. But in 2002, the Islamic Republic Parliament passed the “Law on Protection of Children and Adolescents”, which addresses the issue of child abuse.

Article 1 of the law underlines that the law includes all persons below 18 years of age: “All persons below 18 years old (according to the solar calendar) can benefit from the legal protections mentioned in this law.”

Article 2 of law prohibits child abuse, stating: “Abuse of any kind to children and adolescents which harms or endangers their physical or mental wellbeing is prohibited.”

Regarding the punishment for these offences, the law states: “Any kind of abuse, harassment or physical or mental torture of children and intentional neglect of their physical or mental wellbeing and preventing their education is prohibited and is subject to imprisonment from three months and one day to six months or up to 10 million rials in fine.”

The effect of child abuse on the child’s health varies, depending on the type and the degree of the abuse. Therefore, the punishment mentioned in the above Article is grossly inadequate for such acts that severely affect the child’s mental and physical health.

The positive aspect of this law is that Article 5 identifies child abuse among public crimes, stating: “Child abuse is a public crime and does not require the filing of a private complaint;” which makes it easier to deal with cases of child abuse.

Article 6 of the law obliges individuals and institutions that are somehow responsible for the maintenance and guardianship of children to report cases of child abuse: “All individuals, institutions and centres that are in some way or another responsible for the maintenance and guardianship of children are obliged to immediately report any observed cases of child abuse to the competent judicial authorities to legally pursue the offender and to take appropriate action. Failure to oblige this responsibility is subject to imprisonment up to six months or a fine of up to 5 million rials.”

But unfortunately Article 7 of the same law states: “The disciplinary acts mentioned under Article 59 of the Islamic Penal Code (ratified in 1991) and Article 1179 of the Civil Code (ratified in 1935) are exempted from the provisions of this law.”

Article 59 was changed in the new Islamic Penal Code to Article 158, and it reads: “The following acts shall not be considered an offence: ... (d) The acts committed by parents and legal guardians of minors and insane people in order to discipline or protect them, provided that disciplining and protection are exercised within the customary and religious limits.”

As mentioned earlier, due to failure to clearly define the permissible limits of punishment and leaving the decision to customs and religion, many acts of child abuse can be simply overlooked as punishments for disciplining the child.

And finally, Article 8 states: “If the offences mentioned in this law are subjected to other legal punishments, or if other laws prescribe heavier punishments or penalties for these offences, the maximum penalty shall be applied accordingly.”

This includes such cases where, for example, an act of child abuse has caused permanent injury or other physical injuries for which the law has prescribed blood-money, and so on. First published in 2017 by Persia Educational Foundation, London, United Kingdom

Recommendation: Along with the progresses and advancements in today’s world, the factors affecting children’s health are also changing, including the outbreak of communicable diseases such as AIDS, climate change and air pollution, impact of new technologies, the growing importance of mental health, etc.

Therefore, as significant achievements and advancements emerge in medical science, it has also lead to the creation of new problems and challenges.

The “right to health” is very important as it affects all other rights, but unfortunately much discrimination exist in this area. Children with disabilities, children suffering from infectious diseases, migrant children, street children and impoverished children are among the vulnerable groups that suffer from discrimination. Apart from reforming the existing laws in Iran, there is an imminent need to create new laws in this regard.

Kamal, a child consultant with 12 years of experience in the area of working children, says: “While a little progress has been made in the area of children’s physical health, the issue of children’s mental and emotional health has gone completely unnoticed. For example, primary school teachers do not undergo any training to help them understand the emotional needs of children in the first year of school, which is particularly difficult for children who are too attached to their parents. This results in a child’s an aversion to school, and they wish to rush back home to their parents and toys. If a child does not feel safe at school, he/she will likewise have an aversion to education in the future.”

CHILDREN’S MARRIAGE RIGHTS

Child marriage is considered by child rights activists as a type of sexual abuse and rape. Both economic and cultural parameters affect this issue. Family financial problems and traditional cultures that encourage marriage at an early age are both factors that lead to an increase in cases of early marriage. In this section the issue will be looked at from the viewpoint of Iranian law, examining the condition of children’s marriage in Iran’s legal system.

Children’s rights activist, Ladan, comments: “last year we travelled to Zahedan, the capital of Sistan and Baluchestan Province in southeast of Iran, to educate the government officials on children’s rights. In the market, we noticed a sunburned Sistani man who was shopping with a woman. The fabrics in Zahedan are among the most expensive in Iran and I was surprised to see that despite the dire poverty in the Province, the man was buying such expensive fabrics.

I was told that even the poorest man buys expensive fabrics for his wife at least once in his life. We asked the man and woman about it and the woman told us that the man, her brother, was planning to get married. Her brother already had an 18-year-old wife and three children and was now planning to marry a 12-year-old girl. We asked him where he was planning to live with the second wife. ‘In the same home,’ he replied. Imagine the 18-year-old wife with her three children who now have to live with another 12-year-old girl under the same roof. When the man saw my surprised look and that of my companions (all three women), he said, ‘Don’t look at me like that. The law and Sharia (the Islamic law) have given me the right to do so.’ And he was right. Just think about it. The 12-year-old girl was not even brought along to choose the fabric for her dress.”

Children’s Marriage

The United Nations passed a resolution to end child marriage in 2013, urging all member states to enforce laws for banning child marriage and punishing the offenders. As mentioned, the Convention on the Rights of the Child (CRC) of 1989 defines a child as any person below 18 years of age.

Article 1041 of Iran's Civil Code determines the minimum age of marriage, stating: "Marriage of girls before the age of 13 and boys before the age of 15 is contingent upon the permission of the guardian and upon the condition of the child's best interests as determined by a competent court."

Two points are worth noting in this article, in addition to setting a very low minimum age for marriage: firstly, it differentiates between the minimum age of marriage for girls and boys, setting a lower marriage age for the girls, which clearly contradicts Article 20 of the Constitution; and secondly, this Article has not banned marriage for girls below 13 years old and boys below 15 years old, but it has left it to the decision of the child's guardian and the competent court.

So practically speaking, if the child's guardian gives consent and the court has no objection, child marriage is permissible at any age without any restriction.

The only Article of the Constitution that refers to marriage is Article 10, which states: "The family is the foundational unit of the Islamic society. Therefore, all the laws, regulations, and their corresponding policies must be in the direction of facilitating the establishment of the family, the protection of its sanctity, and the maintenance of its relations, based on Islamic law and ethics."

The Right to Free and Full Consent to Marriage

The most important principle in marriage is that both parties have the right to enter marriage with free and full consent.

Article 1070 of the Civil Code states: "Consent of the marrying parties is the condition upon which depends the enforcement of the marriage contract, and if a party initially showing reluctance, subsequently authorizes the making of the contract, the contract will be binding unless the reluctance is so acute that the reluctant person cannot be considered as having been in possession of any intention."

The important point here is to recognise the child's consent to marry. How can a minor child, whose acts and words related to his/her financial matters are considered as void in order to protect his/her interest, make a decision that would change his/her whole life? Besides, there is no mention of the child's consent when it comes to marriage, but the marriage is conditioned to the permission and consent of the child's guardian.

Marriage to Adopted Child

The Bill to Protect Orphan and Vulnerable Children and Adolescents was disputed for a long time. An article was incorporated in the bill addressing the fact that if the child's legal guardian wants to marry him/her, the Welfare Organisation should notify the court about the conditions of the marriage and the court should in turn take appropriate decision, in accordance with the law, regarding continuation or termination of the guardianship.

After many controversies about the matter, Parliament members finally agreed that marriage to legal guardian, both during and after the period of custody, is prohibited. But the Expediency Council protested the decision, arguing that marriage to an adopted child is a right given by Sharia law and cannot be banned.

The bill was finally passed in 2013 and Article 26 of the bill refers to the issue of caring for the child after the termination of the period of custody. A note under this Article states: "Marriage between the guardian and the foster child is prohibited both during the period of custody and after that, unless a competent court, after obtaining advice from the Welfare Organisation, decides that the act is in the best interest of the foster child."

Therefore, the initial absolute ban was changed to this law, which makes the marriage between the guardian and the adopted child possible, on the condition that the court and the Welfare Organisation deem the marriage to be in the best interest of the child.

Law Enforcement

In recent years, a law entitled "Family Protection Law" was ratified in Iran. An article in this law sets punishment for any man who disregards the provisions stated under Article 1041 of the Civil Code.

This Article states: "If a man marries without regard to the provisions of Article 1041 of the Civil Code, he shall be sentenced to imprisonment of the sixth grade. If the abovementioned marriage leads to incidents resulting in permanent injuries to or disease of the wife, the husband will be sentenced to imprisonment of the fifth grade in addition to the payment of blood-money; and if the incident results in the wife's death, the husband will be sentenced to imprisonment of the fourth grade in addition to the payment of blood-money."

This article might seem promising at first. But the main problems are the previously mentioned flaws in Article 1041, which cannot be fixed with such supporting regulations. **Recommendation::** Because of deep-rooted traditional and religious beliefs, the issue of child marriage cannot be solved simply through legal reforms. While having a clear and practical law can be effective in the long term, since many traditional marriages in Iran take place simply by the reading of a marriage contract by a clergyman and never get registered, this issue should be solved at the grass root and cultural level. The involvement of clergymen could be effective in reducing the cases of child marriage.

Children's rights activist, Faramarz, believes: "Economic and cultural backwardness often go hand in hand. The available scattered statistics indicate that the role of economic poverty is more significant. For example, in Sistan and Baluchestan Province, Khuzestan Province and rural and marginal urban areas, the rate of child marriage is very high. The phenomenon is also observed in the poor suburbs of large cities like Tehran. But the issue of cultural underdevelopment is also certainly important. Many times, the girls are used as means to settle tribal conflicts."

Ladan, a child rights activist, says: "The two [factors] are interconnected. People, who are in extreme poverty and live in difficult conditions, do not have access to many facilities. When a girl gets married at the age of 13, certainly she cannot develop culturally. She lacks the suitable condition for cultural growth. Unfortunately, there is no exact data to indicate the types of families in which child marriage occurs most. But in most cases, cultural and economic underdevelopment goes hand in hand, and the law supports it too. We should consider reforming the law that gives people permission to do so."

CHILDREN'S LEGAL AND JUDICIAL RIGHTS

One of the most important and basic human needs is to have a sense of security. The sense of security has two aspects: physical and emotional.

Physical security means to be protected from any bodily harm in every environment, be it at home, at school, at university, at work, etc. Therefore, both the social environment and the law can affect our sense of security.

In its emotional aspect, the term security can take different forms; economic security, life safety, housing safety, etc. In this aspect of security, too, the social culture in which we live and the laws and regulations play an important part.

In today's society, women and children are the least secure groups because the law neither provides them sufficient protection, nor can they feel safe and secure in the traditional patriarchal society.

This lack of security affects all other aspects of life. Financial insecurity forces many women to tolerate a troubled marriage, to remain in jobs where they are sexually harassed or where they are overworked and underpaid, it obliges the child to tolerate unfavourable conditions in the family, and many other problems that follow one another like a chain.

Certainly, all these problems cannot be solved through reforming the law. Even expecting such a result would be naive. But legal reforms would no doubt be effective in improving the current conditions because the law, being enforceable, is an important instrument of social change.

Children's Legal Rights: Inheritance

Article 856 of the Civil Code states: “It is possible to appoint a minor as an executor, together with a person of full age. In that case, the person of full age will execute the duty until the minor arrives at full age.”

Article 878 expounds: “When at the time of death, there is an infant conceived which, if born and capable of inheriting, will prevent the succession of all or a part of the other heirs, the inheritance will not be divided up till such time as the state of the infant be determined; and if the infant conceived will not stand in the way of the inheritance of any of the other heirs, and the latter, desires the estate to be divided up, a portion must be set aside for the conceived infant equal to the portion of two sons of that degree of relationship; and the 82 portion of each of the heirs is conditional until the state of the infant conceived is determined.”

The above two articles protect the rights of the minor in inheritance and attempt to overcome any obstacle that might come on the way of the minor child benefiting from inheritance. Only in two cases of illegitimate child and the child born through Li’an (malediction, as we shall see later), the law has not protected the minor child.

(b) Illegitimate Child

Article 884 of the Civil Code states: “An illegitimate child does not take inheritance from the father, the mother, or their relatives; but if the legitimacy of the relationship of which the child was born is established in relation to one of the parents, while it is not established in relation to the other parent due to lack of consent or doubt, the child takes inheritance only from the former parent’s side.”

The law must protect children born outside marriage, because these children have not chosen their circumstances and deserve to benefit from inheritance. Even the illegitimate child has a father and a mother and if both parents are identified, then the child should be able to take inheritance from both, and the parents should take responsibility for the child’s education and financial affairs.

According to Article 1168 of the Civil Code, “maintenance of children is both the right and duty of the parents.” This law makes no mention of whether or not the parent’s relationship is legitimate or not. Furthermore, the child born to a man and woman should be provided every opportunity for development and education.

Contradiction: Articles 884 and 1168 contradict each other in regard to the rights and duties of parents.

Recommendation: It is recommended that the child’s inheritance be viewed independently from the legitimacy of the relationship between the parents, so that establishing the relationship between the parents and the child is sufficient for recognizing the child’s rights and the parents’ duties.

Nationality

Article 976 of the Civil Code says: “The following persons are considered to be Iranian subjects:

- All persons residing in Iran except those whose foreign nationality is established. The foreign nationality of such persons is considered to be established whose nationality documents have not been objected to by the Iranian government.
- Those born in Iran or outside Iran whose fathers are Iranian.
- Those born in Iran of unknown parentage.
- Persons born in Iran of foreign parents, one of whom was also born in Iran.
- Persons born in Iran of a father of foreign nationality who have resided in Iran at least one year immediately after reaching the full age of 18; in other cases, their naturalization as Iranian subjects will be subject to the stipulations for Iranian naturalization laid down by the law.
- Every woman of foreign nationality who marries an Iranian man.
- Every foreign person who has obtained Iranian nationality.

Note: Children born of foreign diplomatic and consular representatives are not affected by clause 4 and 5 of this article.”

According to this law, a child whose mother is Iranian cannot obtain Iranian nationality, regardless of whether the child was born in Iran or outside Iran.

This law does not recognise the mother’s role in conferring her nationality to her child, which is another example of gender discrimination. If an Iranian woman marries an Afghan man and if their child is born in Iran, the child will be considered an Afghan national and cannot obtain an Iranian birth certificate. This is one of the defects in Iranian law, considering that the same law recognises a child born in Iran of unknown parentage as an Iranian subject. But the same does not apply to a child born of an Iranian mother.

One of the problems in this area is the issue of children born of marriages between Iranian women and Afghan or Iraqi men. These children do not have an Iranian identity card and, therefore, have to pay an annual fee for residing in Iran. Since many of these marriages take place in poverty- stricken families and result in the birth of children deprived of sufficient opportunities for growth and education, the situation creates a vicious cycle that keeps these families in poor economic and cultural conditions.

Contradiction: This article is in contradiction with Article 19 and particularly Article 20 of the Constitution, which states that “members of the nation, whether man or woman, are equally protected by the law” because it deprives the Iranian woman from having equal rights as that of the man.

Recommendation: It is recommended that the women be given rights equal to men when it comes to conferring their nationality to their child.

Domicile

Article 1006 of the Civil Code states: “The domicile of a minor child or an incapacitated person is the same as that of his/her natural guardian or legal guardian.”

Domicile: The domicile of a minor child is the same as that of his/her natural guardian or legal guardian, but there is no provision in the law for the person who is in charge of the child's custody. This means that even if the child's custody has been awarded to the mother, the child's official domicile is considered as that of his natural guardian or his legal guardian. The law remains silent about the domicile of a child whose custody is awarded to the mother.

Recommendation: It is recommended to define the child's domicile as the same as that of his/her place of residence. So that if the child lives with the mother, his/her domicile is the mother's house and if the child lives with the father, his/her domicile is the father's house.

Disability and Guardianship

Article 1208 of the Civil Code says: "By the term 'not of age' is meant a person whose method of dealing in his/her property and rights is not in accordance with reason."

Article 1210 of the Civil Code clarifies: "No one, when reaching the age of majority, can be treated as under disability in respect of insanity or immaturity unless his immaturity or insanity is proved."

The age of "majority" in this article means the same as the age of "maturity" because the same article states that "unless his immaturity is proved," which uses the term "immaturity" as opposed to the term "maturity."

Article 1212 of the Civil Code goes on to say: "The acts and words of minor children are null and void and of no effect so far as their acts and words relate to their property and pecuniary rights. A discriminating minor child, however, can take possession of gratuitous property, such as accepting a gift, or a free transfer, or assuming possession of unclaimed property."

The term Rashid (major) is used to describe a matured person. The opposite term is Non-Rashid (not of age) or Safih (juvenile).

The term 'discriminating minor' is defined as: a minor who can distinguish between beneficial and harmful transactions similar to a wise and mature person, and if he lacks this quality, he shall be regarded as "non-discriminating minor."

Article 1235 says: "The protection of the person who is under guardianship as well as his legal representation in all matters relating to his property and financial rights, are entrusted to the guardian."

These definitions of a major and a discriminating minor person indicate that a person is considered fit to personally handle his/her financial affairs when he/she attains the ability to distinguish between beneficial and harmful transactions. The law defines the major person as any person above 18 years of age, and the discriminating minor can handle financial matters of low importance after obtaining a certificate from the court.

The question is why should a minor person face so many obstacles handling his/her financial affairs because of the laws that intend to protect him from harming his/her properties, while similar sensitivity has not been applied to the laws dealing with a minor person's criminal responsibilities?

Of course, there have been some legal reforms in this area, but it is still a matter of contemplation as to which age should be considered the age of full criminal responsibility for children and adolescents.

Contradiction: Under the current Iranian law, the age of civil liability is considered to be 18 years old, while the age of criminal responsibility is 15 years old, unless it is proven that the person has not understood the wrongness of his action.

Recommendation: It is recommended to investigate and revisit the age of criminal responsibility through sociological and psychological analyses, taking into account the social conditions in Iran.

Article 1214 of the Civil Code states: "Transaction and legal acts performed by a person not of age are not binding except with the permission of his natural guardian or his legal guardian, whether the permission has already been given or will be given after the transaction is made."

Article 1217 of the Civil Code states: "The management of the property of minor children and insane and immature persons is entrusted to the care of their guardian, as is laid down in Part 3 of Book 8 and the subsequent articles.

Guardianship

Article 1218 of the Civil Code explains: "Guardians will be appointed for the following persons:

- For minor children not having a specific guardian.
- For insane and immature persons whose insanity or immaturity does not immediately follow their years as a minor and who have no specific guardian.
- For insane and immature persons whose insanity or immaturity does not immediately follow their minority age.

Definition of guardian: Anyone who, by the order of law, has the authority to manage part of another person's or persons' properties, be it in private matters (such as the guardianship of father or paternal grandfather of the minor), or in public affairs.

Even if the father dies and the child's custody is transferred to the mother, the mother does not have the right to manage the child's properties because the mother is considered neither the child's natural guardian nor his legal guardian.

Contradiction: This article contradicts Article 20 of the Constitution which states that “members of the nation, whether man or woman, are equally protected by the law,” because according to this article, the woman has no right to manage her child’s properties.

Recommendation: The child’s mother (if she has been awarded the child’s custody) should be entitled to manage the child’s properties and there should be no differences or discriminations in this regard.

Children’s Judicial Rights in Iran: Basic Principles of Penal Code in Dealing with Child Offenders

Article 88 of the Islamic Penal Code states: “In case of children and adolescents who commit punishable crimes (ta’zir) and whose age at the time of committing the crime is 9 to 15 solar years, the court adopts one of the following decisions, as the case may be:

- a. Entrusting to the parents or the natural or the legal guardian with a commitment to discipline and educate and chastise the child or adolescent in their care. *Note: If the court deems appropriate, it can oblige the persons mentioned in this paragraph to commit to performing the following actions and report the results to the court within the set deadline:*
 - i. Introducing the child or adolescent to social workers or psychologists and other professionals and cooperating with them;
 - ii. Enrolling the child or adolescent in an educational or cultural institution for education or vocational training;
 - iii. Taking action for the treatment or rehabilitation of the addicted child or adolescent under medical supervision;
 - iv. Preventing harmful relationships and interactions between the child or adolescent with other people, according to the court’s discretion;
 - v. Preventing the child or adolescent from commuting in certain neighbourhoods.
- b. Entrusting to any other natural or legal persons that the court considers in the best interests of the child or adolescent, with due consideration for the regulations and with the commitment to take the actions listed in paragraph (a), if the court finds the parents, natural guardians or legal guardians of the child or adolescent to lack competency or if they are inaccessible. *Note: Entrusting the child or adolescent to the competent persons is conditioned to those persons’ consent.*
- c. Chastisement by the judge.
 - i. Issuing warning or notice, or demanding a written declaration by the child or the adolescent
 - ii. not to repeat the crime.
 - iii. Detaining the child or adolescent in a juvenile institution from three months to one year, in
 - iv. the case of punishable crimes of the first to fifth degrees.
 - v. *Note 1: The decisions referred to in paragraphs (d) and (e) are only applicable to children and adolescents between 12-15 years old. Enforcing the regulation in paragraph (e) is mandatory for children and adolescents who have committed punishable crimes of the first to fifth degrees.*

- vi. *Note 2: Whenever a minor person commits a crime punishable by hadd or qisas, and his age is between 12 to 15 lunar years, he shall be subject to one of the measures referred to in paragraphs (d) and (e); otherwise, one of the measures referred to in paragraphs (a) to (c) should be adopted for them.*
- vii. *Note 3: In respect to the measures referred to in paragraphs (a) and (b) of this article, the juvenile court can revise its decision as many times as the interest of the child or the adolescent demands, based on investigations and reports from social workers regarding the condition and behaviour of the child or the adolescent."*

Article 89 states: "The adolescents who commit punishable crimes (ta'zir) and whose age at the time of committing the crime is between 15 to 18 solar years, are sentenced to the following punishments:

- a. Detention in a juvenile institution for 2-5 years for committing punishable crimes of the first to third degree;
- b. Detention in juvenile institutions for 1-3 years, for committing punishable crimes of the fourth degree;
- c. Detention in juvenile institutions from three months to one year or payment of a fine from 10 million rials to 40 million rials or unpaid community service order of 180-720 hours for committing punishable crimes of the fifth degree;
- d. Payment of a fine from 1 million rials to 10 million rials or unpaid community service order of 60 to 180 hours for committing punishable crimes of the sixth degree;
- e. Payment of a fine of up to 1 million rials for committing punishable crimes of the seventh and eighth degree.

Note 1: The community service order shall be no more than 4 hours per day.

Note 2: In view of the defendant's conditions and the type of the committed crime, the court can replace the detention sentence and community service order mentioned in the paragraphs (a) to (c) of this article with home detention during specified hours or detention in a correctional centre during the weekends for three to five months, as the case may be."

Article 90 says: "In view of the reports received from the correctional centres regarding the behaviour of the child or adolescent, the court can change its sentence only once by reducing the detention period to one third or appointing the guardian or legal representative to monitor the child or adolescent. The court's decision to change the sentence is only valid if the child or adolescent has completed one fifth of his detention period in the correctional centre. The court's decision in this case is final. This provision does not prevent the use of conditional release or other sentence reductions, should their requirements be fulfilled."

Article 91: "In respect of crimes punishable by *hadd* and *qisas*, if the offenders, who are under 18 years old but have reached the age of maturity, do not understand the nature of the committed crime or its prohibition, or if there is a doubt about their mental development and sanity, then, according to their age, they shall be subjected to one of the punishments provided in this chapter.

Note 1: The court can ask the opinion of the forensic doctor or use other appropriate means to determine the offender's mental development and sanity."

Articles 92 and 93 explain: "In case of the crimes that involve payment of blood-money or other financial damages, the court shall sentence the child or adolescent to pay the blood-money or the financial damage, in accordance with the relevant regulations" and "if the conditions for reduced sentences are met, the court can reduce the sentences by half or impose alternative non-punitive sentences for the children and adolescents."

Articles 94 and 95 continue: "In case of all punishable offences committed by adolescents, the court can postpone the sentencing or suspend the execution of the punishment" and "the criminal convictions of children and adolescents do not result in criminal records."

The dichotomy in legislations for children in the Civil Code and the Penal Code create ambiguities and confusion for any impartial person. How is it that the legislator does not recognize persons below 18 years old as having the necessary physical and intellectual capabilities to join military service, own a driving license, be employed in government offices, acquire a passport independently or engage in formal business transactions; but regards children and adolescent offenders between 9 and 15 years of age at par with adults in terms of criminal responsibility and sentences them to religious and legal punishments such as qisas, execution, death by stoning, lashing, whipping and imprisonment?

If we accept that engaging in any act, be it criminal or not, is a result of certain rational, emotional and mental processes, then how can it be justified that a 16-year-old adolescent lacks sufficient perception and understanding to follow driving regulations or engage in financial transactions or comprehend the principles of working in an office; whereas, the same adolescent has intellectual and physical capabilities at par with an adult so that his criminal offences deserve similar punishments?

Therefore, imposing penalties on a person who has not yet achieved full intellectual and cognitive abilities is practically obscene because having intellectual and cognitive abilities is the prerequisite for criminal liability and enduring legal punishment. Someone who has not yet achieved rational development can, therefore, not properly understand the legal orders and regulations and should not be held fully responsible for his criminal acts. Imposing similar penalties on such a person as to the penalties imposed on persons with full intellectual and cognitive abilities would be logically and religiously obscene and contrary to justice and a wise lawmaker should not engage in obscene acts. Therefore, it is essential to give due regards to the mental development of the offender and the age at which it is achieved.

Some might argue that the Penal Code has provided provisions for reducing the sentence of minors below 18 years of age who do not understand the wrongness of the committed crime; but the problem here is that the basis for judging a 9-year-old girl who has committed murder is that she can understand the wrongness of her act, unless it can be proven otherwise. This is while our law is based on the "presumption of innocence," which is the principle that a person is considered innocent unless proven guilty. How can one assume

partial criminal responsibility for children and, on the other hand, fight to prove their innocence?

Well-known psychologists in the field of developmental psychology have estimated the age of mental development to be between 16 and 18 years old. Many psychology experts have pointed out that adolescents experience emotional and mental stresses during this age, are strongly influenced by their peer group and need independence from their family. Therefore, it is highly probable that the adolescent under such pressures might take aggressive actions which he regrets afterwards, but cannot analyse the situation at that moment because his mental stability and intellectual abilities are not yet fully developed.

The problem is particularly challenging because most Islamic jurists (Faqaha) define the age of maturity as 9 lunar years for girls and 15 for boys, and the law also adopts the same as the age of majority and the age of criminal responsibility. It might be acceptable to expect children to perform religious duties at this age, but determining the age of civil liability and, more importantly, the age of criminal responsibility is not a simple matter and needs to be decided by lawmakers in consultation with experts from other disciplines including psychologists and sociologists to come up with the appropriate age according to the norms and realities of the society. This is a highly sensitive matter because imposing criminal responsibility on children and adolescents at early ages could be equally detrimental as setting a high age limit for criminal responsibility, which could lead to an increase in the crime rate.

As it was noted, the classification of criminal responsibility for different age groups is a noteworthy and appreciable progress in the new Penal Code. However, Article 91 which states: "In case of crimes punishable by *hadd* or *qisas*, if a mature offender whose age is below 18 does not understand the nature of the committed crime or its wrongness, or if there is a doubt regarding his sanity or maturity, he shall be sentenced to the punishments mentioned in this chapter, as the case and the age of the offender may be," needs to be revised. Because the assumption is that children and adolescents cannot be held fully responsible for crimes punishable by *hadd* or *qisas*, and subjecting the imposition of alternative corrective and non-punitive measures to the court's decision and proving the child's lack of understanding of the nature or wrongness of the crime gives rise to the concerns that children and adolescents below 18 years old could still be executed, which is against the international agreements such as CRC to which Iran is a signatory. Children and adolescents are vulnerable groups of the society and the law has a responsibility to protect them.

Article 91 subjects this protection to such conditions that are obscure for everyone. Therefore, Article 91 needs to be re-examined and revised, with an open mind.

Contradiction: Non-conformity of the age of criminal responsibility and the age of civil liability under Iran's law.

Recommendation: Analytical study regarding the best age for criminal responsibility and adapting the same for the age of civil liability.

Child Murdered by her/his Father

Article 301: “*Qisas* shall be delivered only if the perpetrator is not the father or a paternal grandfather of the victim, and if the perpetrator is of sane mind and of the same religion as the victim.”

Article 309: “The claim that the perpetrator is the victim’s father or a paternal grandfather must be proven in the court, and in absence of such proof, the right to retaliate will be proven by claims stated by the victim’s family, the victim or his guardian.”

The New Penal Code

Based on this article, the father has the right to kill his child without having to undergo *qisas* punishment. He only has to pay the blood-money (*Diyyeh*) for his child. Giving this right to the father is a clear violation of the right to life because every human being has an inherent right to life and cannot be deprived thereof by giving the right to death to another person.

No ideology or legal system in today’s world would accept such a law and it is essential to revise this law in order to prevent the wide-occurring cases of honour killing in Iran.

According to Article 22 of the Constitution, “The dignity, life, property, rights, domicile, and occupations of people may not be violated, unless sanctioned by law.”

This article of the Constitution requires much speculation because it states that the law may violate every right of the individual. This article is vague and generalised and leaves room for many interpretations. It is best to amend the laws with more clear terms so as to prevent abuse or misunderstanding of law.

Article 40 of the Constitution states that: “No one can claim the exercise of his right as a pretext to harm others or to infringe on the public interest.”

Harming others to exercise one’s right (the child’s murder by his father) is contrary to this article of the Constitution.

Contradiction: Articles 301 and 309 of the Islamic Penal Code are in complete contradiction with articles 22 and 40 of the Constitution.

Recommendation: The father should have no right to kill his child because no human being can deprive another person of the right to life.

Malediction (Li’an)

Article 882 of the Civil Code states: “After a solemn malediction (*li’an*) husband and wife cannot take inheritance from one another. Similarly, a child who, owing to a forfeiting of paternal relations, has been the cause of a solemn malediction, does not take inheritance

from the father nor the father from him; but the said child takes inheritance from the mother and his maternal relatives and vice versa.”

Article 883 explains: “If a father, after pronouncing a solemn malediction, withdraws it, the son takes inheritance from him, but he takes no inheritance from the paternal relatives, nor does the father or the paternal relatives take inheritance from the son.”

According to Article 20 of the Constitution, “Members of the nation, whether man or woman, are equally protected by the law...” But time and again we see examples of gender discrimination in the law.

Article 883 states that after withdrawing the solemn malediction, the son can take inheritance from the father, but there is no mention of the daughter and her inheritance. Malediction (*li’an*) is an Islamic and legal condition wherein the husband and wife mutually repudiate each other and permanently divorce. But it would be unjust to deny the child of his/her right to inheritance, which would guarantee a better future for him/her. Considering that the maintenance of the child is the right and duty of the parents, *li’an* should not affect the child’s right and the parent’s duty towards him/her.

Contradiction: This article is in contradiction with Article 20 of the Constitution as well as Article 1168 of the Civil Code, because firstly, it does not give equal rights to men and women and only the son can take inheritance from the father and secondly, the parent’s duty to maintain the children has been overlooked.

Recommendation: The daughter should also take inheritance from the father who has withdrawn *li’an*, and more importantly, the child should not be denied inheritance as a result of *li’an*.

CONCLUSION

According to Article 4 of the Constitution, “all civic, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle governs all the articles of the constitution, and other laws and regulations. The determination of such compatibility is left to the *Foqaha* (Islamic jurists) of the Guardian Council.”

Thus, the laws pertaining to children’s rights in Iran are also affected by the interpretation of the lawmaker and the Guardian Council of *Sunnah* (Islamic traditions) and Sharia.

New developments, increased awareness among the people and the emergence of new problems in the society call for reforms in the existing laws and creation of new and secondary rules that are compatible with the needs and realities of today’s society. One example of such reforms took place in 2003 with the introduction of legal provisions that recognize equal *diyyeh* for the followers of religious minorities as that of Muslims, a reform that was unimaginable in the past. This and similar legal reforms are proof that the laws are not absolute and unchangeable, but rather can and must be revised from time to time, and that one could expect legal changes to be proposed, initially by the Parliament and then, in

turn, approved by the Guardian Council, the Expediency Council and ultimately by the Leader. Therefore, with increased awareness and efforts by any of these authorities, moving in the direction of improvement and rectification could become a reality.

The same is true in relation to the children's rights and we could observe improvements in this area, as was shown in the past. The changes that took place in the laws related to custody are examples of such reforms. On the other hand, securing the independence of the judges is an essential part of the improvement process.

Apart from hoping for improvement and reforms, the Iranian Constitution recognises some basic rights for all of its citizens. Among them are the equality of all citizens regardless of gender, colour or race, as mentioned in Articles 19 and 20 of the Constitution, the right to free education, social security and freedom to choose one's profession, as mentioned in Articles 30, 29 and 28 of the Constitution respectively. Therefore, it is natural to expect the laws that violate or ignore these general principles to be abolished.

The first problem related to children's rights in Iran's law is a lack of definition for the concept of child. The use of terms such as 'the age of majority', 'the age of maturity', 'discriminating minor', 'non-discriminating minor' and the like, make it more difficult to identify the age at which a person is considered to be a child. Moreover, different laws have expressed different ages for children.

According to Article 304 of the Code of Criminal Procedure, "all offences committed by children and individuals who are under 18 years shall be investigated by the Court for Children and Adolescents. In any case, the convicts who are older than 18 years old shall be detained in the youth detention section, which will be created in the Correction and Rehabilitation Centre."

According to this article, the cases of children and adolescents below 18 years old are addressed by the Children and Adolescent's Court. Thus, the law has categorised the individuals below 18 years old as children and adolescents and instituted special conditions for their legal proceedings. Note 1 of the same Article states: "The child is defined as anyone who has not reached the age of maturity." Based on this definition, the criterion for distinguishing a child is the age of maturity, which is 9 lunar years for girls and 15 lunar years for boys.

On the other hand, Article 91 of the Islamic Penal Code states: "In respect of crimes punishable by *hadd* and *qisas*, if the offenders, who are under 18 years old but have reached the age of maturity, do not understand the nature of the committed crime or its prohibition, or if there is a doubt about their mental development and sanity, then, according to their age, they shall be subjected to one of the punishments provided in this chapter."

The Note under this Article reads: "The court can ask the opinion of the forensic doctor or use other appropriate means to determine the offender's mental development and sanity."

According to this article, if an adolescent between 15 to 18 years old understands the prohibition of the crime he has committed and if there are no doubts regarding his mental

development and sanity and the forensic expert also agrees that he is of a sound mind, he will be convicted of the crimes punishable by *hadd* and *qisas*.

Finally, no age limit has been specified for complete criminal responsibility. Accordingly, a child can marry but cannot manage his/her own financial affairs. Lack of fixed age limits for distinguishing children from adults in all laws including the Civil Code and the Islamic Penal Code creates many problems and complications.

Another problem is the excessive rights given to parents, particularly the father, which allow him to treat his children as his assets. Lack of clarity regarding the limits for disciplining the child, permitting the father to marry off his daughter even if she is under-aged, providing legal concessions to the father who kills his own child, are all indicative of the excessive rights awarded to parents, particularly the father, in the Iranian law.

What was presented in various parts of this study indicates that in addition to the silence of the Iranian law on many issues related to children's rights, some of the existing laws are also clearly in contradiction with the international conventions (to some of which Iran is also a signatory). On the other hand, some of the current appropriate laws lack suitable enforcement mechanisms. Moreover, while in certain areas such as labour laws, regulations in accordance with the international standards are in place, the reality in Iranian society reveals lack of implementation of these laws.

Resources

Islamic Republic of Iran Constitution:

<http://www.iranonline.com/iran/iran-info/Government/constitution.html>

The Civil Code of The Islamic Republic of Iran:

<http://www.alaviandassociates.com/documents/civilcode.pdf>

Islamic Penal Code of the Islamic Republic of Iran:

<http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>

Convention on the Rights of the Child

<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Islamic Republic of Iran's Criminal Code of Procedure for Public and Revolutionary Courts

<http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html>

Islamic Republic of Iran Labour Code

<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/21843/64830/E90IRN01.html>