

## The stand of child's right in Islam

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**Abstract:** The children and teenagers have some basic needs in the process of their growth and puberty and after it to entry into society and if their real needs in childhood and adolescence have not been considered, some irreparable damages will be imposed to the society. In fact, these needs are the rights of children which should be considered. The child's needs have some extraordinary features and importance at a point of time more than other times. In the meantime, child's right is not only as a duty of parents, but also the society (public authority) through supporting and monitoring systems defends the rights of children as the most vulnerable classes of society and it also considers targeted planning to achieve the noble objectives of its outcomes for this class. Surely mankind in spite of that he has tried to create new perspectives to promote a cultural level of society which are based on legal vocabulary and institutionalizes it in community in different periods of life from creating the world up to now through different ways, but on the other hand, its basic needs in the part of children, have been accompanied with many negligence and these innocent children have been bothered through different ways which are due to violation of their real rights.

**Key words:** *Child's right; Islam*

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### 1. Introduction

Slave ownership, abusing through different forms, aggression, physical and mental damages and deprivation of education are some cases of unjust acting toward children's rights. Through emergence of global schools and increasing progress of social and personal rights and also promotion of general awareness and states' development and essential duties of government in order to defend of public profit and interest, this significant has been felt that children and teenagers are considered as those who will constitute future communities and they are those who will prevent through productiveness of their thought from some of upcoming problems of society which may be occurred because of lack of their fulfillment as act of omission. For this purpose, it is tried to fulfill an appropriate ground for vindication of children's and teenagers' rights or preventing of its violation in communities. One of the schools which has seriously considered to children's rights and has paid attention to child's right from the time of sperm coagulation in mother's womb up to after it is Islam's school. This school connects children's rights as the manner of relationship of parents before giving birth and it creates a deep look in this scope. What that has been risen from Islamic concepts and Quran verses and narrations of respectful Prophet of Islam (peace be upon him) and biography of infallible Imams, the child has moral kind feelings which have been shaped during times

and stages and step to step and it will be glorified and grown. This growth needs a healthy and appropriate educating environment (whether traditional or modern education) in order to be gradually turned from potentially to actually. As the body of child requires different kinds of food for being healthy, the ground and environment should be provided for his intellectual growth and the appropriate tools and instruments should be prepared for achieving these results. In spite of the fact that Islam school look at child's rights with expansive features and it considers a deep look regarding children's characteristic, but it should be noted that different condition and false understanding or inappropriate interpretation of some terms or concepts leads to abuse of children's innocent intentions and many suffering and disasters have been observed. The most unfairness which has been observed in Islamic communities toward child's rights is due to false interpretation of it or lack of a codified law which be supporter of children and teenagers. But in the recent decades, several new attributes for supporting children have been created and Islamic nations in step with global communities try to take action with new perspective regarding children's rights and its development through different methods. In the scope of child's rights convention and its principles, it is observed that according to cultural, social and emotional needs, it is emphasized that the child is susceptible and he needs a set of basic and fundamental rights for personality development and sociability. In the content of child's rights contract has been talked

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about giving value to family as the most basic indicator and fundamental group of society and avoidance of any discrimination in contact with children and providing a well environment situations for them have been reminded. In fact, importance of family and its position in Islam school and child's rights convention present a unique perspective. It is strictly prohibited to oppress the child who is not in the condition to be informed about his rights and abuse of his physical weakness and innocent and pure intention. The child's rights are a natural right and it should be respected. The need to training, health, etc. is something that every child must enjoy them in order to his civil and social rights have not been damaged.

## **2. The study of the stand of rights of children and teenagers in Islam**

When the God or Divine law which is explained by Prophets and God's saints or a law which enacted by government let doing an action or do not prohibited it, the child or teenager has the right to benefit from it and perform it. As an example, the right to life, knowledge right through educating or thinking right or even the right to play which plays a basic role in children creativity. Through development of communities, the children enjoyed the other rights such as the right to have identity, citizenship, having family, social welfare, education, freedom of thought. Decision-making and etc. .Of course , this topic are not confined to Islam, but also all the divine religions emphasize on it. Islam has also expressed it extensively. Child's rights have been mentioned in detail in child's rights convention which it will be referred in following chapter.

## **3. The history of child's rights at the beginning of advent of Islam**

As it comes from historical texts, especially the study of topic in the area of Arabian Peninsula which is first origin of Islam and it is named as Hejaz, the ignorant Arabs were living in tribal. they were at the basic level in term of learning science and knowledge and most of them have been deprived of fortune of writing and reading. They were also very limited in term of sociability and wrong culture has been common as constant custom. The former Hejaz society was not an integrated society and whole the Arabian Peninsula were surrounded by other tribes in different forms. In the majority of Arab tribes, young girls were buried alive and were killed wildly and they were considered a honor to have a male child. Therefore, killing female child was customary as a habit and tradition and because they put special importance on genealogy and this necessarily was continued through son (male child), so the role of son benefited from a unique dignity. The issue of killing daughters was common even after advent of Islam in some tribes and it was gradually abolished after advent of Islam and its expansion.

## **4. The study of child's rights after advent of Islam**

Islam's blessed prophet was the first one who could brought together different Arab tribes after communicating true religion of Islam in Arabia and he constituted a united community during 23 years in this country. Killing daughters has been forbidden in Islam and Islam prophet (peace be upon him) tried to remind this evil deed through different ways. The Holy Quran has determined piety and virtue as the priority criterion and it has prohibited gender as the priority criterion .The God in Holy Quran in the verse 13 of cells Sura (Hohorat) said that: o people, we created you of a man and a woman and made you in nations and tribes to recognize themselves mutually. In fact, the most venerable of you in front of God is the most virtue. Holy Quran in the Ascension Sura in verse 31 said that "Do not kill your children because of fear of poverty; we will give them and you daily bread. Yes, it is always a great mistake to kill them. Also God in verse 9 of Obscuration Sura says that: for what sin was she/he is killed? The God has also brought in some verses regarding limited ability of people (The ability of children is very limited). Holy Quran in the Cow Sura in verse 286 said that" The God never obligates any one to beyond to the extent of his ability. The good deeds of each person are in the favor of himself and his bad deeds will damage again himself. Islamic law considers the topic of custody and protecting child as the significant issue and child's rights, which the duty of mother in the suckling period will be more preferable. Then, she is more deserved to protect son up to 2 years and daughter up to 7 years. But what that is perceived of Islamic teachings is that the responsibility of parents to their joint duty in educating and training of children and teenagers has been emphasized. In discussion regarding protection and custody and fosterage , the Holy Quran says in Cow Sura in verse 233 that the mother should breast-feeds their babies two completed years. If mother wants to breast-feed their babies, the father must conventionally prepare food and clothes for her. There should not be any obligation or duty for any one more than his endurance. The mother should not suffer from protection of child and the father should not also sustain in loss more than conventional, and if child did not have father, the heir should be his protector and whenever wife and husband was going to divorce, they should not be afraid of anything. And if you (fathers) want that the mothers of your children breast-feed your children, you must give them a salary and fear the God and know that the God is aware of your deeds. The prophet (peace be upon him) emphasized frequently in his narrations referring to verses of Quran that: the children have certain rights which they should be considered and responded properly. He never prevent the children from playing when they were performing prayer, because he wanted to respect to child's rights and its important role in intellectual training and he introduce it as a part of child's rights. In a narration of Prophet Mohammad has been

brought that "The heart of child and teenager is as a prepared ground in which what that is planned, the same will be harvested. Also God in Holy Quran in verse 32 of Ambrosia Sura regarding that killing anyone is blameworthy, said that "We wrote to Jews that if anybody kills the other one such as killing a criminal, it seems that he kill all the people and one who make him alive, it also seems that he make alive all the people. The God has reminded that we must note to orphan and unsupervised children and He said in verse 8 of Human Sura that "they give their food to the poor and prisoner people for the purpose of friendship. In verse 9 of Al-Sacrifice Sura has been brought that "Never displease the orphan. Holy Quran has forbidden the wasting of orphan property and overreaching it and it expressed that "Never close to property of orphans. The verse 6 of Woman Sura expressed that "examine orphans up to they reach to time of marriage and if they reach to legal age, then you give their property to themselves. Also regarding criticism of the act of killing an innocent person (whether child or adult), it has been brought in Woman Sura that" if one kills a believer intentionally and purposefully, so his punishment is Hell and he will be there eternal. And the God will get angry and get him away and he must prepare himself for a great punishment. In fact, verses of Holy Quran have blamed the unfair murder of man and its perpetrators have been promised to a painful punishment. The purified God sent down "Heavenly fountain" Sura in respect to stand of daughter and in some Islamic narration of infallible Imams, the male child has been mentioned as blessing and female child has been mentioned as mercy. According to Islamic law, if mother got married with another person and she has a child, she is deprived of custody right. In explaining this topic, the ethics and training discussion has been proposed that it is possible that the husband of that woman is not a good-tempered one and he may neglect child's training.

According to Imamate law, if a child steal something, the physical punishment is not executed for him and in the case of other conditions, he will be punished and castigated which this is sign of lack of child's responsibility.

### **5. The right of children and teenagers in Islamic law**

The principle in Islamic legal texts is based on lack of criminal responsibility of children (of course, legal age of puberty is considered as age of responsibility) and criminal law if children requires that some punishments such as physical punishments and retaliation must not be executed for children, but in Islamic law the castigation and discretionary punishment in appropriate extent and through avoidance of extremes for the purpose of children's training with respect to their conditions.

According to Islamic law, the children are divided into three groups:

The first group is 1-7 year old children and they are lack of criminal responsibility, because they do not have the power of distinguishing

The children who are older than 7 years up to age of poverty have not criminal responsibility in the case of committing a crime but they will be punisher.

If adult children means those who have reached to the age of poverty (legal age). Commits a crime, the law will act with them as adults.

Among Islamic sects, Shafite and Hanabalite sects have said that the age of puberty for female is 15 years and Malikite sect considers it 17 years. The Hanifite sect has considered the age of puberty for son is in 18 years old and for daughter is in 17 year old. Imamite law has known frequently the age of puberty for son in 15 years old and for daughter in 9 lunar years. Although some of modern Shiite have also considered the age of puberty for daughter in 13 year old. Some of Imamate jurisprudence have considered necessary the condition of age and also growth for enforcing punishment accordingly. In fact, according to Islamic training and obligations, the power of distinguishing and free will in commitment of action and its ascription to criminal acts and responsibility is necessary. What that is interpreted from jurisprudence basic and Islamic rights regarding duty and general condition which famously speculated that all the religious obligations, whether affirmative or prohibitive, is contingent on several conditions as actuality. It is certain that those conditions are: puberty, reason, power and favor which these are named as public conditions of obligation. So there is not an actual verdict concerning child, mad, unable and unaware for performing duty. Also the purpose of perfection in jurisprudence is puberty and reason which are considered as the public condition of obligation.

### **6. Custody and alimony**

In Islamic teaching, in addition to general obligation which the couple has toward themselves, they should perfectly cooperate with together about family foundations and children's training. Therefore, in Islamic law, protection of children is considered both right and duty. According to Islamic teaching, the protection and education of children is called custody.

What that is perceived of set of narration and document of early Islam period, is that If a father kills his child, he will not retaliated.

Among Sunnis, the Shafite jurisprudence believes that if a father kills his child, he is not killed. The Hanbalites also have this belief. The Hanafies also emphasizes on this point and Maliki says that: According to Maliki religion, the excuse of men who kills his child intentionally and purposefully in some ways such as he tortures or beheads his child or imprison him/her, is not acceptable. And if he claims that this is not just, it is not caused any doubt. In this case, the father will be retaliated without any discrepancy.

## Appendix

The path of elocution, the efforts of Ali Shirvani , house of thought publication-1

Doctor. Ali Reza Feiz, bases of jurisprudence and rights, Tehran university publication, pages 2-326 - 2

Yasrebi Qomi Seyyed Mohammad Ali , the family rights in civil law of Islam, Printing and Publishing publication, dependent to Islamic propaganda-3

The punishment of mother and father in killing their children, Doctor Mohammad Eshaghi, Morning Ambassador publication-4

The punishment law of Islamic Republic of Iran, codified by Jahangir Mansour-5

Najafi Tavana Ali , the abnormality and law-breaking of children and teenagers, Training and assessment publication, page 172, paragraph 2-6

Article 21 of child right convention, community for protecting children's right-7

Article 37 of child's right convention, community for protecting children's right-8

Doctor Taj Zaman, Trial of criminal children in comparative law, Scale publication, page 9-129

The convention of children's right in 14 Shahrivar 1370 has been signed by the representatives of the government of and it has been ratified in Esfand 1372 through general consideration. Iran reserved this right for itself to prevent of implementation of the provisions or clauses of the convention of children's right in which there was a conflict with local rules and Islamic standards. Islamic Republic of Iran joint to convention of children's right in 25 Khordad 1373 and convention entered into force from 21 Mordad 1373. Some countries such as America, Somalia and some other ones have not been joint to convention of children's right-11

The path of elocution, the efforts of Ali Shirvani , house of thought publication-12.

The punishment of mother and father in killing their children, Doctor Mohammad Eshaghi, Morning Ambassador publication

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