

## The Age of Criminal Responsibility in Children: some of Islamic Views

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### Abstract

The age of criminal responsibility of children in the Islamic Penalties Act has been determined as religious *Bulugh* (puberty) *Nasab*. According to this, criminal authorities hold girls criminally liable and punishable at 9 complete lunar years and boys at 15 complete lunar years. Unfortunately, our legislator has set criminal responsibility of children based on sexual maturity; therefore, thousands of newly born infants who are unable to think have been liable to punishment, while in the realization of criminal responsibility, there is a need for intellectual maturity (growth) in addition to sexual maturity; that is, in the realization of criminal responsibility of children, there are two necessary conditions: "attainment of puberty boundary" and "achieving growth and attaining intellectual maturity"; otherwise, the child has no criminal responsibility and we cannot hold him liable for his action and punish him. In this research, an attempt is made to address the problems of the Act by drawing on the Islamic sources.

**Key Words:** Children, Criminal responsibility, Puberty, Quran, Religious puberty, Sunnah.

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## Introduction

### A. Puberty in terminology

Bulugh in the Arabic language refers to reaching the ultimate end in terms of time and place or other scales; "*Balagh al-sheh Vasalvaenteha*" (Janati, No. 61). In the holy Quran (Yusef, 24), it is said "Valammabalaghashshadeh", when he reaches puberty and adolescence. Ismaeel bin HemanJohari in the Sahah al-loghah holds that "*Balaghalgholam*," child reaches the age of maturity, and "*Balagh feljodehmablagha*" (Kama fealebab) to reach level of deep and quick understanding (Johari, Bita, Vol. 4, p. 1316). According to men of letters, it is seen that no specific age has been set for the realization of girls' and boys' puberty, as they suffice to set growth and autoerotism.

### Methods and Materials

The current study is a review survey which was conducted to evaluate the age of criminal responsibility for children that is mentioned in Islam and holy Quran by studying holy Quran and religious science texts. To evaluate the texts, the singular or combination forms of the following keywords were used: "Quran", "Puberty", "Criminal responsibility", "Islam" and "Children". To evaluate the electronic Persian and Arabic databases the following websites were searched: Google, scientific information database (SID), ministry of healthcare, medical articles library of Iran (medlib.ir), Iranian research institute for information (Iran Doc), publication database (Magiran, Iran medex), and also search in other electronic databases such as Google Scholar, Scopus, PubMed, and etc. Also, library search was performed by referring to the journal archives of libraries, and evaluating the available Persian and Arabic references such as religious books and Quranic texts, and also articles of research-scientific and religious

journals, and articles of the annual seminar of Law, Children's Rights and Quran.

## Results

### 1. Difference between puberty and religious puberty (Bulugh)

According to Figh sources in which Sunnah Nasab recourse to religious age for holding a child liable, committing an offence shall not hold doer criminally responsible before reaching the stage. Yet, having reached the age, the child is subject to the same criminal punishment and reaction as adult offenders. The Statute of Iran was established accordingly in the aftermath of the Islamic Revolution.

Under Article 49 of the Islamic Penalties Act, children are free from penal responsibility. According to Note 1 of the Article, "child is referred to as someone who has not reached the religious puberty yet". Therefore, "religious puberty had (boundary)" is considered the basis of the criminal responsibility of children.

Unlike "puberty", "religious puberty" has not been unanimously agreed upon on the part of jurists and lawyers. With "puberty" and "religious puberty" being twisted, many jurists consider a state in that individuals can reach reproductive and parenting level when attaining the stage. Reaching the stage comes with a triple effect as well as external and physical side effects:

1- Reaching the age of nine lunar years for girls and the age of fifteen lunar years for boys;

2- Coarse hair growth up to the head of the penis;

3- Ejaculation (autoerotism) in boys and menstruation in girls. In fact, it seems that the display of each of symptoms is enough to establish religious puberty (Safi Golpaygani, 1418 and 1419 AH, Vol. 1 and 2, p. 57).

According to some contemporary jurists, religious puberty means reaching obligation boundary and obligation age is complete fifteen lunar years for boys and complete nine lunar years for girls. According to this, the foregoing ages are the benchmark for determining criminal responsibility; that is, divine and people rights boundaries are required to be fulfilled completely (Proceedings of Jurisprudential-Judicial ideas about criminal issues, 2002, Vol. 2, p. 26).

Some however hold that the age of religious puberty is thirteen years for girls and even more than fifteen years for boys. They believe that the condition for boundary penalties is puberty as it cannot be a fixed boundary for an immature individual; however, Ta'zir is a fixed crime. Additionally, a 13-year-old girl is considered religiously mature, as is a boy before the completion of fifteen lunar years, so they are treated just like other mature persons if their religious puberty are established. Concerning the philosophy differentiating puberty age in girls from puberty in boys, some believe it is sprung from certain physiological properties of man and women, as well as drawing on part of jurisprudential (Fighhi) spirituality, and calling on people to acquiesce to the wisdom of Almighty God (Proceedings of Jurisprudential-Judicial ideas criminal issues, 2002, Vol. 2, p. 29). As a result, most jurists perceive religious puberty to be synonymous with sexual maturity in that they both have descriptions in common.

Drawing on the viewpoint, the Civil Code in Note 1 of Article 1210 has set the age of majority to be full fifteen lunar years in boys and full nine lunar years in girls. The civil processes of reaching the age of "majority" and its consequences appear to be conflicting and different in the foregoing Act, especially when it comes to a comparison between Article 1210 and Note of the Article, because it is impossible as the clear text of Article 1210

stipulates to find anyone incapacitated due to madness or lack of growth after reaching the age of majority unless his lack of growth or madness has been proved; meanwhile, according to Note 2 of the Article, properties of a minor who has now reached the age of majority may be given to him only if his growth has been proved. As a matter of fact, under Article 1210 of the Islamic Penalties, reaching the age of majority is conceived as growth and the child has the right to meddle in his property. However, Note 2 of the article does not include the attainment of the age of majority in that it is found to be the age of growth unless it has been proved.

Comparing the two texts suggests a profound theoretical difference between their developers, because the mere exhibition of physical signs of puberties the reason for growth for pioneers of Article 1210 of the Civil Code, while it seems that designers of the Article didn't find signs of puberty the only reasons for growth. Growth or intellectual competency cannot be found unless there is a combination of two conditions; the one about physical development and the other about mental faculty. If these two conditions are met by anyone, it can be established that his/her minor period has come to an end (Emami, 1973, Vol. 5, P. 245).

Therefore, it seems that there is a critical difference between the concept of "puberty" which is conceived of as the exhibition of physical signs or the attainment of a specific age and the definition of "religious puberty" which transcends physical appearance, requiring other conditions such as wisdom, understanding faculty and mental development. As a result, it can be said that the age of puberty stipulated in Note 1 of Article 1210 of the Civil Code as well as in its notes can be inferred. Iran's judicial system faces a lot of problems due to the uncertainty and insufficiency of the statute relating to religious puberty, which

is considered the basis of criminal responsibility of children. Thus, with unjustified consideration of "religious puberty" stipulated in Note 1 of Article 49 of the Islamic Penalties Act, statutory authorities found it to be in accord with the definition of "puberty" embedded in Note 1 of Article 1210 of the Civil Code. Accordingly, they make statutory decisions on newly matured children which include very heavy punishment.

## 2. Age of criminal responsibility of children in the holy Quran

The Islamic rules are elicited from the four sources: the holy Quran, Sunnah, reason, and consensus, in that the Quran is the most basic source among others; it is because the validity of some of the foregoing sources, such as Sunnah, is contingent upon conformity to the Quran, in addition to the fact that it is seen as an independent source of rules.

Having thoroughly considered the verses relating to puberty, we obtained the following results:

1. When carefully considered, the words referring to human puberty suggest that puberty and child's attainment of obligation level is a natural, developmental and sexual phenomenon; this was described by some expressions such as "bulughalhuluma" (sexual maturity), "bulughnekah"(marriage puberty) and ashudabulugh (discernment maturity):

For further explanation, we point out to some verses in which the expressions are used:

The first verse: "When your children reach puberty, let them ask permission at all times, just as those who asked permission before them. Thus does Allah clarify His signs for you and Allah is all-knowing, all-wise ["vaezabalaghaltfalmenkomalhulumfalay satadnokamaestazanalazin men

ghablehemkamaesta'zan men  
ghablehemkazalekayobayenno Allah  
lakomayatehva Allah Allimo Hakim" (An-Nur: 59)].

The second verse: "Those among you who have not come to the age of puberty ask your permission (before they come to your presence) on three occasions; before Fajr (morning) prayer, and while you put off your clothes for the noonday (rest), and after the 'Isha' (late-night) prayer: (These) three times are of privacy for you ["... vallazina lam yabllaghualhulummenkomsalasa men ghablesalatavahinatazoonasiabekom men alzahireva men bade salataalashasalas orate lakom (An-Nur: 58)].

The third verse: Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them ["vayatloalyatamahataezayalghoalnekahfaeba nastomroshdafadfaelayhemamvalahom" (al-Nesa: 6)].

The fourth verse: "Do not approach the property of the orphan except in the best manner until he attains his maturity " ["valatagharabo mal alyatimeellabellatihiaahsanhattayablogha shade" (al-Anam: 152)].

2. The benchmark for crossing childhood and attaining adulthood (period of masculinity and femininity) is autoerotism and sexual power and sexual intercourse and realization of *ashadbulugh* (sexual and intellectual liability). Thus, it is difficult to set a specific age for puberty; because the attainment of *huluma* (sexual maturity), *nekah* (marriage maturity), *ashuda* (discernment puberty) are considered to be developmental and the recognition of developmental and natural issues are a matter of convention rather than Shari'ah

(religion). Therefore, determining a specific age with regard to developmental issues lies outside the purview of lawyer's duty. As a result, it is observed that there is no account on the age of girl and boy as the age of puberty in the Quran, but rather an array of overall criteria are presented.

3. Therefore, it can be said that the age of puberty and obligation followed by the age of criminal responsibility of children from Quran perspective are synonymous with boy's attainment of autoerotism and menstruation level for girl. Nonetheless, it should be noted that there is a need for intellectual (growth) maturity in the realization of criminal responsibility of children, in addition to sexual maturity; therefore, for the realization of criminal responsibility, there are two necessary conditions: "the attainment of puberty boundary" and "the attainment of growth and intellectual maturity". Otherwise, child is not criminally liable and cannot hold him/her liable for his/her action and punish him/her.

4. Age from Quran's perspective: it is not a topical issue in the realization of puberty, nor as a proof among others.

### **3. The age of criminal responsibility of children in the "Sunnah "**

Subsequent to the Quran which is the words of revelation, the speeches of Muhammad Peace be upon him (PBUH) are considered equal to the Revelation in validity, as well as one of the sources of the Islamic legislation, which is endowed with high validity and priority. Likewise, Hadiths quoted by Imams (PBUH) as interpreters of the Revelation are sources of *Shari'ah* and legislation. Thus, the results of the billowy and benignant sources relating to the criminal responsibility of children take on a high importance. The age of criminal responsibility of children in the Narratives of Prophet Muhammad (PBUH)

has considered and reflected on the Narratives of Muhammad (PBUH), we can conclude that:

1. Concerning puberty and criminal responsibility of children, Prophet Muhammad's speeches are proved to be in conformity to and consistent with the verses relating to puberty, as the famous words of Prophet Muhammad (PBUH) state that: "Rafael Ghalam an salasa: an sabbihatta yahta lemvaanelmajnon hatta yafighva an name hattayastighiz" (Horemeli, 1414 AH, Vol. 1, P. 320, Chap. 4, Hadith 11), in that it is observed that childhood continues as long as autoerotism is realized, i.e. they are *marfoolghalam* (to be exempt from charges); that is to say, they have no obligation to their actions, thereby being free from criminal responsibility. In another hadith where the Prophet Muhammad (PBUH) is addressing Imam Ali (PBUH), it is said that the end of *Yotm* (childhood) is the realization of autoerotism ["Ya Ali, La Yotamabaadehtelam" (ibid, p.315, hadith 9)]; once he experiences autoerotism, he is not a *Yotm* or child anymore.

2. In Muhammad's words, autoerotism has been set as a main criterion for the attainment of puberty, as there is no word about the realization of puberty there to.

3. In the words of Revelation and Muhammad (PBUH) about the realization of puberty boundary and children's transition from childhood, a common criterion is offered; autoerotism for boys and menstruation (the start of menstrual period) for girls. Nevertheless, to realize the criminal responsibility of children, there is a need for children's attainment of growth stage, in addition to the attainment of puberty.

### **B.The age of criminal responsibility of children based on 'Imams' hadiths "**

The narratives received from Imams (PBUH) regarding puberty and criminal

responsibility of children are generally divided into three classes:

1. Narratives happen to find autoerotism in boys and menstruation in girls a sign of puberty as there is no mention of age (sexual puberty);
2. Narratives emphasizing age along with menstruation in girls and autoerotism in boys (age of maturity);
3. Narratives in which age is the only sign of puberty as there is no discussion von other signs.

### 1. Sexual puberty

When the first class of the narratives are carefully considered, it is concluded that autoerotism and menstruation are considered topical as two developmental issues in the realization of puberty and transition from (Yotm and childhood).

By considering the clear text of the following narratives, it is observed that the main criterion for the realization of puberty and the attainment of masculinity and femininity is the attainment of autoerotism and menstruation.

Sahihehe Hisham: Imam Sadegh (PBUH) said "childhood of a child ends with his autoerotism which is his ushud (discernment maturity), and if he is being autoerotic and he didn't show in a sashud, he is *saffieh* or incapacitated; however he is recommended not to give his property to him ["EnghetaeYotm al-yatimbelehtelamvahovaashoddah van ehtalemvalamyoanesmenhoashoddahvakansa fihaaozahifafalyomasekenhovalliyomaleh" (ibid, (Ketaab al-hojr), vol. 13, p. 141, chap. 1, hadith 1)].

Sahiheh Ali bin Jaafar: "I asked Mosa bin Jaafar (PBUH): when is a child no longer an orphan? When he becomes autoerotic and familiar with take and give (trading), he replied" ["Saalto an alyatimmattayanghateyotmeh? Ghala:

Ezaehtalemvaarafaalakhazvaalata", (ibid, vol. 1, p.31, chap 4, hadith 6)].

Prophet Muhammad (PBUH) said Ali in his will: "O Ali! After the attainment of autoerotism and sexual puberty, it is not orphanage (childhood)" ["Ya Ali, la yotmehbaadahtelam", (ibid, vol. 1, p 315, chap 4, hadith 9)].

### 2. Age of puberty

In some Narratives, a specific age is set, because at this specific age girls experience menstrual period and boys become autocratic; that is, according to these Narratives, *Senbemahova* is not a topical issue, but if a specific age is determined in these Narratives, it is due to the realization of puberty criterion (menstruation, autoerotism). Thus, a given age is not concerned, but it is a means of the realization of the criterion.

Therefore, if the arguments and interpretations of the Narratives are carefully considered, it can be concluded that age is not a topical issue, but it is a matter of path (transition); hence, it is seen that Imam Ali (PBUH) in Moasage Abdollah bin Senan said "a nine-year old girls is hold liable for her actions because girls invariably go through menstrual period" [An abiabdollahalayhem al-sallamghala:

"ezabalaghaalgholamsalasarasenohkataba tlahoalhasanovakatabatsiattovaoghob, vaezabalaghataljariatasseninfakazalekvazalek enhatahizletosesenin", (ibid, vol. 13, p. 431, chap 44, hadith 12)].

Moreover, in *Moasage Ammar Sabati* [An AmmarSabbati, an abiabdellah al-layhe al-sallamghala:

saalto an algholammatatajabalsala? Ezaattaallayhesalasaasharasenna, faenehtalemghablazalekafaghadvajabataliehs allavajaraalayhealghalam, vajarialayhealghalam, vajariahmeslozaleka an atalahasalasaasharassennoahozatghablazalek a,

faghadvajabatallayhasalaevajaraalayhasalam", (ibid, vol. 1, p. 45, chap. 4, hadith 12; tosi, (bita), vol. 2, p. 318)], it is seen that (PBUH) when he holds boy and girl liable to obligations and duties and liable for their actions in at their thirteen, Imam Ali found hulum (maturity) contingent upon the fact that boy does not become autoerotic before the age of thirteen and girl does not go through menstrual period at this age, because in the event of being autoerotic in boy and menstruate in girl, puberty is realized and there is no need for the age of puberty.

Thus, the criterion and scale for the emergence of puberty is menstruation and autoerotism, rather than the age of fifteen years or nine years, and the mention of age in Narratives is a dominant proof of the realization of autoerotism and menstruation or an example of puberty instances (autoerotism and menstruation).

### **3. Narratives exclusively based on age**

In this class of narratives, it is just age being mentioned, rather than other signs; it is maybe because Imams (PBUH) were asked many questions about the matter of puberty and the time of obligation commencement and criminal responsibility of children, and Imams (PBUH) were referred then, and they pointed out to natural and developmental signs (menstruation and autoerotism) at times in order to give accounts on the attainment of puberty; and in some cases, they pointed out to a specific age for bringing an example of how to determine it; and in some cases, they referred to the natural signs (autoerotism, menstruation, anbat), as well as a specific age.

Therefore, determining an age on the part of Imams (PBUH) indicates, given the time of the Narratives in which most girls reached sexual puberty (period) during the years of nine to thirteen years and boys typically became autocratic during the years of thirteen to fifteen years, Imams

(PBUH), in some cases relating to determining an indicator, pointed out to the attainment of puberty in ages namely nine, thirteen, fourteen, or fifteen years, though these ages are not topical per se.

A number of third-hand Narratives are as follows:

A narrative from Abihamzeh Samali: I asked Imam Mohammad Bagher (PBUH): when is a child held responsible? "At thirteen and fourteen years old", he replied. Thus, I said "what if he does not become autoerotic at this age?" "He is hold responsible at this age and judgments apply to them, even though he does not become autoerotic", Imam (PBUH) replied [An abi Hamza salmali, an abijaafarallayhe al-sallamghala: gholtolaho: fikomtajraalahkamalasabian? Ghala: fi salasaasharavaarbaaashara: gholtofanennaholam yahtalemfiha? Ghala: "va en kana lam yahtalemfaenalhkamtajrialayhe" (Horameli, Vol. 13, p. 432, Hadith 3, Katabalwasaya, Chapter 45)].

Sahihe Hamzeh bin Hamran: I asked Imam Mohmmad Bagher (PBUH): when is it obligatory for a boy to take to the hudud completely, (that it be) established upon he, and he be taken by it? He said: "when the state of orphanhood (al-yatm) leaves and he is found in possession of understanding and perception". I said: is there something by which this limit is known? So he said: when he becomes autoerotic, or he reaches fifteen years, or he becomes sensible or he grows pubic hair, divine hudud (limitation) are established upon him and he will be judged to his advantage or disadvantage. I said: so the girl, when does the hudud become obligatory upon her completely, she is taken by them, and they are taken for her? He said: girl is not like boy. Verily, the girl when she marries and is entered upon (i.e. has sexual intercourse) and she is nine years old, the state of or fanhood leaves her, her property is given

to her, her command is allowed in buying and selling, and the hudud are established upon her completely whether to her advantage or disadvantage [An hemranghala: saalat aba jaafarallayhe al-sallam: mattayajeballaalgholam an yakhozbelhodod tama vayahmalayhevayukhazbeha? Ghalaezakharajaanhooallaytomvaadrak". Gholtofalzalekhaddoyarefbeh? Faghala: "... ezahtaalemaobalaghakhamsasharassennoaas haaraonanbatghablazalekaaghimatalayhealhod otammavaakhzobehavaakhazatlaho". Gholtofaljarahmattatajaballayhaalhododtam mavatakhzobehavayokhazlaha? Ghala en aljarialaysatmeslolgholam. En jariaezatazavjatvadakhalabehavalahatasaseni nzahabaanhaalaytemvadafaaelayhamalahav ajazamraha fi alshravabeyeeaghimatalayhaalhududtamaav aakhzalahavaalayha." (ibid, vol 1, p 30, chap. 4, Hadith 2, Al-kaffi, Vol. 17, p. 197, hadith 1)].

Imam Jaafar Sadegh (pbuh) said "the criterion for woman's puberty is nine years old" (Horemeli, (1414 AD), vol. 20, p.104, chap. 45, hadith 10).

Therefore, it seems that obligation is a matter of judgment, and judgment applies to someone who meets the criterion to be judged; hence immature individuals who cannot be judged are exempt from obligation and being held criminally liable; however, once children reach sexual puberty, they can be judged since childhood has left them. Therefore, it seems that the realization of sexual puberty cannot be itself regarded as a sufficient condition for criminal responsibility (though conditions are necessary), because individuals who are not mature deemed to be punished and reproached if they do not reach the age of majority and are unable to recognize their good and evil of their actions. Thus, given the proof of understanding (intellectual growth), one of the basic components of the realization of criminal responsibility, our deduction and inference about the sum total of proofs lie

in the fact the age of criminal responsibility is concerned when an individual physically reaches sexual maturity as well as the age of majority (discernment of good and evil) intellectually.

### ***5. Age of criminal responsibility of children from Islamic jurists' (foghaha) perspective***

The idea of Islamic jurists as Islamic experts and those who have the permission to use the sources of the Islamic rules (the holy Quran, Sunnah, reason and consensus) due to their access to the sources (Hozavi Sciences) are very important and bindings to the followers of the Islamic religion.

#### **A. The famous ideas of the Shiite Jurists:**

The Shiite Jurists' famous idea found criminal responsibility complete fifteen years old in boys and complete nine years old in girls. The major reason for the famous idea about criminal responsibility of children consists in the narrative of Hamze bin Hemran which was mentioned earlier.

The foregoing hadith was quoted in *Kaffi* with a little change made by narrators prior to ibn Mahbob and difference in the text of the narration. However, it seems that it has document unity considering the fact both hadiths were quoted by the same Imam and descend from ibn Mahmud. An investigation into the proof of the narration by Hamzeh bin Hemran, it is shown that Ahmad bin Issa's narration is weak, so is Abdolaziz Abdi's. Hamzeh bin Hemran mentioned in the text of Hemran hadith was modified or authenticated by Ahadi, a great man of letter. Therefore, it is just Shahid Sani who found the narration impeccable.

#### **B. Ideas against Jurists' famous opinion:**

As against Shiite Jurist's famous idea, there are opposing ideas, though different, which are in agreement with one another with respect to their opposition to the jurist's famous ideas.

*The opposing ideas can be categorized into two classes:*

1. A group of jurists and researchers: given the narratives about fasting or news on different decisions for different obligations, they considered a hierarchy and determine certain ages for every obligation, for which can point out to the ideas of Feyz- Kashani (May the mercy of Allah be upon him) and Ayatollah Mohammad Hadi.

In the book *Maffatih alsharaye* the late FeyzKashani says:

The consensus among narrations maintain that age of puberty include a variety of levels with respect to different obligations. As hadiths on fasting suggest, a girl is not obliged to fast before thirteen years old, unless she becomes menstruate before the age. Under narratives on hudud, it can be used to say that Had (limit) is established upon girls at nine years old, and other narratives about will and etq (abolition of slavery) hold that the contracts are true for a ten-year child [FeyzKashani, vol. 1, p. 14; Horemeli, (1414 AD), Vol, 1, P. 45, and vol, 13, p. 431, Tosi, (Bita), vol. 2, p. 318].

2. Another group of researchers, given the verses and Narratives that found autoerotism and menstruation the criteria for puberty and conflict between Narratives of famous jurists and other narratives, as well as considering the requirements of practical principles such as presumption of innocence and rule of prior possession (esteshab), and given the external facts and natural science experts' view, it is believed that puberty as phenomenon is a matter of development; by puberty in the Islam, it refers to sexual puberty whose decisive token and sign in

boys include the attainment of autoerotism and menstruation blood seen in girls.

Among those who hold on to the idea, we can refer to Ayattollah Marefat, Ayatollah Marashi, Ayatollah Mirseyyed Ali Tabatabai, Allameh Helli and the late Naraghi, some of their ideas will be given in what follows:

#### ***Ostad (master) Marefat:***

The main benchmark for puberty in boys is the attainment of an autoerotic state and the age of female growth in girls in that it occurs with the proof of menstruation blood. Puberty is a natural matter, and the role of a holy lawyer is to give account on presumptions and common signs, as there are no religious servitude in such natural circumstances (Quoted from an unpublished article by Ayatollah Marefat which is entitled "puberty of girls").

#### ***Allameh Helli:***

The criterion for girl's childhood is the age less than nine years old, because she does not see menstruation blood as it was never seen that a girl has been able to see blood before nine years old; it is because God created menstruation blood to let fetus be fed on it. Thus, the wisdom of menstruation blood creation is to nurture and grow fetus in the uterus of women and girls before nine years old are not competent to carry a child. Thus, they are dispossessed of menstruation blood, because it lacks wisdom. Like boys' semen whose wisdom of creation is the same as that of menstruation blood, because *Mani* (semen) is the liquid by which fetus comes into existence, the blood feeds and grows fetus, and either of them cease to exist in the minor state. Therefore, either of them is the reason and sign of puberty, and the youngest age at which girls may see blood is nine years old. Hence, age of menstruation comes first rather than nine years old, and then the likelihood of puberty has been raised over this age

[AllamehHelli, (Bitā), vol. 1, PP. 95-96 (quoted from unpublished article by Ayatollah Mohammad HadiMarefat)].

### ***Mirseyyed Ali Tabatabai:***

Menstruation blood is a something known well among other nations and clans as well as medics, and it is not something pending by lawyer's idea, though it is needless of lawyer's view to diagnose it because it is a phenomenon like other natural phenomenon in human body namely Bol (urine), semen, and the like, all of which are outside the purview of religious decisions; however, once it is recognized and diagnosed, relevant rules apply to it [AllamehHelli, (Bitā), vol. 1, PP. 95-96] (1-16).

### **Conclusion**

The main criterion for the attainment of puberty in boys is autoerotism and seeing menstruation blood in girls, and other signs and age are indicators which are generic rather than topical; likewise, puberty is a matter of development rather than legislation (Tashriiee).

However, determining an age at which girls are typically seeing menstruation blood and boys are autocratic is essential for a legislator. It is worth noting that the full understanding (statutory growth) is necessary for the realization of criminal responsibility, in addition to puberty. Accordingly, age is not a topical theme concerning responsibility, though it is a matter of order. A child reaches the stage of complete understanding and mutual growth at this age; therefore, individuals without perception and intellectual growth are exempt from criminal responsibility. Thus, as the realization of sexual puberty (autoerotism, menstruation) is a necessary condition for considering obligation and obligator, statutory growth and perception (discernment power) are also conditional. Therefore, for criminal responsibility, there are two necessary conditions: "puberty" and "statutory growth", neither

of these two conditions is sufficient itself for a criminal responsibility.

However, in the Islamic Penalties Act enacted 1991, given the Shiite Jurists' famous idea, the hudud of the criminal responsibility of children has been set, which is generally different compared to prior rules. In the foregoing rules, the criminal responsibility of children has been divided into two periods: before puberty and the attainment of puberty. Article 49 ("Children shall be free from criminal responsibility, if committed a crime, and the responsibility for correction, education and disciplining is given to the guardian, and if necessary the court will instruct a correction house to carry out this task").

Note 1: "Children is someone who has not reached the age of religious puberty) and its notes admit of this explanation.

In this act, by attaching and considering Note 1 of 1210 of the Civil Code ("Age of puberty in boys is the complete lunar fifteen years old and in girl the complete nine lunar years"), it can be said that children, before religious puberty are exempt from criminal responsibility; that is, a boy reaches religious puberty and is held criminally liable before reaching the complete fifteen lunar years, so does a girl before reaching the complete nine lunar years.

It is noted the idea of legislator has a lot of faults and objections which can be mentioned in sum as follows:

1. A mismatch between determined age and objective and social facts, particularly in girls that the criterion is ability to get married.
2. Lack of discrimination between identified children and non-identified in terms of responsibility
3. Failure to take account of statutory growth concerning criminal responsibility of children (NoorbahaNo. 9, p.34) (1-14).

**Conflict of interest:** None.

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