Standards of children Criminal justice in convention on the right of the child

1Ahad khazai, 2Saber Afrasyabi, 3Abedin Darabi Emarati

1Kermanshah University of medical science, Kermanshah, Iran.
2Department Of Law, Science and Research Branch Islamic Azad University, Eslamabad-E-Gharb, Iran.
3Department of Educational sciences, Payame-Noor University, Tehran, Iran.

ARTICLE INFO

Article history:
Received 25 October 2014
Received in revised form 26 November 2014
Accepted 29 December 2014
Available online 15 January 2015

Keywords:
Convention of child rights, Criminal Justice, Delinquency, Principle of trial, child

ABSTRACT

Base on Convention of child rights, first article: for the purposes of the present conventions, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. In this way protection by the international community. Criminal standard of juvenile is an important topic about child rights. So, this paper discussed child rights that was approved as a convention of child rights by U.N General assembly. The question is: "what is standard of Juvenile Criminal Justice in convention on the right of the child? We discussed standards of child Criminal justice from international instrument specially rights of the child.

© 2014 AENSI Publisher All rights reserved.


INTRODUCTION

Talking about teen and childhood is not a new topic, they are value of each society and they will make its future. So, they have an important role in their society; future and in this period they will face two ways; one of them is spiritual and emotional evolution or drawing in delinquent and corruption. This is attract by world community. So, Poland offered convention of child rights by professor Adam Lvbatka efforts (He provided this convention draft on the occasion of the international on the right of the child year) in 1989, was approved unanimously. It is consist of an introduction and 54 articles. 192 countries join to this they are not a member of this convention and 72 countries have entered a reservation on it.

The main purpose of this convention is making better life for children and trying to provide a good condition for them in different aspects like physical, mental, emotional, spiritual and social growth, for achieving this aim, we should pay attention to 4 main factors such as, growth, survival, support and association and standards of juvenile Criminal justice is notice able and we will discuss it in this paper.

MATERIALS AND METHODS

Child:
In this convention child means:
Child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. [4]

Base on this description:
So, following points are remarkable:
1- only people under 18 are subject to convention rulers.
2- Age presented in this article is not an absolute age for children; it varies according to national law.
3- In this convention 18 is puberty and growth age. The convention on the right of the child.

Corresponding Author: Ahad khazai, Kermanshah University of medical science, Kermanshah, Iran. E-mail: Geoman110@gmail.com
Delinquency:
Unfortunately, delinquent juvenile is under fined, but in its literal concept and meaning, it is error action that arising out of leaving legal duty or an act that is not considered a Crime, this word or used more for children and juvenile and this term is really close to Crime and Criminal words, but they use for children.

It is bad, we use Criminal or guilty for children; because they have sensitive spirit. So, we call them delinquent. Sometimes, we use it for a person that does not committed any Crime, but it is an anti-social and rebellious person. [1]

It should be mentional that this convention is silent about delinquent child.

Juvenile Justice:
It is a kind of rules for Crime detection, pursuit, preliminary investigation and way of trialing that must be heeded, since a child or teen have initial contact with police and Judicial authorities of committing illegal acts to terminate his charge to meet the lofty goal of human.

Contributing Factors of child delinquency:
Social studies show, more delinquent is normal trauma of abnormal society. It means, they are mentally natural and normal, but they commit Crime because of abnormal condition in society. These people are not really strong at social problem and social factors put their effects in direct way or mentally ways. So, they provide condition for committing Crime and anti-social activities. [6]

Lots of scholars believe delinquency is borne community and social factors and juvenile cannot adopt themselves positively, they do it negatively. Normal child and adolescent development is possible when social condition is suitable. When we don’t have this condition. Children and juvenile do anti-social activity.

Durkheim's theory:
He discuss about the relationship between human and their needs and aspirations.

He believes, in stable condition of society of society. Human aspiration gets set and limit by normal factors. If we do not have any limitation for our expectations, we will face unlimited condition that they are not accessible.

So, they put their negative effects in social acts. [3]

Social bond theory:
Travis Hirsch, founder of this theory. He believes, when distort behavior occurs, there is fragmented and weak link between person and society. He believes four main factors because this ling between people and society there is not one of this factor, it will cause fragment.

These factors are dependence on social, commitment, Entertainment, participation in social activities.

Failure theory or unequal opportunities:
It is the most important sociology theory about delinquency. This theory knows Criminal behavior of youth as violate to common norms of society.

This group believes, norm-breaking behavior originate from deviant subcultures. For accepting subcultures delinquent put their juvenile member under the pressure.

So, they challenge to their delinquency behavior and their behavior led to changing peer norms.

This theory believes that friendship in this scope lead to delinquency. [4]

Social learning Theory:
This theory knows delinquency as a result of role molding of society. Every behavior that attracted attention and received its reward accepted by society and attracts more attention. So, this can be very important pattern for juvenile.

General features of the Criminal Justice of child:
Criminal trial of children starts, since they have contact with police and judicial authorities, because they commit illegal act, to the end of proceedings. These steps are important for providing humanitarian goal, correction and prevent of committing Crime.

Procedures style of children and juvenile is different from adults one. For example Judges and police should take some courses like child psychology. Social work and Criminology Hearing should be absolutely closed and respect child’s privacy. Personal records contain different expert, comment such as medical, psychology, social work and Criminology. This case for adopting appropriate response, with Criminal records is urgent. [5]
In proceedings, child’s psychological and social condition that has conflict with social values, on the other hand providing good condition for education and social adjustment cause purists, preliminary investigation and trial style would be really different from adult one.

So, there is special trial for Criminal proceeding children and juvenile.

**Right to attend the hearing:**

- It contains all affairs that affect on child.
- The convention, article 12, say: 1 state party to the convention will ensure to respect child’s idea about his affairs during proceeding.
- 2. So, it provides opportunities for them to express their idea directly in each of the executive and judicial steps or express it by reprehensive.

**Pursuit and Preliminary investigation:**

- Base on article 12, educated, trained and conversant law enforcers should be chosen for trialing of children, this is the minimum of U.N standard rules. Base on this article: police officers often try to control Juvenile Crime, should be trained in special way that they could do their duties on best, there should be special police station for this aim in big cities.

**The way of handling with allegations of child:**

- As it was mentioned, for handling with allegations of child, police and Judges are responsible for finding, persuading, Preliminary investigation and trialing and they should notice benefit of child and avoid every had behavior that lead to unfavorable conditions. So, they should be just and heed international instruments rules about Juvenile justice. Every improvement in Juvenile Justice is part of national development.

**RESULTS AND DISCUSSION**

**Fundamental Principles of Criminal Procedure:**

- Articles 39 and 40 emphasis on heading Justice trialing in purist, preliminary investigation and trialing of children. In this way, the principle of legality of Crime and punishment, presumption of innocence, in formed of charges and its reasons, right to silence in the investigation and prosecution, prohibition of torture and other nuisance during investigation, right to confront and question of other witness, right of appeal to a higher author authority should be heeded.

**Acceleration of processing:**

- Understanding relationship between judicial decisions and their acts in adopting their personality to society values for under prosecution children is important and elapsed time in emotional, mental relation and special social condition cut this relationship, par 2 and 3 in article 40 of right of child treat emphasis on any delay to trialing child case.

**Summons:**

- Enforcement and Judicial authorities should prevent children from entering Criminal Justice Field or avoid formal investigation and prosecution or avoid their entry onto the formal Criminal justice process. Article 11 of the standard rules of U.N is mentioned about this (child and juvenile Justice).

**Needs of attending parents and legal guardians and lawyers:**

- During the investigation and handling charges of children and juvenile, presence of parents or legal guardians and lawyer is important in terms of psychological and emotional and legal support. So, paragraph 5 of convention on the Rights of the child emphasis on their presence during investigation and handling charges. Base on this rules, If the competent judicial authority detect their present do not have any benefit for child during the hearing process, they will not attend in this process.

**Ban torture and the principles of justice:**

- Article 37: State parties shall ensure that:
  - a- No child shell be subjected to torture or other cruel, in human or degrading treatment or punishment, capital punishment nor shall life imprisonment without possibility of release be imposed for offences committed by persons below 18 years of age.
  - b- No child be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be inconformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
c- Every child appropriate period of liberty shall be treated with humanity and respect for the in he rent dignity account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

d- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. [7]

Base Article 37, state parties shall ensure that:
1. Torture, capital punishment and life imprisonment must be banned for children below 18 years old.
2. The arrest, detention or imprisonment of a child shall be banned and it will be used as a last resort.
3. When a child deprived of liberty. Shall be treated with humanity and respect for the inherent dignity.
4. A child has the right to prompt access to legal and other appropriate assistance, also, the right to challenge the legality of the deprivation of his or her liberty before court or other competent impartial authority.

Observe Justice

Article 40 of the convention:
1. States parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth which reinforces the child’s respect for human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, states parties shall, in particular ensure that:
   a) No child shall be alleged as, because of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed:
   b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
      B1) To be presumed innocent until proven guilty according to law.
      B2) To be informed promptly and directly of the charges against him or her, and if appropriate, through his or her parents or legal guardians, and t have legal or other appropriate assistance in the preparation and presentation f his or her de fence.
      B3) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in an fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular taking in to account his or her age or situation, his or her parents or legal guardians.
      B4) Not to be compelled to give test money or to confess guilt, to examine or have examined adverse with nesses and to obtain the participation and examination of with nesses on his or her behalf under conditions of equality.
      B5) If considered to have in fringed the penal law, to have this decision and any measures imposed in consequence there of reviewed by a higher competent, independent and impartial authority or Judicial body according to law.
      B6) To have the free assistance of an interpreter if the child cannot understand or speak the language used.
      B7) To have his or her privacy fully respected at all stages of the proceeding.

3. States parties shall seek to promote the establishment f laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law and, in particular.
   a) The establishment of a minimum age below which to infringe the penal law.
   b) Whenever appropriate and desirable measures for dealing with such children without resorting to Judicial proceedings, providing that human rights and legal safe guards are fully respected.

4. A variety of dispositions such as care. Guidance and supervision orders, counseling, probation, foster care, education and vocational training programmer and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their Circumstances and the offence.

This article explains standards for Criminal Juvenile delinquent and force states to heed these principles like fair trials, presumption of innocence, human behavior with the accused and the principle of legality of Crime and punishment, turning to the law being retrospectively, Finally confidentiality of hearing children. [7]

Conclusion:

In evaluating of the convention on international child rights 1989, about standards in Criminal justice, It should be said that the principles stated in the convention, express basic and fundamental needs of children and
society and government duties to respond these needs. So, we can say this convention is a revolution on children’s Criminal justice. This paper illustrates reviews that increase standards in Criminal justice as all of the countries signed it. It is required and many signatory countries use provisions of the convention in their domestic law. Despite accepting and sign convention, some nations avoid because of lack of motivation and financial difficulties doing their duties. It seems, international organization in charge should act more serious in this case Until the children reach their rights.

ACKNOWLEDGEMENT

We are grateful to Kermanshah university of medical science authorities, for their useful collaboration.

REFERENCES