

# Contents

<b>Acknowledgments</b> .....	VII
<b>Contents</b> .....	IX
<b>List of Tables and Figures</b> .....	XIX
<b>Introduction</b> .....	1
<b>Chapter 1</b>	
<b>The Historical Study of Criminal Law Governing Juvenile Delinquency in Iran, Germany and the United Nations</b> .....	7
<b>1.1 Historical Evolution of Juvenile Criminal Law in Iran</b> .....	9
1.1.1 The ancient era .....	12
1.1.1.1 Legal system .....	12
1.1.1.2 Socio-legal status of children and juveniles.....	15
1.1.2 The Islamic era .....	19
1.1.2.1 Legal system .....	19
1.1.2.2 Socio-legal status of children and juveniles.....	24
1.1.3 Contemporary era .....	26
1.1.3.1 From the Constitutional Revolution of 1906 to the Islamic Revolution of 1979 .....	27
1.1.3.1.1 Legal system.....	27
1.1.3.1.2 Laws and regulations concerning child and juvenile delinquents.....	30
1.1.3.2 From the Islamic Revolution 1979 until now .....	36
1.1.3.2.1 Legal system.....	36
1.1.3.2.2 Laws and regulations concerning child and juvenile delinquents.....	38
<b>1.2 Historical Development of Children’s Criminal Law in Germany</b> .....	46
1.2.1 The early era.....	49
1.2.1.1 The Early Middle Ages .....	49
1.2.1.1.1 Legal system.....	49
1.2.1.1.2 Socio-legal status of child and juvenile delinquents... ..	50
1.2.1.2 The High Middle Ages.....	51
1.2.1.2.1 Legal system.....	51
1.2.1.2.2 Socio-legal status of child and juvenile delinquents... ..	53
1.2.2 The codification (modern) era .....	54

- 1.2.2.1 Legal system ..... 54
- 1.2.2.2 Laws and regulations concerning child and juvenile delinquents ..... 56
  - 1.2.2.2.1 The German state codes before unification ..... 56
  - 1.2.2.2.2 The German criminal codes after unification ..... 59
- 1.3 Historical Study of Criminal Law Governing Juvenile Delinquency in the United Nations ..... 76**
  - 1.3.1 Validity of the United Nations instruments concerning juvenile delinquents..... 77
    - 1.3.1.1 Binding instruments ..... 77
    - 1.3.1.2 Nonbinding instruments ..... 78
  - 1.3.2 Categorization of the United Nations instruments concerning juvenile delinquents..... 79
    - 1.3.2.1 Basic soft law ..... 79
      - 1.3.2.1.1 Universal Declaration of Human Rights of 1948 ..... 79
      - 1.3.2.1.2 Universal Declaration on the Rights of the Child 1959 ..... 80
    - 1.3.2.2 Hard law ..... 80
      - 1.3.2.2.1 Covenants ..... 80
      - 1.3.2.2.2 Conventions ..... 82
    - 1.3.2.3 Soft law ..... 84
      - 1.3.2.3.1 Resolutions ..... 84
      - 1.3.2.3.2 General comments ..... 86
      - 1.3.2.3.3 Other soft law instruments ..... 89
  - 1.3.3 International obligations for applying children’s rights ..... 89
    - 1.3.3.1 International obligation of Iran ..... 91
    - 1.3.3.2 International obligation of Germany ..... 93

**Chapter 2**

**Comparative Study of Current Criminal Law Governing Juvenile Delinquents in Iran, Germany and the United Nations..... 97**

- 2.1 Juvenile Criminal Law ..... 99**
  - 2.1.1 Characteristics, objectives and application of juvenile criminal law..... 99
    - 2.1.1.1 United Nations ..... 100
      - 2.1.1.1.1 Characteristics of juvenile criminal law ..... 100
      - 2.1.1.1.2 Objectives of juvenile criminal law ..... 100
      - 2.1.1.1.3 Application of juvenile criminal law ..... 102
    - 2.1.1.2 Iran ..... 102
    - 2.1.1.3 Germany ..... 103
  - 2.1.2 Fundamental rights of delinquents in juvenile criminal law..... 106
    - 2.1.2.1 United Nations ..... 106

2.1.2.1.1	Right to life, survival, and development.....	106
2.1.2.1.2	Right to dignity.....	107
2.1.2.1.3	Right to equality and non-discrimination .....	107
2.1.2.1.4	Right to best interest.....	108
2.1.2.1.5	Right to be heard.....	109
2.1.3	General principles in juvenile criminal law.....	110
2.1.3.1	United Nations .....	111
2.1.3.1.1	The principle of presumption of innocence.....	111
2.1.3.1.2	The principle of legality .....	111
2.1.3.1.3	The principle of non-retroactivity of criminal law ...	112
2.1.3.1.4	The principle of equality.....	113
2.1.3.1.5	The principle of proportionality.....	114
2.1.3.1.6	The principle of child-oriented interpretation.....	115
2.1.3.1.7	The principle of participation .....	115
2.1.3.2	Iran and Germany.....	116
2.1.4	Specific measures in juvenile criminal law .....	117
2.1.4.1	United Nations .....	117
2.1.4.1.1	Diminished criminal responsibility.....	117
2.1.4.1.2	Decriminalization .....	118
2.1.4.1.3	Depenalization .....	119
2.1.4.1.4	Decarceration.....	119
2.1.4.1.5	Diversion .....	120
2.1.4.1.6	Due process .....	121
2.1.4.2	Iran and Germany.....	122
<b>2.2</b>	<b>Juvenile Delinquents and Criminal Responsibility.....</b>	<b>122</b>
2.2.1	Juvenile delinquents .....	122
2.2.2	Elements of criminal responsibility concerning juvenile delinquents.....	126
2.2.2.1	United Nations .....	126
2.2.2.1.1	Age and gradual criminal responsibility.....	126
2.2.2.1.2	Maturity, intellectual development, ability of understanding, and diminished criminal responsibility .....	127
2.2.2.1.3	Irresponsibility.....	128
2.2.2.2	Iran .....	129
2.2.2.2.1	Criminal responsibility in discretionary punishments.....	129
2.2.2.2.2	Criminal responsibility in fixed punishments.....	132
2.2.2.3	Germany.....	134
2.2.2.3.1	Age and gradual criminal responsibility.....	134
2.2.2.3.2	Moral and mental development and maturity.....	135
2.2.2.3.3	Ability to understand and control .....	136
2.2.2.3.4	Irresponsibility.....	137

<b>2.3 Juvenile Delinquency and Sanctions</b> .....	138
2.3.1 United Nations .....	141
2.3.1.1 Juvenile delinquency .....	141
2.3.1.1.1 Delinquency and crime .....	141
2.3.1.1.2 Status offenses .....	142
2.3.1.2 Sanctions and responses .....	144
2.3.1.2.1 Principles concerning sanctions and responses .....	144
2.3.1.2.2 Types of sanctions and responses .....	146
2.3.1.2.3 Depenalization and decarceration policies .....	148
2.3.2 Iran .....	148
2.3.2.1 Crimes, differentiated measures and sanctions for juveniles in <i>Ta'zir</i> .....	149
2.3.2.1.1 Children and juveniles between the ages of 9 and 15 years .....	149
2.3.2.1.2 Juveniles between the ages of 15 and 18 years .....	150
2.3.2.2 Crimes and common sanctions for adults and juveniles in <i>Hadd</i> , <i>Qisas</i> , and <i>Diye</i> .....	152
2.3.2.3 Depenalization and decarceration policies .....	153
2.3.2.3.1 Discretionary punishments: <i>Ta'zir</i> .....	153
2.3.2.3.2 Fixed punishments: <i>Hadd</i> , <i>Qisas</i> , <i>Diye</i> .....	159
2.3.3 Germany .....	159
2.3.3.1 Juvenile delinquency .....	159
2.3.3.2 Sanctions and measures .....	161
2.3.3.2.1 Main sanctions and measures .....	162
2.3.3.2.2 Other measures with reformative and preventive goals .....	166
2.3.3.3 Depenalization and decarceration policies .....	166
2.3.3.3.1 Suspension of sentence .....	166
2.3.3.3.2 Suspension of imposition of youth penalty (probation) .....	168
<b>2.4 Juvenile Delinquents and Proceedings</b> .....	168
2.4.1 United Nations .....	169
2.4.1.1 Formal institutions and proceedings .....	169
2.4.1.1.1 Pre-trial stage .....	170
2.4.1.1.2 Trial stage .....	174
2.4.1.1.3 After trial stage/post-trial .....	177
2.4.1.2 Informal institutions and proceedings .....	179
2.4.2 Iran .....	182
2.4.2.1 Formal institutions and proceedings .....	182
2.4.2.1.1 Pre-trial stage .....	182
2.4.2.1.2 Trial stage .....	184
2.4.2.1.3 After the trial stage .....	186

2.4.2.2	Informal institutions, proceedings and sanctions .....	188
2.4.3	Germany .....	190
2.4.3.1	Formal institutions and proceedings .....	190
2.4.3.1.1	Pre-trial stage .....	190
2.4.3.1.2	Trial stage .....	192
2.4.3.1.3	After-trial stage .....	194
2.4.3.2	Informal institutions, proceedings, and sanctions .....	197

## Chapter 3

### Attitudes of Elites to Juvenile Criminal Law:

#### An Empirical Survey in Iran .....

201

#### 3.1 Description of the Survey .....

201

3.1.1	Introduction .....	201
3.1.2	Hypotheses of the survey .....	203
3.1.3	Research procedure .....	204
3.1.3.1	Sampling and administration of the questionnaire .....	204
3.1.3.2	Target groups .....	204
3.1.3.2.1	Characteristics of group 1 .....	204
3.1.3.2.2	Characteristics of group 2 .....	205
3.1.3.3	Provinces and Cities .....	205
3.1.3.4	Organizations .....	206
3.1.3.5	Total number of questionnaires .....	206
3.1.3.6	Method of data analysis .....	206
3.1.4	Description of variables .....	207
3.1.4.1	Occupation .....	207
3.1.4.2	Education .....	207
3.1.4.2.1	Distribution of respondents in relation to their education .....	208
3.1.4.3	Gender .....	208
3.1.4.3.1	Distribution of respondents in relation to their gender .....	209
3.1.4.4	Age .....	210
3.1.4.5	Marital status .....	210
3.1.4.6	Place of residence .....	210
3.1.4.6.1	Distribution of respondents in relation to their place of residence .....	211
3.2	Analysis and Description of Survey Results and Findings .....	212
3.2.1	Attitudes to the definition of the child in criminal law .....	212
3.2.1.1	Occupation and attitudes toward the definition of a child .....	214
3.2.1.2	Place of residence and attitudes toward the definition of a child .....	216

- 3.2.1.3 Gender and attitudes toward the definition of a child ..... 217
- 3.2.1.4 Marital status and attitudes toward the definition of a child ..... 218
- 3.2.1.5 Age and attitudes toward the definition of a child ..... 219
- 3.2.1.6 Education and attitudes toward the definition of a child..... 220
- 3.2.1.7 Results of a regression on the definition of a child..... 220
- 3.2.2 Attitudes toward the criteria of criminal responsibility and maturity..... 222
  - 3.2.2.1 Occupation and attitudes toward the criteria of criminal responsibility and maturity..... 223
- 3.2.3 Attitudes toward the criteria of mental maturity and their relation to the age of criminal responsibility ..... 224
- 3.2.4 Attitudes toward the differences between girls and boys in relation to the age of criminal responsibility ..... 225
  - 3.2.4.1 Occupation and attitudes toward the differences between girls and boys in relation to the age of criminal responsibility .. 226
  - 3.2.4.2 Gender and differentiation between girls and boys with respect to the age of criminal responsibility ..... 228
  - 3.2.4.3 Education and differentiation between girls and boys in relation to their age of criminal responsibility ..... 228
  - 3.2.4.4 Results of a regression on the differentiation between girls and boys ..... 230
- 3.2.5 Attitudes toward diminished criminal responsibility as well as maximum and minimum ages..... 231
  - 3.2.5.1 Occupation and attitudes toward diminished criminal responsibility..... 233
- 3.2.6 Attitudes toward criminal responses, mitigating and aggravating circumstances ..... 234
  - 3.2.6.1 Occupation and attitudes toward criminal responses, mitigating and aggravating circumstances ..... 235
- 3.2.7 Attitudes toward punishments according to the principle of proportionality..... 236
  - 3.2.7.1 Occupation and attitudes toward punishment in the juvenile justice system ..... 237
  - 3.2.7.2 Gender and attitudes toward punishment in the juvenile justice system ..... 238
- 3.2.8 Attitudes toward educational and disciplinary measures..... 239
  - 3.2.8.1 Occupation and attitudes toward educational and disciplinary measures ..... 239
- 3.2.9 Attitudes toward deprivation of liberty..... 241
  - 3.2.9.1 Occupation and attitudes toward deprivation of liberty ..... 241
- 3.2.10 Attitudes toward physical punishment ..... 243
  - 3.2.10.1 Occupation and attitudes toward physical punishment ..... 243
  - 3.2.10.2 Education and attitudes toward physical punishment ..... 245
  - 3.2.10.3 Results of a regression on attitudes toward physical punishment..... 246

3.2.11	Attitudes toward the role and duties of judges in the juvenile justice system.....	247
3.2.11.1	Occupation and attitudes toward the role and duties of the judge in the juvenile justice system .....	248
3.2.12	Attitudes toward the role and duties of the prosecutor in the juvenile justice system.....	249
3.2.12.1	Occupation and attitudes toward the role and duties of the prosecutor in the juvenile justice system .....	249
3.2.13	Attitudes toward the role and duties of the police in the juvenile justice system.....	251
3.2.13.1	Occupation and attitudes toward the roles and duties of the police in the juvenile justice system .....	251
3.2.14	Attitudes toward the competent authority for diversion .....	252
3.2.14.1	Occupation and attitudes toward the competent authority for diversion .....	253
3.2.15	Attitudes toward sexual intercourse and drug trafficking under duress by others .....	254
3.2.15.1	Occupation and attitudes toward sexual intercourse and drug trafficking under duress by others.....	255
3.2.15.2	Place of residence and attitudes toward sexual intercourse and drug trafficking under pressure by others.....	257
3.2.15.3	Gender and attitudes toward sexual intercourse and drug trafficking under pressure by others.....	258
3.2.15.4	Marital status and attitudes toward sexual intercourse and drug trafficking under pressure by others.....	259
3.2.15.5	Age and attitudes toward sexual intercourse and drug trafficking under pressure by others.....	260
3.2.15.6	Education and attitudes toward sexual intercourse and drug trafficking under pressure by others.....	261
3.2.15.7	Results of a regression on attitudes toward sexual intercourse and drug trafficking under pressure of others .....	261
3.2.16	Attitudes toward criteria of responsibility when a person under 18 years of age kills another one without malice aforethought .....	263
3.2.16.1	Occupation and attitudes toward the criteria of responsibility when a person under 18 years of age kills another person without malice aforethought .....	264
3.2.16.2	Place of residence and attitudes toward the criteria for criminal responsibility when a person under 18 years of age kills another person without malice aforethought .....	266
3.2.16.3	Gender and attitudes toward the criteria for criminal responsibility when a person under 18 years of age kills another person without malice aforethought.....	267
3.2.16.4	Marital status and attitudes toward the criteria for criminal responsibility when a person under 18 years of age kills another person without malice aforethought.....	268

- 3.2.16.5 Age and attitudes toward the criteria for criminal responsibility when a person under 18 years of age kills another person without malice aforethought ..... 269
- 3.2.16.6 Education and attitudes toward the criteria for criminal responsibility when a person under 18 year of age kills another person without malice aforethought..... 269
- 3.2.16.7 Results of a regression on criminal responsibility for the killing of another person without malice aforethought ..... 270
- 3.2.17 Attitudes toward punishment of a person under 18 years of age for killing another person without malice aforethought ..... 272
  - 3.2.17.1 Occupation and attitudes toward punishment of a person under 18 years of age for killing another person without malice aforethought..... 273
  - 3.2.17.2 Place of residence and attitudes toward punishment of a person under 18 years of age for killing another person without malice aforethought ..... 274
  - 3.2.17.3 Gender and attitudes toward punishment of a person under 18 years of age for killing another person without malice aforethought ..... 275
  - 3.2.17.4 Marital status and attitudes toward punishment of a person under 18 years of age for killing another person without malice aforethought..... 276
  - 3.2.17.5 Age and attitudes toward punishment of a person under 18 years of age for killing another person without malice aforethought ..... 277
  - 3.2.17.6 Education and attitudes toward punishment of a person under 18 years of age for killing another person without malice aforethought..... 278
  - 3.2.17.7 Results of a regression on punishment for killing another person without malice aforethought..... 278
- 3.2.18 Attitudes toward informal responses in the juvenile justice system..... 280
  - 3.2.18.1 Occupation and attitudes toward informal responses in the juvenile justice system ..... 280
- 3.3 Discussion ..... 281**
- Conclusion ..... 285**
- References..... 289**