

A LEGAL ANALYSIS OF THE SCOPE AND LIMITS OF JUVENILE CRIMINAL RESPONSIBILITY WITHIN THE AFGHAN CRIMINAL JUSTICE SYSTEM

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Abstract. *Juvenile criminal responsibility constitutes one of the fundamental and challenging issues in criminal law and the juvenile criminal justice system. This research is conducted with the aim of clarifying the scope and limits of children's criminal responsibility within the legal system of Afghanistan. The principal research question addresses the legal bases and criteria upon which such responsibility is determined, particularly across different age stages.*

The research hypothesis is premised on the assumption that the Afghan legislator, by taking into account age and the degree of discernment, has envisaged graduated levels of responsibility and, in proportion to the physical, psychological, and intellectual development of children, has prescribed differentiated criminal responses. The research methodology is descriptive-analytical, employing a library-based approach that draws upon legal, jurisprudential, and criminological sources to analyze the theoretical and practical foundations of the subject. The findings indicate that the Afghan legal system, through the application of combined criteria of age and development, classifies juvenile criminal responsibility into three stages: first, children under the age of seven, who bear no criminal responsibility; second, individuals aged seven to twelve, who, if possessing the capacity of discernment, bear relative responsibility; and third, adolescents aged twelve to eighteen, who, depending on their level of development, are subject to limited responsibility and benefit from special judicial protections.

Moreover, the influence of psychological, environmental, and climatic factors in determining maturity and the attribution of criminal liability is taken into consideration. In conclusion, the study emphasizes the necessity for legislative precision in defining the limits of responsibility and for strengthening protective measures in the adjudication of juvenile offenses.

Keywords: *Juvenile criminal responsibility; Afghan legal system; age of discernment; juvenile justice; criminal maturity; judicial protection of children.*

Introduction

The issue of juvenile criminal responsibility is regarded as one of the key and complex subjects in contemporary legal systems. Owing to the distinctive characteristics of childhood and the psychological, social, and physical dimensions associated with this stage of life, it requires careful and comprehensive examination.

Children, due to the incomplete development of their cognitive faculties, lack of full psychological maturity, and heightened susceptibility to the influences of the family and social environment, possess a more limited capacity than adults to comprehend legal concepts and the consequences arising from their criminal conduct.

Consequently, they are more vulnerable and in need of protection (Masoon, 1403: 69).

In response to these challenges, legislators in various legal systems have formulated specialized frameworks for juvenile criminal justice which, while safeguarding the rights of the child, also take into account protective and rehabilitative considerations.

In light of the repeated emphasis of international and regional conventions on the necessity of protecting children and adolescents at risk, the primary objective of this research is to elucidate and analyze the precise scope and limits of juvenile criminal responsibility within the Afghan legal system. To this end, fundamental concepts such as criminal responsibility, the child, maturity, and discernment are examined, and the legal provisions relating to the determination of the age of criminal responsibility, the role of the legislator in distinguishing between discerning and non-discerning children, as well as criminological and psychological considerations influencing juvenile criminal responsibility, are analyzed.

In this context, Khajeh-Noori (1396) notes in his research that numerous international instruments, including the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, emphasize that all individuals under the age of eighteen require the adoption of a special approach in criminal policy-making.

According to these instruments, responses to juvenile delinquency should be based on protective, corrective, and child-centered models that prioritize the best interests of the child.

In recent decades, criminal policymakers, relying on scientific criminological teachings and human rights principles, have developed and implemented differentiated approaches in addressing juvenile offending. These approaches, which have been discussed in various legal systems for more than a century, emphasize the replacement of traditional punishments with corrective and rehabilitative measures.

Despite legal advancements, the Afghan legal system continues to face significant challenges in precisely determining the age of criminal responsibility, clearly distinguishing between discerning and non-discerning children, and applying sanctions proportionate to the physical and psychological conditions of juveniles. These issues necessitate structural review and reform. Accordingly, this study, employing a descriptive-analytical method and based on library sources including domestic legislation, jurisprudential resources, and criminological theories, undertakes a comprehensive examination of the subject, with the aim of proposing practical solutions to enhance the legal and judicial status of children in Afghanistan.

1. Concepts

1.1. The Concept of Criminal Responsibility

The term “criminal responsibility” is composed of two elements: “responsibility” and “criminal.” Responsibility denotes an individual’s obligation to answer for the consequences of his or her actions, which, in its general sense, primarily emphasizes prospective accountability. In its specific sense, criminal responsibility, in addition to accountability, entails the acceptance of criminal culpability and the individual’s commitment to being answerable for his or her conduct (Jafari Langroudi, 1387: 832).

In the Persian language, the word “responsibility” signifies duty, obligation, and that for which a person is called to account (Amid, 1379: 1798). Likewise, in Islamic and lexicographical sources, “responsible” is defined as being “liable to be questioned or held to account” (Abu al-

Qasim, 1413: 250). In general terms, responsibility refers to a person being subject to questioning and claims in relation to his or her affairs or conduct (Dehkhoda, 1373).

In legal terminology, responsibility is defined as an individual's legal obligation to compensate for damage inflicted upon another, whether arising from fault or from an activity (Jafari Langroudi, 1387: 642).

The term "criminal" (penal) refers to punishment, penalty, or legal sanction imposed for criminal behavior (Dehkhoda, 1373). Accordingly, criminal responsibility is invariably accompanied by an obligation to undergo punishment, and this obligation carries different meanings and scopes across various branches of law.

1.2. The Concept of the Child

Despite differences in the definitions of criminal responsibility and the concept of a child, within the Afghan legal system a child is defined as a person who has not yet attained the age of Sharia maturity. Although the legislator has not specified the exact age of Sharia maturity, the adjudication of crimes committed by individuals under the age of eighteen is generally conducted before juvenile courts. Pursuant to the United Nations Convention on the Rights of the Child, a child is any person under the age of eighteen, unless, under the law applicable to the child, a lower age of majority or responsibility is recognized. In certain legal systems, criminal responsibility is determined more on the basis of gender than age. In general, a child is a person who has not reached Sharia maturity and, in the event of committing an offense, is subject only to disciplinary measures, provided that such measures are proportionate and carried out in consideration of the best interests of the child. From a legal perspective, children are divided into two categories: the non-discerning child up to approximately seven years of age, who lacks the capacity of discernment, and the discerning child after the age of seven, who gradually acquires the ability to distinguish between right and wrong (Riyaz, 1399: 35).

In the Afghan legal system, a child is defined as a person who has not yet attained Sharia maturity. Although the precise age of maturity is not specified, crimes committed by individuals under the age of eighteen are generally adjudicated by juvenile courts. According to the Convention on the Rights of the Child, any individual under the age of eighteen is considered a child. If a child commits an offense, he or she is subject only to disciplinary measures carried out in consideration of the child's best interests, and from a legal standpoint children are divided into two groups: the non-discerning child up to approximately seven years of age, and the discerning child after the age of seven.

In linguistic terms, "child" refers to an infant, newborn, or young person, and its plural form is "children" (Abdullah, 1394: 3). The terms "minor" and "underage" are also regarded as its synonyms (Amid, 1369: 894). In Islamic jurisprudence, a minor is defined as a person from birth until the attainment of maturity, and under the Afghan Civil Code this period extends from birth until reaching the age of fourteen (Riyaz, 1398: 5). In both Islamic jurisprudence and the Afghan Civil Code, a minor refers to an individual from birth until reaching maturity, and this period is legally defined as extending to the age of fourteen.

In legal terminology, the definition of a child varies among countries depending on economic and cultural conditions. Under the Afghan Law on the Handling of Juvenile Offenses of 1383, a child was defined as a person who has reached the age of criminal responsibility (twelve

years) but has not yet attained the age of maturity (eighteen years). Children under the age of twelve lack criminal responsibility and require care and protection. Pursuant to Article 39 of the same law, the punishment of a child aged twelve to sixteen is one-third of the punishment prescribed for adults, while the punishment of a child aged sixteen to eighteen is at most one-half of the punishment prescribed for adults (Danesh, 1391: 237). Likewise, Article 4 of the same law defines a child as a person who has not yet completed eighteen years of age (Law on the Handling of Juvenile Offenses, 1382: Article 4). Under Article 39 of the Afghan Civil Code, the age of legal capacity (rushd) is determined as eighteen full solar years, and minors are divided into three categories: non-discerning minor, discerning minor, and adolescent (moraheq). Pursuant to Article 72 of the Law on the Handling of Juvenile Offenses, children under seven years of age are non-discerning and lack criminal responsibility, and Article 70 of the same law defines a minor as an individual between the ages of seven and thirteen who is still in a stage of growth and dependent on family and school (Law on the Handling of Juvenile Offenses, 1382: Articles 70 and 72).

Despite variations in definitions, within the Afghan legal system a child is defined as a person who has not yet attained Sharia maturity or the legal age of capacity. Various laws, including the Law on the Handling of Juvenile Offenses, by establishing age classifications and distinguishing between discerning and non-discerning children, emphasize protection, rehabilitation, and proportionality of sanctions for individuals under the age of eighteen. This approach demonstrates that juvenile criminal responsibility is not solely dependent on age, but is also linked to the level of mental development and the capacity of discernment, and that the legislator has sought to strike a balance between the protection of the child and the maintenance of social order.

.1.3The Concept of Maturity (Bulūgh)

The term bulūgh (maturity), following the morphological pattern fu'ūl and derived from the root balagha, denotes reaching, attaining perfection, and growth. Raghib al-Isfahani defines it as reaching the ultimate point of an مقصد, whether in terms of place, time, or purpose (Najafi Abbrandabadi, 1387: 11–12). Accordingly, in its literal sense, maturity signifies arrival at and completion of a particular stage of growth or development.

In Islamic jurisprudence, maturity marks the end of childhood and the commencement of a stage at which a person becomes legally obligated to perform religious duties and refrain from prohibitions. At this stage, the individual is, from a Sharia perspective, capable of disposing of his or her property and is held responsible for his or her actions (Abu al-Qasim, 1413: 60). Maturity constitutes one of the fundamental conditions of legal obligation (taklīf) in Islamic jurisprudence and serves as the basis for numerous Sharia and penal rules and regulations. During this period, significant physical and instinctive transformations occur, indicating the individual's entry into the stage of physiological completion.

From a scientific and legal standpoint, maturity is the stage during which an individual attains sexual maturation as well as physical and intellectual development. According to Al-Mawsū'ah al-'Arabiyyah al-Muyassarah, maturity refers to the commencement of the natural functioning of the reproductive system; in females, it usually occurs between the ages of twelve and fourteen and is accompanied by menstruation and breast development, while in males it generally appears between the ages of twelve and sixteen and is manifested through seminal

emission, voice change, and the growth of facial hair (Raoufi, 1399: 28). From a scientific and legal perspective, maturity is thus the stage at which a human being achieves physical, sexual, and, to some extent, intellectual development.

Nevertheless, the age of maturity varies across different societies depending on climatic, environmental, and social conditions, and therefore no fixed and universal standard can be established. For this reason, the legal systems of each country, taking into account their cultural and social particularities, designate a specific age as an “indicator of maturity and development” (*amārah-ye bulūgh wa rushd*), on the basis of which the commencement of criminal responsibility is determined (Jafari Langroudi, 1387: 1342). Despite scientific criteria, the age of maturity is not uniform across societies due to climatic, environmental, and social differences, and thus cannot be defined by a single fixed threshold. Consequently, each legal system selects, in accordance with its own cultural and social conditions, an age that serves as a presumption of maturity and development, thereby determining the onset of an individual’s criminal responsibility.

2. The Concept of Juvenile Criminal Responsibility

Responsibility, in essence, refers to the attribution of an act or an omission; accordingly, criminal acts or omissions committed by children give rise to the question of accountability.

The issue that arises is at what point responsibility is incurred and under what conditions criminal responsibility is established. As a general rule, children are considered to lack criminal responsibility upon the commission of an offense. This raises the question of the circumstances under which, following the commission of a crime, the preparation and handling of their case files are entrusted—by decision of the court—to their legal guardian, or, where the court deems appropriate, to juvenile correction and rehabilitation institutions.

In cases where a child commits homicide or causes bodily injury, liability rests with the ‘*āqilah*, namely the male agnatic relatives on the paternal and maternal sides, or the father, in accordance with the order of inheritance classes. However, if a child causes damage to another person’s property, compensation is to be paid from the child’s own assets. Individuals above the age of twelve are regarded as *kabīr* (major) and, accordingly, are subject to criminal responsibility. Criminal responsibility in this sense implies that if a boy is eleven years and eleven months old, he lacks criminal responsibility; although the act may constitute an offense, criminal responsibility is incurred only after reaching the age of twelve. Nevertheless, his case is examined before a specialized court. Likewise, a boy aged seventeen years and eleven months who commits homicide is not sentenced to capital punishment under the Penal Code; however, if the offense falls within the category of *ḥudūd* crimes, the prescribed *ḥadd* punishment is enforceable against him (Riyaz, 1399: 34).

Responsibility denotes the attribution of an act or omission to the perpetrator; however, children, due to insufficient development, are considered to lack criminal responsibility. In the event of an offense, the initiation and management of their case files are, by order of the court, entrusted either to their guardian or to juvenile correction and rehabilitation institutions. In offenses such as homicide or bodily injury, the payment of *diyah* (blood money) is borne by the ‘*āqilah*, while in cases involving damage to property, compensation is recovered from the child’s assets. Criminal responsibility commences from the age of twelve; thus, a boy aged eleven years and eleven months bears no responsibility, whereas after attaining the age of twelve, his case is

examined by a special court. Furthermore, a boy aged seventeen years and eleven months who commits homicide is not subject to the death penalty, although *hudud* punishments, where applicable, may still be enforced.

2.2. The Scope of Juvenile Criminal Responsibility

The Penal Code makes no explicit reference to the developmental stage of children, nor does it distinguish between discerning (*mumayyiz*) and non-discerning (*ghayr-mumayyiz*) minors.

This omission indicates that the drafters of the law may have, under certain circumstances, assumed the application of general criminal responsibility, which underscores the complexity of the matter. Criminal responsibility can only be attributed to an individual when the perpetrator's capacity for accountability can be established. Factors such as intent (*niyyah*) and volition, which are linked to brain mechanisms, cannot be treated as variables over two distinct periods of time or addressed through two different behavioral frameworks.

One cannot simply disregard the physiological and cerebral development that underlies intent and volition in individuals. It is sufficient, for instance, to imagine a child sitting in the defendant's chair, his bright eyes fixed on the judge, being tried and sentenced for a homicide he allegedly committed (Raoufi, 1399: 35).

The absence of a distinction between discerning and non-discerning minors in the Penal Code reflects a weakness in accurately assessing the intent and volitional capacity of children.

Since mental development and the ability to discern right from wrong vary among children, imposing criminal responsibility without accounting for these differences may result in injustice, highlighting the necessity for a more precise legislative review.

2.2. Juvenile Criminal Responsibility from a Legal Perspective

The most significant factor that distinguishes the offenses of children and adolescents from those of adults is age. The determination of the commencement of criminal conduct is informed by criminological theories as well as relevant criminal laws. Legally, since the degree of responsibility and the severity of punishment correspond to the offender's level of understanding and awareness, society must impose sanctions proportionate to the child's capacity for comprehension and free will. Given that children, due to their young age, possess a more limited understanding and awareness, the legislator is required to mitigate punishment accordingly.

However, if the legislator or the court determines that a child, despite their age, possesses sufficient cognitive capacity and understanding to commit an offense, the child is held responsible and subjected to punishment. Conversely, if it is established that the child committed the offense without the requisite cognitive capacity, the child is deemed to lack criminal responsibility and is exempt from punishment (Riyaz, 1399: 40).

Age thus serves as the primary criterion for distinguishing juvenile offenses from adult offenses, ensuring that responsibility and punishment are proportional to the offender's level of understanding and awareness. Due to the immaturity of comprehension and volition in children, the legislator provides for mitigation of penalties; however, if the court ascertains that the child, despite being underage, had the capacity to discern and consciously committed the offense, the child is held accountable. In the absence of such cognitive capacity, the child is considered devoid of criminal responsibility and is exempted from punishment.

3The Age Range of Juvenile Criminal Responsibility from a Criminological Perspective

In criminology, determining the age range of juvenile criminal responsibility is considered a fundamental and sensitive issue. Although, under the laws of many countries, including Afghanistan, individuals under the age of eighteen may be held partially responsible, the nature and quality of their criminal behavior differ from that of adults due to physical, psychological, and social differences. Consequently, criminologists study this age group separately, maintaining that rational and moral development in children and adolescents occurs gradually and in distinct stages (Riyaz, 1399: 40–42).

The first stage, childhood, extends approximately up to the age of nine. During this period, a child's physical and psychological development is still in progress and reaches relative stability between the ages of nine and twelve. At this stage, the child is fully dependent on parents and rarely engages in criminal behavior. Their actions are generally influenced by adults. From an educational perspective, children in this stage require affection, instruction, and psychological and physical care, while familial problems such as poverty or divorce may contribute to psychological harm and deviant behavior.

The second stage, adolescence, spans roughly from twelve to eighteen years of age and is considered one of the most challenging periods of human development in terms of education and behavior. This period coincides with physical and sexual maturation, resulting in profound emotional and psychological changes. Adolescents seek independence, identity formation, and new experiences, and are more vulnerable to social pressures and peer influence. These transformations may predispose them to criminal or deviant behavior, particularly if adequate emotional support and parental supervision are lacking.

The third stage, youth, generally encompasses the period between fifteen and twenty-five years of age. During this stage, cognitive and physical development approaches maturity; however, susceptibility to social, economic, and familial conditions remains high. Factors such as unemployment, poverty, affiliation with deviant groups, substance abuse, and insufficient parental supervision are among the primary causes of crime in this age group. Research indicates that parental inability to enforce proper discipline and the presence of mental illnesses within the family are significant contributors to criminal behavior among youth (Khajeh-Noori, 1396: 181).

Historically, the perception of children has evolved through two main periods. Initially, children were treated similarly to adults and were subject to the same rights and obligations.

However, advances in educational sciences, psychology, and criminology revealed fundamental differences between children and adults. This intellectual shift prompted legislators to adopt a differentiated approach and to enact specific regulations for juvenile criminal responsibility. Accordingly, determining the minimum age of criminal responsibility has become one of the most challenging issues in criminal policy.

At the international level, no uniform age for the commencement of criminal responsibility has been established, as it is heavily influenced by religious beliefs, cultural traditions, and social values of each country. Some states have lowered the age of responsibility to seven years, while others have raised it to eighteen years, and in certain jurisdictions no specific age is defined.

This wide divergence demonstrates that establishing the minimum age of criminal responsibility is not only a legal matter but also a cultural and social one, requiring a realistic understanding of the stages of growth and development in children (Riyaz, 1399: 44–45).

Overall, the criminological approach emphasizes that criminal responsibility should be determined based on the child's cognitive and psychological development rather than merely chronological age, in order to ensure justice, rehabilitation, and genuine protection of children within the legal system.

4. Age of Juvenile Criminal Responsibility in Afghan Criminal Law

In the Afghan legal system, the age of juvenile criminal responsibility has undergone significant historical evolution. The earliest efforts in this regard trace back to the 1302 AP (1923–24 CE) General Penal Code, which, inspired by the Turkish Penal Code and Islamic Sharia principles, set the age of thirteen as the threshold for criminal responsibility. Under Article 23, children under thirteen were considered lacking in discernment (*quwwat al-tamyiz*) and were exempt from criminal liability, whereas Article 24 provided that children aged thirteen to fifteen, if they committed an offense, would face only half the adult penalty or an alternative punishment.

In 1306 AP, the Code was amended, and Article 26 declared individuals under fifteen to be without discernment and, therefore, free from criminal responsibility. At this stage, the law distinguished between *ḥuqūq Allāh* (divine rights) and *ḥuqūq al-ʿibād* (rights of individuals), meaning that children over fifteen were considered responsible in religious obligations, but their criminal responsibility did not commence until the age of eighteen. Sexual maturity was determined based on physical signs, such as nocturnal emission, but ambiguity in identifying these signs made consistent application difficult. Additionally, the law introduced age distinctions between boys and girls, which had not been addressed in previous regulations.

The 1355 AP Penal Code introduced a more precise classification of juvenile age groups. Under this law, children under seven were entirely exempt from criminal responsibility.

The age group of seven to thirteen was considered minors and subjected to disciplinary measures such as being handed over to parents or placed in reform schools. Adolescents aged thirteen to eighteen were treated as juveniles, who, depending on the type of offense and judicial discretion, could face either corrective measures or, in some cases, principal penalties.

A major development occurred in 1383 AP with the enactment of the Law on the Handling of Juvenile Offenses, which replaced the term “crime” with “offense,” reflecting a form of partial responsibility for children. Article 4 defined a non-discerning child as one under seven and a discerning child as one aged seven to twelve. According to Article 5, both groups were exempt from criminal responsibility. Article 6 provided for the use of forensic medicine and medical boards to determine the child's actual age in the absence of official identity documents. A key innovation of this law was the emphasis on free will and sound mind at the time of the offense as essential conditions for criminal responsibility—a principle also reinforced under Article 65 of the Afghan Penal Code.

Finally, the 1396 AP (2017–18 CE) New Penal Code addressed juvenile criminal responsibility in detail under Articles 95 to 114, establishing a three-tier system: children under seven are not prosecutable; children aged seven to thirteen must be handed over to parents and subjected to disciplinary measures; and children aged thirteen to eighteen, depending on their age

and the type of offense, may face corrective measures or proportionate penalties. Despite these advancements, determining a child's actual age remains a major challenge. The absence of valid identity documents, weak birth registration systems, and inconsistencies in medical age assessment create a discrepancy between legal and biological age, complicating the precise enforcement of juvenile criminal responsibility laws (Raoufi, 1399: 38–47).

A review of the evolution of the age of juvenile criminal responsibility in Afghan law shows that legislators have consistently sought to balance Sharia considerations, social needs, and modern child rights standards. From the 1302 AP General Penal Code to the 1396 AP New Penal Code, the age of criminal responsibility has gradually become more precise and systematic, and rehabilitative approaches have increasingly replaced harsh punishments. Nevertheless, the fundamental challenge remains the accurate determination of children's real age, as the lack of reliable identity documents and weaknesses in birth registration impede effective and fair enforcement of these regulations.

Conclusion

Based on the discussions presented, juvenile criminal responsibility within Afghanistan's criminal justice system is a multidimensional and dynamic concept that must be examined simultaneously from legal, Islamic jurisprudential (fiqhi), and criminological perspectives. In principle, criminal responsibility entails an individual's accountability for their criminal acts; however, in the case of children, this concept must be interpreted in light of their cognitive, psychological, and social development, as a child's personality is still forming and they lack stable willpower and full comprehension of the nature of criminal behavior.

From a jurisprudential perspective, a child is one who has not reached the age of shar'i (Islamic) puberty and is not legally or religiously obligated to perform duties. Nonetheless, the Afghan legislature, drawing inspiration from Islamic principles and international standards, has sought to design a gradual and supportive system for juvenile criminal responsibility. According to the Law on the Handling of Juvenile Offenses, this system comprises three main categories: children under seven, who are exempt from responsibility; children aged seven to twelve, who bear partial responsibility and require supervision; and children aged twelve to eighteen, who possess limited responsibility and are subject to corrective measures. This classification reflects the legislator's realistic understanding of cognitive and moral development at different stages of childhood.

From a criminological standpoint, responsibility should not be determined solely based on chronological age; rather, the child's psychological, social, and cultural circumstances must also be assessed professionally. Therefore, the juvenile justice system should move beyond a purely punitive approach and adopt a rehabilitative and supportive model—one aimed at reformation, social reintegration, and guiding the child toward a constructive path, rather than punishment and social exclusion. Such an approach aligns with the principles of restorative justice and human rights and can help prevent the formation of future criminal cycles.

Furthermore, the effective implementation of this system requires specialized training for judges, prosecutors, and child psychologists to ensure that decisions are fair, humane, and grounded in scientific understanding of child development.

From a policy perspective, periodic review of juvenile-related laws and coordination among judicial, educational, and social institutions is indispensable.

In conclusion, juvenile criminal responsibility in Afghanistan should be redefined in light of the best interests of the child, taking into account age, psychological, and social criteria, so that the criminal justice system shifts from a purely punitive approach to one that is rehabilitative, educational, and child-centered. Only in this manner can criminal justice serve not merely as a response to crime, but as a bridge for rebuilding children's futures and ensuring social security.

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