

# Minority as One of the Barriers to Criminal Responsibility

1. Ahmad Ali Hoseyni<sup>1</sup>: PhD Student, Department of Law, Yazd Branch, Islamic Azad University, Yazd, Iran.

2. Ali Mazidi Sharafabad<sup>2\*</sup>: Assistant Professor, Department of Law, Yazd Branch, Islamic Azad University, Yazd, Iran.

\*Correspondence: mazidiali@gmail.com

## Abstract

For the realization of criminal responsibility, a person must possess criminal capacity, which is summarized in reason, puberty, and free will. In the Islamic Penal Code of Iran, ratified in 2013, Articles 146 to 159 are dedicated to the discussion of barriers to criminal responsibility. Propositions such as reason, puberty, intent, and free will are either components of the mental element or components of criminal capacity. If these propositions constitute components of the mental element, then without them, the mental element—as one of the three necessary elements for the completion of a crime—would not be fulfilled, resulting in no crime being committed and, consequently, no responsibility arising. The consideration of factors such as minority as a barrier to criminal responsibility does not have an objective and operational outcome; however, it at least influences the belief in the realization of the offender's criminal responsibility and subsequently the removal of their punishment, or the non-realization of criminal responsibility and thus the absence of punishment. This article has been written with the aim of analyzing minority as one of the barriers to criminal responsibility.

**Keywords:** Responsibility, Criminal Responsibility, Barrier, Minority.

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## 1. Introduction

Persons are divided into two groups with respect to criminal responsibility: those who possess criminal responsibility and those who lack it. Individuals with criminal responsibility are those who possess abilities such as comprehension, free will, and maturity. However, individuals without criminal responsibility lack such abilities and are exempt from punishment due to reasons such as minority. Under certain specific conditions, acts that would normally be considered crimes by the legislator are not deemed criminal and thus are not subject to punishment. The principal benefit envisaged by the legislator in foreseeing factors that remove criminal responsibility is that if the perpetrator has an accomplice or an accessory at the time of committing the offense, only the perpetrator's criminal responsibility will be negated, while the accomplice and accessory will still be considered criminal and must be punished. In contrast, in the case of justificatory causes, the committed act is deemed lawful, and none of the participants—including the principal, accomplice, or accessory—are regarded as criminals, as if none of them had committed a crime. Among the justificatory causes, legitimate defense can be mentioned. Factors such as minority or

insanity are considered barriers to criminal responsibility. If an individual, under coercion, duress, or for purposes of defense as specified by the legislator under the term "legitimate defense," commits an act that is criminalized and punishable under the law, despite the criminal nature of the act, they will not be punishable. The barriers to criminal responsibility are specified in Articles 146 to 159 of the Islamic Penal Code, and they include: minority, insanity, coercion, necessity, sleep, unconsciousness and similar states, intoxication, ignorance of the law, legitimate defense, acting under legal authority or permission, enforcement of more significant laws, lawful orders by legal authorities, disciplinary actions by parents or legal guardians toward minors and the insane, incidents arising from sports activities, and legitimate medical or surgical procedures.

Regarding those subject to factors removing criminal responsibility, if established by the court, an acquittal judgment will be issued without the need to rely on legal excuses, whereas generally, the reliance on legal excuses for exemption from punishment occurs after establishing the defendant's fault and at the discretion of the court ([Galdouzian, 2010](#)).

## **2. Main Concepts**

### *2.1. Responsibility*

In the Comprehensive Modern Dictionary, responsibility is defined as being subject to accountability. In Moein's Dictionary, the word "responsible" is defined as something demanded or a person who bears an obligation and will be questioned if not fulfilled, and responsibility is defined as being responsible and obligated to perform a task. Nazem al-Atibba considers a responsible person as someone from whom inquiry and request are made. In Amid's Persian Dictionary, responsibility is defined as that which a human being undertakes and is responsible for, and "responsible" means being questioned and demanded ([Karkheiran, 2013](#)).

### *2.2. Criminal Responsibility*

Although Iranian criminal laws refer to the "extent of criminal responsibility," they do not provide a definition of it. However, legal doctrine has attempted to define this term, stating that criminal responsibility is the attribution of a criminal act or omission to a person or persons who have violated criminal laws, whether as principal, accomplice, or accessory, whether intentionally or negligently, provided that the person is capable of bearing punishment or corrective and educational measures for their act or omission.

The 2013 Islamic Penal Code also does not define criminal responsibility but has compiled the conditions of criminal responsibility, previously scattered in various sections of the former law, under one chapter in the general provisions. The 2013 Penal Code, in the first chapter of the fourth section of the first book under the title "Conditions of Criminal Responsibility," from Articles 140 to 159, defines the conditions and barriers of criminal responsibility in Hudud, Qisas, and Ta'zirat. It specifies that criminal responsibility is realized only when the individual is sane, mature, and possesses free will at the time of committing the crime, except in cases of coercion into murder, whose ruling is set out in the third book (Qisas). In this article, reason, maturity, and free will are stated as conditions for establishing criminal responsibility; however, there is no mention of intent. Islamic jurists regard general conditions for obligation as including maturity, reason, free will, and intent. According to Article 144 of the new law, "In the realization of intentional crimes, in addition to the offender's knowledge of the subject matter, their intent in committing the criminal act must also be established. In crimes dependent on a result, the intent regarding the result with knowledge of its occurrence must also be verified," indicating that for the realization of intentional crimes, in addition to maturity, reason, and free will as conditions of criminal responsibility, two additional elements from the mental component, namely knowledge of the subject and intent to commit the criminal act, are also necessary ([Niazpour, 2012](#)).

According to Legal Terminology, criminal responsibility refers to the responsibility of the perpetrator of a crime specified in the law, and the responsible person will be subject to one of the punishments prescribed by the law. The society is the injured party, unlike in civil responsibility where individuals are the injured parties ([Jamshidi, 2003](#)).

Validi, while defining criminal responsibility as an obligation to answer for the negative consequences of a criminal phenomenon or offense, emphasizes that committing a crime or violating criminal regulations alone does not automatically result in criminal responsibility. Conditions such as the conscious will behind the crime, the offender's malicious intent or

criminal negligence, and the causal connection between the crime and the perpetrator are necessary ([Validi & Zangi Ahromi, 2010](#)).

### 2.3. *Minority*

Age is only one indication of maturity, as individuals may experience puberty at different ages depending on their location and time. It must be noted that puberty at the time of committing the crime is the relevant point, not at the time of trial ([MirMohammadSadeghi, 2013](#)).

Historically, two main periods can be distinguished regarding the perception of children: initially, children were assumed to have needs and characteristics similar to adults and thus had identical rights and duties. Over time, as understanding of various aspects of children's existence and personality developed, this perspective changed. Findings from educational sciences, psychology, sociology, and criminology revealed significant differences between children and adults, leading national legislators to adopt differentiated rights and duties for children, influenced also by international mandates ([Ashouri, 2005](#)).

Thus, an era of differentiated treatment of children began, one key aspect of which is the differentiated approach to juvenile delinquency and victimization. This differentiated perspective, based on the criterion of the offender, has led to specific criminal policy measures concerning children ([Shams-Nateri et al., 2014](#)).

One important issue regarding juvenile delinquents is the minimum age of criminal responsibility—that is, at what age an individual can be deemed to possess sufficient mental and cognitive capacity to attribute a committed crime to them and hold them accountable for its consequences. Determining this age is controversial across various criminal justice systems, with wide differences. No international document has definitively established a minimum age of criminal responsibility. Different countries have not reached a consensus and have failed to specify a minimum age in the various international instruments concerning children's rights.

The range of differences is so broad that it seems unlikely that a global consensus will ever be achieved. Some countries set the age as low as 3 years, others as high as 11 years, and some countries have no established minimum age at all. This diversity not only reflects the difficulty, if not impossibility, of reaching a universal agreement but also shows that determining the minimum age of criminal responsibility is deeply rooted in religious beliefs, social traditions, customary practices, and cultural values, which vary greatly across countries ([Jamshidi, 2003](#)).

In Iran, this issue is even more complicated due to the categorization of crimes into Ta'zir and non-Ta'zir offenses, requiring special considerations in determining the minimum age of criminal responsibility. The Islamic Penal Code of 2013 introduced significant changes regarding this minimum age, influenced both by the shortcomings of the previous law and by international recommendations and comparative studies in juvenile justice.

Pursuant to Article 146 of the Islamic Penal Code, minors are not criminally responsible. The general principle is that a mature person is presumed criminally responsible unless proven otherwise; however, regarding minors, the principle is non-responsibility and this cannot be rebutted. Children are exempt from criminal responsibility upon committing a crime. It should be noted that a child is defined as someone who has not reached puberty, and according to many Islamic jurists, puberty coincides with the attainment of intellectual maturity. Moreover, a nine-year-old girl and a fifteen-year-old boy are not necessarily considered mature ([Zera'at, 2013](#)).

According to Decision No. 2911 dated January 15, 1959, of the Supreme Court, if the court cannot determine the actual age of the accused at the time of committing the offense, it is not obligated to refer the matter to an expert; in such a case, the decision must be based on the minimum certain age.

According to Decision No. 20/375 dated August 9, 1992, issued by Branch 20 of the Supreme Court, issuing an acquittal verdict for minors is not legally valid, because minors, by virtue of the law, are exempt from responsibility and cannot be prosecuted ([Karkheiran, 2013](#)).

### 2.4. *Age of Maturity*

According to Article 147 of the Islamic Penal Code, the age of maturity is nine full lunar years for girls and fifteen full lunar years for boys.

In Iran, the age of maturity for the onset of criminal responsibility is fifteen full lunar years for boys and nine full lunar years for girls. Furthermore, the birth certificate is only an indication of the accused's age, and the court may determine the individual's maturity and age through other means as well (Zera'at, 2013).

In the former Penal Code, the age of maturity was not specified and was limited to a reference in Note 1 of Article 49, relying on Article 1210 of the Civil Code to determine the criterion for maturity. In contrast, under the former law, contrary to the principles governing criminal responsibility and punishment, the commission of a Hadd crime by a minor could, in some cases, result in a Ta'zir punishment. However, in the new law, no Ta'zir punishments are stipulated for minors, and minors are only subject to security and educational measures (Shams-Nateri et al., 2014).

In none of the verses of the Holy Qur'an is age cited as a criterion for maturity; rather, the attainment of the stage of marriageability and dreams (wet dreams) are set as standards. From the totality of narrations, it is also inferred that age is not substantive but is merely an indication of instinctual maturity (Galdouzian, 2010).

### **3. Criminal Responsibility of Minors in Ta'zir Crimes**

In the 2013 Islamic Penal Code, the criminal responsibility of children, without any distinction based on gender, follows a gradual system, with different responses envisaged for various age groups. Each of these groups is separately examined below.

#### *3.1. The Age Group of 9 to 12 Years*

Article 88 of the 2013 Islamic Penal Code states that children aged 9 to 15 who commit Ta'zir crimes shall be subject to one of the decisions listed in paragraphs "a" to "th" of the same article. However, according to Note 1 of this article, the decisions mentioned in paragraphs "t" and "th" apply only to children aged twelve to fifteen years; thus, the measures applicable to the 9 to 12 age group are limited to those listed in paragraphs "a" to "p." Substantively, the responses foreseen by the legislator for this group are of a remedial-educational nature (Jamshidi, 2003).

Technically, this article implies that a child under the age of 9 cannot be subject to any decision within the criminal justice system, even corrective and supervisory measures. In other words, these children cannot be prosecuted criminally.

This raises the question of whether, under the Iranian legislator's accepted view, the child cannot commit a crime due to the absence of the mental element, or whether the child commits a crime but is not punishable due to the absence of criminal responsibility.

Article 146 of the 2013 Islamic Penal Code stipulates that "minors are not criminally responsible," meaning that while children may possess the necessary mental element for committing a crime, they are not punishable due to their inability to discern right from wrong or their inability to control their behavior.

This same meaning was previously expressed, albeit differently, in Article 49 of the former Islamic Penal Code. However, according to the present author, this view, although consistent with the former Penal Code, is not fully compatible with the provisions of the 2013 Penal Code.

In the former Penal Code, although children were not punishable, at any age the judge could still impose alternative measures, such as referring them to a correction and rehabilitation center. However, under the 2013 Penal Code, with children categorized into different age groups and no measures applicable for children under nine years old (whether boys or girls), it could be argued that these children lack the mental element required for committing a crime.

In the former Penal Code, no minimum age was set for attending a criminal court. Moreover, the possibility of corporal punishment for delinquent children was envisaged without consideration of their age. According to Note 1 of Article 49, the court could order corporal punishment if deemed necessary for the child's education.

However, the 2013 Penal Code provides for no measures, even corrective or educational, for children under nine years old, meaning these children cannot be subject to criminal prosecution, and the legal authorization for corporal punishment is also nullified.

### 3.2. *The Age Group of 12 to 15 Years*

Regarding the 12 to 15 age group, the legislator has adopted a stricter approach, allowing for not only corrective reactions but also certain disciplinary and punitive measures. In the original draft bill, Article 88 practically applied only to boys, as a girl between the ages of 9 and 15 would have passed the presumption of maturity according to Article 147 and would no longer be considered a child.

### 3.3. *The Age Group of 15 to 18 Years*

Upon reaching the age of 15, and until reaching 18, boys and girls who commit Ta'zir crimes are subject to Article 89 of the 2013 Islamic Penal Code.

In the former Penal Code, no specific regulations existed for this age group (15 to 18 years), and they were considered to have full criminal responsibility. However, the 2013 Penal Code envisages special sanctions for this group, subjecting them to a different system than adults (those over 18 years old).

Although the legislator has not explicitly raised the age of criminal responsibility, by establishing a gradual system of criminal responsibility, the scope of corrective and educational protections has been expanded to include individuals under 18 years of age, who, from no interpretation of Islamic sources, could be deemed children.

## 4. **Criminal Responsibility of Minors in Hadd and Qisas Crimes**

The fundamental rules governing the commission of Hadd and Qisas crimes by persons under eighteen years old are set forth in Note 2 of Article 88 and Article 91 of the 2013 Islamic Penal Code. These provisions have not significantly altered the penal reaction toward minors committing Hadd or Qisas crimes compared to the previous law.

However, unlike Note 2 of Article 88, Article 91 introduces a major transformation in the criminal reaction toward minors committing Hadd or Qisas crimes. This article identifies three situations as causes for the elimination of Hadd or Qisas, obliging the judge to impose instead a Ta'zir punishment based on the offender's age group.

These three situations are:

- a) Lack of understanding of the nature of the committed crime by the offender.
- b) Lack of understanding of the prohibition of the committed crime by the offender.
- c) Doubt concerning the offender's intellectual maturity or mental capacity.

Two important points arise regarding the ruling of this article:

First, do the considerations leading to the elimination of Hadd or Qisas not possess sufficient strength and validity to also eliminate Ta'zir punishment? For example, if a person under eighteen cannot be sentenced to Hadd due to "doubt concerning their mental maturity," is it logical to impose a Ta'zir punishment instead? Furthermore, if the crime committed was exclusively punishable by Hadd, and this punishment has now been eliminated due to doubt, what logical basis exists for replacing it with Ta'zir punishment? Essentially, can a person whose intellectual maturity is doubtful be sentenced to Ta'zir?

Second, the type of reaction under Article 91 remains ambiguous. After declaring the elimination of Hadd or Qisas, the legislator only states generally that the offender should be sentenced, "considering their age," to "the punishments prescribed in this chapter," meaning Chapter 10 of Section 2 of Book 1 of the 2013 Islamic Penal Code.

However, it is unclear which specific punishments the legislator refers to: the measures mentioned in Article 88, its Note 2, or Article 89? Answering this question is not simple, particularly as the legislator, by emphasizing the consideration of the offender's "age" when determining punishment, adds to the ambiguity.

## 5. **Legal Effects of Justificatory Causes of Crime and Factors Removing Criminal Responsibility**

Justificatory causes of crime refer to objective conditions that render a criminal act justified or permissible. In contrast, the factors removing criminal responsibility pertain to personal and subjective conditions of the perpetrator, where, despite the occurrence of the crime, criminal responsibility is lifted from the offender.

When discussing factors removing criminal responsibility, it must be stated that the act committed remains a crime, but for reasons such as insanity or minority, the perpetrator is exempted from responsibility.

The principal benefit envisaged by the legislator in foreseeing the factors removing criminal responsibility is that if the offender has an accomplice or accessory at the time of committing the crime, only the offender's criminal responsibility is lifted, whereas the accomplice and accessory are still considered criminals and must be punished. In contrast, when justificatory causes are present, the act becomes permissible, and none of the participants—whether the principal, accomplice, or accessory—are considered criminals, as if none of them had committed a crime. Legitimate defense is among the justificatory causes of crime.

Conditions such as minority or insanity are factors removing criminal responsibility, whereas coercion, compulsion, and legitimate defense are considered justificatory causes of crime.

If an individual, under coercion, duress, or for purposes of defense as defined by the legislator under the term "legitimate defense," commits an act criminalized by law and punishable, despite the criminal nature of the act, they are not punishable.

Factors removing criminal responsibility include childhood, insanity, compulsion, mistake, intoxication, sleep, and unconsciousness. In such conditions, due to physical or psychological immaturity or the occurrence of a transient condition, the perpetrator lacks either cognition or free will—or both—thus the act committed cannot be attributed to them.

In the new Islamic Penal Code, the barriers to criminal responsibility have replaced the previous distinction between justificatory causes and factors removing criminal responsibility.

Prior to the ratification of the new Islamic Penal Code in 2013, under the former law, two completely distinct and separate categories—"factors removing criminal responsibility" and "justificatory causes of crime"—existed, each carrying different legal effects.

However, the legislator, in the 2013 Islamic Penal Code, merged justificatory causes with factors removing criminal responsibility under the title "barriers to criminal responsibility," such that in the event of the realization of a barrier to criminal responsibility, the perpetrator is not punishable.

The legislator, starting from Article 146 onward in the 2013 Islamic Penal Code, addresses the barriers to criminal responsibility. Nevertheless, it seems it would have been preferable had the legislator not merged justificatory causes of crime with factors removing criminal responsibility, as each carries its own distinct legal effects.

## 6. Conclusion

Today, almost everywhere in the world, distinctions between children and adults are observed in various domains, including morality, education, health, psychology, and others. One such distinction is the differentiated approach in criminal proceedings, which is widely accepted as a principle. The reason lies in the differences that exist between children and adults, both physically and mentally.

A close examination of the Islamic Penal Code ratified in 2013 reveals notable standards in the realm of fair punishment applicable to children and adolescents. Among these standards are: the exclusion of recidivism rules, the absence of criminal effects for the convictions of children and adolescents, the abolition of corporal punishment for minors, repeated court reviews of previous decisions, deferral of judgment issuance in all Ta'zir crimes, and suspension of punishments, among others.

Chapter 10 of the new 2013 Islamic Penal Code outlines the criminal justice system's position regarding delinquent children and adolescents under eighteen years of age. These regulations have undergone changes compared to previous regulations. However, certain deficiencies resulting from the amendments to the Penal Code in this field require correction.

First, the age of criminal maturity—that is, the age at which an individual attains full criminal responsibility—is lower in Hudud and Qisas than in Ta'zir crimes. In Ta'zir crimes, full criminal responsibility is not reached until the end of eighteen years, whereas in Hudud and Qisas, a girl after nine lunar years and a boy after fifteen lunar years attain full criminal responsibility.

This inconsistency is problematic. Indeed, it could be argued that the desirable presumption should be the opposite: that the age of criminal maturity for Hudud and Qisas should be higher than for Ta'zir crimes, because Hudud and Qisas crimes generally entail more severe and stringent punishments and have more profound consequences for the convicted individual.

Furthermore, a measured and deliberate approach to criminal reaction demands that the severity of the response to juvenile delinquency increase proportionally with age, understanding, and responsibility. As the child's age advances, society's reaction



may understandably become harsher, moving from a purely educational and corrective approach toward one that also includes elements of blame and deterrence.

However, the 2013 Islamic Penal Code moves in precisely the opposite direction: in Ta'zir crimes—where punishments are milder, more flexible, and can be individualized through mechanisms like deferred judgments, punishment reduction, and suspension—the age of criminal maturity is raised to eighteen full solar years.

Conversely, in Hudud and Qisas punishments—which are functionally devoid of corrective aspects and are inherently harsher and more punitive—the age of criminal maturity is equated with the age of sexual maturity (nine or fifteen lunar years, depending on the gender of the perpetrator), thereby imposing full criminal responsibility immediately after reaching sexual maturity.

### **Authors' Contributions**

Authors contributed equally to this article.

### **Declaration**

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

### **Ethical Considerations**

All procedures performed in this study were under the ethical standards.

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### **Conflict of Interest**

The authors report no conflict of interest.

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