



CRIMINAL RESPONSIBILITY OF JUVENILES IN SECULAR LAW AND ISLAMIC JURISPRUDENCE

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Abstract:

This study addresses the criminal responsibility of a minor, or juvenile, in positive law and Islamic jurisprudence, given its significant importance in determining the extent of accountability for actions committed by this segment of society. Particularly, when considering that Algerian criminal law, comparative law, and the rules of Islamic jurisprudence have progressively adopted this responsibility, ranging from exemption to mitigation and, eventually, to full accountability. This progression is attributed to the lack of awareness, discernment, and the extent to which freedom of choice is present or absent.

Keywords: Event - penalty - responsibility - capacity - child.

Introduction:

There is no doubt that criminal behavior is an ancient social phenomenon as old as humanity itself, and no society has been immune to it. Crime, regardless of its nature, constitutes an assault on the security and stability of society, necessitating measures to address perpetrators by imposing punishments in accordance with the law. This requires adherence to a set of procedures defined by the legislator in the Code of Criminal Procedure, starting from the initial investigation phase, passing through the preliminary inquiry, and culminating in the trial phase, with the aim of reducing the severity of crime and preventing its spread in society.

Not long ago, various positive legislations, international conventions, and treaties did not acknowledge the distinctions and individualization granted by Islamic Sharia to this group (juveniles). These systems did not consider the personality or age of the child when imposing penalties.

However, this situation did not persist for long. Most national legislations and international instruments have since adopted the approach of Islamic Sharia, granting children a range of rights, focusing efforts on protecting this group, and safeguarding their interests. Among the fundamental interests of this group is the recognition of their inability to bear the consequences of their criminal actions, due to either a lack of discernment or awareness or the absence of free will.

For an individual to be held accountable for a legally criminalized act they have committed, eligibility and intent must be present, as these are the fundamental conditions for criminal responsibility. The



criminal responsibility of a juvenile differs from that of an adult, as it is characterized by special treatment. Thus, this study will clarify the basis and stages of juvenile responsibility.

To address this issue, the study is divided into two main sections:

- **First Section:** The criminal responsibility of juveniles.
- **Second Section:** The foundations for negating criminal responsibility for juveniles.

First Section: The Criminal Responsibility of Juveniles

This section will be addressed through two main subsections. The first subsection discusses the definition of juvenile criminal responsibility, while the second subsection examines the historical evolution of juvenile responsibility.

First Subsection: Definition of Juvenile Criminal Responsibility

The definition of juvenile criminal responsibility is explored in Islamic jurisprudence and positive law as follows:

Firstly: Definition of Juvenile Criminal Responsibility in Islamic Jurisprudence

Islamic jurists did not use the term "criminal responsibility" explicitly but addressed the subject within their discussions of criminal capacity, which is one of the conditions for the existence of a crime, leading to its legal consequences: namely, liability for punishment ¹.

Criminal capacity is a fundamental condition for qualifying an act as a crime under Islamic law. It is required for both the imposition of legal accountability and for fulfilling its implications, whether through action or abstention. Abdul Qadir Awda defined it as: "The individual's liability for the consequences of forbidden actions that they commit willingly and with awareness of their implications and outcomes. Thus, criminal responsibility in Islamic jurisprudence is based on three foundations: first, the individual commits a forbidden act; second, the individual does so willingly; and third, the individual acts with awareness" ².

Secondly: Definition of Juvenile Criminal Responsibility in Positive Law

Juvenile criminal responsibility refers to the capacity or eligibility of an individual to bear the criminal penalties prescribed by law as a consequence of the crime they commit. This definition reveals two aspects of criminal responsibility:

- **The Material Aspect:** This is fulfilled when an act with a physical existence is classified as a crime by law. If this classification is absent, there is no scope for criminal responsibility.
- **The Personal Aspect:** This is the capacity of the perpetrator of the crime to be subject to criminal penalties, whether as punishment or preventive measures. This requires the individual to be eligible to bear the punishment resulting from this responsibility.

According to Italian jurist "Carrara," criminal responsibility is defined as "the individual's liability for violating the sanctity of a state law through an external act originating from them, provided it is not justified by the performance of a duty or the exercise of a right, and punishable by a criminal sanction."

The Algerian legislator has established that juvenile criminal responsibility begins at the completion of 18 years of age, as stipulated in Child Protection Law No. 15-12.

The legislator provides special care for children in accordance with their developmental stages, ensuring that each stage is treated according to the child's capacity for awareness and choice. As such, the legislator has divided the child's developmental stages into several phases, with penalties



and corrective measures assigned accordingly. Juvenile criminal responsibility is not uniform across all stages but varies depending on the child's age ³.

This differentiation is evident in Article 49 of the Penal Code, which specifies that juvenile responsibility differs for those under 13 years of age and those aged between 13 and 18 years.

Second Subsection: Historical Evolution of Juvenile Criminal Responsibility

Primitive responsibility was primarily concerned with material aspects, meaning it was more connected to physical acts than to the criminal intent, or directly to the crime and the criminal. As a result, responsibility focused solely on the person committing the act, regardless of their intent or willingness to commit it, whether they were an adult or a juvenile, sane or insane. Juvenile criminal responsibility has undergone significant development over the ages, which can be outlined as follows:

Firstly: In Ancient Times

In ancient societies, the concept of collective responsibility was prevalent. Over time, these societies evolved and began to distinguish between juveniles and adults in terms of treatment.

1- Juvenile Responsibility in Ancient Chinese Society

In ancient Chinese society, the concept of collective responsibility was prevalent for certain crimes, such as high treason and some murder cases. During this period, responsibility extended to all relatives of the perpetrator, regardless of their age. No distinction was made between adults and minors, not even infants. The ancient Chinese legal system classified juveniles into three categories:

A. Children Aged Seven

The treatment of children aged seven was equivalent to that of elderly individuals aged ninety (90) years. This group was exempt from criminal responsibility, except in cases of high treason, where juveniles were subjected to the same punishment as all other family members.

B. Children Aged Ten

The treatment of children aged ten was similar to that of individuals with disabilities who had lost both eyes or arms, as well as elderly individuals aged eighty (80) years. Members of this group were treated similarly to the first category, with the exception of death penalty cases. In such cases, their fate could be presented to the emperor, who might mitigate the punishment and impose an appropriate penalty instead ⁴.

C. Children Aged Fifteen

The treatment of children aged fifteen was akin to that of individuals with disabilities who had lost one eye or one arm, and elderly individuals aged seventy (70) years. They were subjected to the death penalty for crimes warranting such punishment, while other corporal penalties were substituted with financial penalties ⁵.

2- Juvenile Criminal Responsibility in Greek Legislation

In ancient Greek laws, collective criminal responsibility was established for crimes such as high treason and religious desecration. In these cases, punishment was inflicted upon all members of the perpetrator's family, extending beyond the living to include deceased relatives. The graves of deceased family members were exhumed, and their remains were expelled from the country.

Juveniles, however, were punished differently. For involuntary manslaughter, they were sentenced to exile. The Law of the Twelve Tables prescribed specific corporal punishments for children in certain crimes, particularly theft. If a child was caught in possession of stolen goods or involved in the theft of agricultural crops from fields, they were sentenced to compensation and corporal punishment, typically flogging. In severe cases, such as theft in flagrante delicto, the punishment



could escalate to death for adults, while children were exempt from execution but still penalized with restitution and corporal punishment⁶

3- Juvenile Criminal Responsibility in Roman Legislation

Roman legislation, like other ancient systems, adhered to the principle of collective responsibility in cases of high treason. However, the emperor, with his absolute authority, could spare the lives of offenders' families, on the condition that they were disinherited and forced to live as outcasts in poverty and destitution.

At a later stage, Roman law began to formally recognize the principle of non-responsibility for juveniles under the age of seven, based on the understanding that children under this age lacked the intent to harm others. However, if intent to harm could be proven, even children over seven years old could be punished⁷.

Secondly: Criminal Responsibility in the Middle Ages

This section focuses on the historical evolution of juvenile criminal responsibility in the West and Islamic jurisprudence.

1- Criminal Responsibility in the West

Christianity played a significant role in shaping criminal responsibility during the Middle Ages, where religious considerations became the primary factor in directing responsibility and punishment. The concept of crime became intertwined with the idea of sin, making punishment a form of religious retribution and atonement for wrongdoing.

Based on this foundation, canon law established principles of personal responsibility, asserting that an individual could not be held accountable unless they acted with free will. Consequently, juveniles were generally deemed not responsible. However, old English law allowed for the application of punishments, including the death penalty, for juveniles aged between seven and fourteen. Children under the age of seven were exempt from criminal prosecution.

During the 18th century, harsh penalties were imposed on juveniles. For instance:

- An eight-year-old boy was sentenced to death for murder.
- A thirteen-year-old girl was executed for committing arson.
- In 1840, a fifteen-year-old was sentenced to 14 years of exile for stealing 40 oranges and 50 eggs.

Although Christianity promotes mercy and forgiveness, the severity of punishments during this period can be attributed to the despotic nature of governance. Rulers used punishment as a tool for vengeance against opponents, strengthening their authority through fear and terror. This approach was justified by the ruler's claim of divine right, which bolstered their absolute power⁸.

2- Criminal Responsibility in Islamic Jurisprudence

Islamic Sharia is undoubtedly the first legal system to distinguish between those who are responsible and those who are not. It considers a living, competent human being as subject to criminal responsibility. Thus, no criminal or civil responsibility was imposed on the deceased, nor were they subjected to punishment, unless they had reached the age of maturity. This principle is rooted in the Prophetic Sunnah, as stated by the Prophet Muhammad: "رفع القلم عن ثلاث: عن النائم حتى يستيقظ، وعن الصغير حتى يكبر، وعن المجنون حتى يعقل أو يفارق".⁹

Supporting this, Ibn Hazm mentioned in his book *Al-Muhalla*: "Abu Muhammad said: There is no retaliation, retribution, prescribed punishment, wounds, killing, or penalties imposed on anyone who has not reached puberty until they know their duties and responsibilities in Islam. If a child, insane



person, or intoxicated individual commits an offense involving bloodshed, injury, or property, they are restrained and held in a safe place to prevent harm until the intoxicated one repents, the insane one recovers, and the child matures." He also cited the verse: *وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ۚ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ* ¹⁰.

Through this, Islamic jurisprudence and Sharia have established the first legal framework to differentiate between juveniles and adults in assigning criminal (and even civil) responsibility and determining the appropriate response. This distinction demonstrates a unique approach to criminal justice, grounded in rationality and capable of accommodating and integrating various social and human sciences ¹¹.

Thirdly: Juvenile Criminal Responsibility in Modern Times

With the decline of church dominance and its control over societal laws, legal systems gradually shifted away from the notions of spirituality and vengeance toward concepts of reform, rehabilitation, and integration. This transformation was largely influenced by the spread of ideas surrounding liberty and human rights, particularly following the success of the French Revolution. Collaboration between legal professionals and experts in sociology and psychology further strengthened calls for reforming outdated and oppressive laws affecting juveniles, which had prevailed for centuries. These efforts emphasized the necessity of distinguishing between juvenile delinquents and adult criminals.

Recognizing the unique characteristics of juveniles as a vulnerable group requiring protection, care, and tailored legislation, most nations adopted specialized laws that reflect their specific needs. Furthermore, the rapid advancements in science and technology have significantly impacted the behavior, upbringing, and morals of juveniles, often contributing to their delinquency. This necessitated the establishment of legal frameworks specifically designed for juveniles.

In conclusion, criminal responsibility serves as a fundamental principle that determines an individual's accountability for their actions. When responsibility is established, individuals are obligated to respect and adhere to the law. However, juveniles represent a distinct group whose criminal responsibility differs from that of adults. This distinction takes into account their age, underdeveloped cognitive abilities, and limited psychological and social maturity.

Second Requirement: Foundations for Negating Juvenile Criminal Responsibility

This section addresses the foundations for the absence of criminal responsibility for juveniles in Islamic jurisprudence and then examines the same in law.

First Subsection: Foundations for the Absence of Juvenile Criminal Responsibility in Islamic Jurisprudence

Islamic jurisprudence attributes the absence of criminal responsibility for a non-discerning child to their lack of will. A child possesses no capacity for discernment, no freedom of choice, and no ability to distinguish between the matters presented to them or the circumstances they face. This is supported by the saying of the Prophet Muhammad: *رفع القلم عن ثلاث: الصبي حتى يحتلم، والمجنون حتى يعقل، والنائم* ¹². *حتى يستيقظ*.

Thus, a child is not held accountable due to their complete lack of discernment or its immaturity. They are neither subjected to corporal punishment nor retribution if they commit an act that warrants such penalties.

Building on this, criminal responsibility is only established when complete legal capacity is present, which requires full maturity of intellect. This is a fundamental condition of adulthood. The maturity of intellect signifies awareness and discernment, which are prerequisites for legal accountability. Similarly, full capacity indicates the existence of free will. These elements constitute the



components of criminal capacity. When combined with wrongful conduct, they form the pillars of a crime and establish criminal responsibility.

Islamic jurisprudence exempts children from criminal responsibility. Imam Malik stated that if a juvenile and an adult together commit murder, the adult is subjected to retaliation (qasas), while the juvenile is not but is held liable for half the blood money (diyah). Imam Abu Hanifa, on the other hand, argued that if an adult and a juvenile jointly commit murder, the adult cannot be executed due to the element of doubt. In contrast, the Shafi'i school held that the adult is subject to retaliation, and the juvenile's blood money is increased.

It is important to note that Islamic jurisprudence does not differentiate between the age of capacity for financial transactions and the age of criminal responsibility. Both depend on attaining maturity. However, while a juvenile is exempted from criminal penalties, they are not absolved from compensating for the damages they cause to others, whether in person or property, from their own wealth. This ensures that others are not harmed by the juvenile's wrongful actions ¹³.

In conclusion, the foundation for negating criminal responsibility for juveniles in Islamic jurisprudence lies in the incompleteness of their mental and physical development. Since this completeness varies from one person to another, legislators in comparative legal systems have established a specific age to define the onset or absence of criminal responsibility for juveniles.

Second Subsection: Foundations for Negating Juvenile Criminal Responsibility in Law

This subsection addresses the philosophical basis and the legal basis for juvenile criminal responsibility.

Firstly: The Philosophical Basis of Juvenile Criminal Responsibility

In this context, two major schools of thought emerge in determining the basis of criminal responsibility: the traditional school and the positivist school.

1- The Traditional School

This school emerged in the second half of the 18th century in Italy under the leadership of its founder Cesare Beccaria, along with the English social philosopher Jeremy Bentham. The fundamental principles of criminal responsibility under the traditional school include:

- **The Principle of Legality:** This emphasizes that no crime or punishment can exist without a legal provision.
- **Moral Responsibility:** Criminal responsibility is based on the moral accountability of the offender.

Beccaria argued that criminal responsibility should be limited to morally responsible offenders those who possess awareness and freedom of choice. He also stressed the importance of proportionality between the severity of moral guilt and the prescribed punishment ¹⁴.

Thus, if freedom of choice is absent, criminal responsibility is negated. Similarly, if an individual's capacity for freedom of choice is diminished, their level of responsibility is reduced accordingly. Based on this principle, if a person lacks freedom of choice due to insanity or immaturity, they cannot be held criminally responsible. Consequently, no criminal responsibility can be attributed to a juvenile offender.

• Evaluation of the Traditional School and Its Impact on Juvenile Responsibility

The traditional school had the merit of establishing several principles in Europe, creating enlightening ideas based on justice and equality, and limiting criminal responsibility to living humans only. It excluded juvenile delinquents and the insane from punishment due to their lack of awareness and discernment.



2- The Positivist School

The positivist school emerged as a critique of the traditional school, which was criticized for following a metaphysical approach. In contrast, the positivist school adopted a scientific methodology based on observation, experimentation, and research to uncover facts. This led proponents of the school to base their ideas on the philosophy of determinism, which asserts that an individual's actions and behavior are influenced by external factors beyond their control, meaning they are guided by circumstances rather than free will.

Prominent figures of this school include: Auguste Comte (1798-1857), Cesare Lombroso, a forensic physician, Enrico Ferri, a criminal and social scientist, Raffaele Garofalo, a criminologist and judge¹⁵.

One of the main principles of the positivist school is the concept of social responsibility, which opposes criminal danger as the basis for legitimizing punishment for the offender.

Secondly: The Legal Basis for Juvenile Criminal Responsibility

Positive laws agree that reason and awareness are the basis for criminal responsibility in humans. These laws set a specific age, referred to as the age of criminal maturity. Individuals who have not yet reached this age are considered to lack the mental and cognitive abilities required to understand matters, make judgments, and comprehend their rights and obligations. This renders them not responsible for their actions due to their lack of discernment and understanding.

Based on this, it can be said that the foundation for negating criminal responsibility for delinquent and deviant juveniles is age, which serves as an irrefutable presumption in establishing or negating criminal responsibility. This is reflected in Algerian legislation, as stated in Article 49, Paragraph 1 of the Penal Code, which provides: "No protection or education measures shall be imposed on a minor who has not reached the age of thirteen (13)."

Thus, the age of eighteen (18) is a presumption against holding juveniles accountable through punitive measures as long as they have not exceeded this age. Furthermore, the same article, in Paragraph 3, states: "A minor between the ages of thirteen (13) and eighteen (18) is subject to either protection and education measures or reduced penalties."

Third Subsection: The Gradation of Juvenile Criminal Responsibility

Juvenile criminal responsibility progresses according to the individual's age, where it is either absent, reduced, or fully established depending on the stage of development. Juveniles pass through various stages in their lives, each governed by distinct rules and principles. This topic is addressed in three stages as follows:

1- First Stage: Absence of Responsibility

The general rule in juvenile criminal legislation is the absolute absence of criminal responsibility during the early stages of childhood. However, there is a variance among legislations regarding the definition of the end of this stage, or, in other words, the age below which children are presumed not to be criminally responsible for their actions¹⁶.

For instance, foreign legislations do not rely on a uniform standard to determine the age of non-responsibility:

- English law exempts juveniles from criminal responsibility until they reach the age of seven.
- French law sets this threshold at 13 years.
- German, Italian, Yugoslavian, Romanian, Brazilian, and Chinese laws establish the age of non-responsibility at 14 years¹⁷.



In Arab legislations, most systems negate criminal responsibility for juveniles under the age of seven, as seen in Article 64 of the Egyptian Penal Code. Legal systems in Arab countries, influenced by Islamic Sharia, exempt juveniles from responsibility until they reach the age of criminal maturity due to their lack of discernment, understanding, and freedom of choice.

Under Islamic jurisprudence, there is no criminal responsibility for a non-discerning child who commits an act warranting hudud (fixed punishments) or ta'zir (discretionary punishments). However, they may bear civil liability in their wealth to compensate for harm caused to others by their actions. The basis for setting the threshold at seven years lies in the presumption that a child at this age is too young to comprehend the nature of criminal conduct.

2- Second Stage: Reduced or Partial Responsibility

This stage follows the absence of criminal responsibility and is marked by the juvenile's development of partial discernment and awareness, although these remain incomplete. As the juvenile grows older, interacts more with others, and gains broader experience, their criminal responsibility gradually increases until reaching the age of full maturity.

Since criminal responsibility is based on discernment and awareness, juveniles can be held accountable during this stage, but only to a limited extent. The penalties imposed must correspond to their level of understanding, discernment, and experience. As juveniles approach the age of criminal maturity, their responsibility increases in tandem with their cognitive and social development.

During this transitional phase, juveniles may be held criminally accountable, and penalties may be imposed. However, these penalties must be of a special and exceptional nature, characterized by leniency in all cases ¹⁸.

3- Third Stage: The Age of Criminal Maturity

This stage begins in most criminal systems at the age of 18 years. A juvenile is considered an adult upon reaching this age and becomes fully eligible for complete criminal responsibility. This includes being subject to all penalties prescribed for crimes committed. These penalties are not reduced unless general provisions of the Penal Code are applied.

At this stage, individuals exit the scope of juvenile-specific laws and no longer benefit from reduced responsibility or the special measures applied to juveniles. They are also no longer tried in juvenile courts but are instead subject to the jurisdiction and penalties of the regular criminal justice system ¹⁹.

Conclusion

In conclusion, our study of the topic of juvenile criminal responsibility in both positive law and Islamic jurisprudence highlights the significant role this group plays in society. This role is evident in the necessity of activating protection mechanisms to exempt juveniles from criminal responsibility, whether through the Penal Code or the Child Protection Law. It also involves providing appropriate measures for mitigating criminal responsibility to facilitate their reintegration into society. This can only be achieved by prioritizing the juvenile's best interest when imposing any measures. While the interest of society is also important, it ultimately aligns with the juvenile's well-being. The security, stability, and progress of society can only be ensured by safeguarding its members and steering them away from criminality. Society, as a collective family, plays a vital role in nurturing and educating this group.

The Algerian legislator, through the issuance of Law 15/12 on Child Protection, demonstrates a significant commitment to the care of children and delinquent juveniles. This law reflects the legislator's focus on providing special attention and care for this vulnerable group, as evidenced by



the provisions and principles outlined in the Child Protection Law. These include exemptions from responsibility or a gradual approach to establishing it, aiming primarily at rehabilitating, reforming, and guiding juveniles, rather than subjecting them to severe punitive measures characterized by deterrence and harshness.

This approach has led the legislator to exempt juveniles from criminal responsibility due to the absence of the fundamental elements of responsibility, namely reason (awareness and discernment) and freedom of choice (will). As a result, specialized courts have been established to address juvenile cases in a manner consistent with their specific needs, utilizing specialized procedures and mechanisms tailored to this group.

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Endnotes

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