

MINIMUM AGE OF CRIMINAL RESPONSIBILITY: ISLAM, PAKISTAN, WORLD AND PSYCHOLOGY

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Abstract

This article dwells into the explanation of the word “crime” with regard to the meaning attached to it and the intrinsic natural understanding or restricting force which puts restraint on the behavior of the human beings in relation to the commission of the acts considered as crimes. The article further extends the deliberation to the minimum age of criminal responsibility; how different Islamic schools of thought see the matter and what the laws of Pakistan and different countries of the world consider as the minimum age of criminal responsibility. The article also analyzes the matter from the lens of psychology to understand the development of the mind of a child and the changes it goes through in terms of emotions, intelligence and maturity with the growth of the child. The purpose of this writing is to deeply apprehend the matter of minimum age of criminal responsibility from different angles and to determine what should be the approach of the law in this regard for complete justice and to avoid any possible excess or injustice.

Key words: Wrongful Deeds, Islamic Thought, Maturity, Puberty, Legal Capacity, Frontal Cortex, Adolescence

1. INTRODUCTION

When a common person thinks of damaging the body, property or dignity of another person, a word crime comes to his mind irrespective of whether he knows the law or not. It gives the impression that there are some acts and omissions which are loathed and considered as bad or naturally forbidden. Now a question arises whether all human beings have this sense of right and wrong regardless of age and mental state. Here the exceptions emerge and further deep observation and analysis show that people with certain mental illnesses and children below a certain age are incapable of differentiating between right and wrong. Latter exception is the topic of this article, and we will dwell into what is considered as the minimum age of criminal responsibility by Islamic thought, Pakistan and the countries around the world. Moreover, we will benefit from the field of psychology for further understanding of what is the age at which a child is mature enough to draw the above-mentioned distinction and able to effectively control his behavior, hence what should be the age of criminal responsibility.

While referring to the enjoinder or advising to do and forbidding or advising not to do of good deeds and wrong deeds respectively in the Chapter 3 (Aal-e-Imran) Verse 104 and 110, Chapter 9 (Al-Tawbah) Verse 71, Chapter 22 (Al-Hajj) Verse 41 of the Quran, Allah uses but

does not explain the terms “*Ma'roof*” and “*Munkar*” which means the good deeds are generally recognized so and wrongful deeds are generally recognized as wrong deeds by the human beings.¹ It sets forth the fact that the human beings naturally recognize and understand those acts which are wrong and cause harm to others. This natural capability and characteristic of a human being to recognize the right and wrong is specifically mentioned in Chapter 91 (Al-Shams) Verse 8.² If we look at the crimes from this angle, there is a significant number of acts which are generally considered as crimes all over the world. With all this discussion, another question which arises is at what age a human being starts recognizing and understanding what is wrong and what is right. Pondering this question takes us into the realm of psychology or the domain of mental studies. With the understanding of mind and mental development we can apprise ourselves of maturity level and understanding level of a child regarding right and wrong or crime in general and how effective his control over his behavior is. Through this approach we might be able to analyze what is the age at which a child is mature enough to understand not only crimes but also the consequences of committing any and is fully able to control his behavior.

There might be some exceptions if we refer to crime as an act which is against the law, because there is a chance that the law of a country prohibits something which is not normally thought of or felt as a wrong deed or a crime. For this we can see the definition by Sir William Blackstone who defines it as “an act committed or omitted in violation of public law.”³ In this definition and many others, the law made by the state is common and hence opens the room for exceptions. For this kind of crimes also a person needs a certain level of maturity to understand the law, the prohibition of certain acts and consequences of its violation. Therefore, analysis from the lens of psychology is needed to understand the age at which a person can be held liable for his actions.

2. ISLAMIC THOUGHT ON MINIMUM AGE OF CRIMINAL RESPONSIBILITY

While answering the question of minimum age of criminal responsibility, Islamic scholars refer to a Hadith or saying of the Prophet Muhammad (PBUH) which states that,

“There are three (persons) whose actions are not recorded: a sleeper till he awakes, an idiot till he is restored to reason, and a boy till he reaches puberty.”⁴

Puberty is generally considered by Islamic jurists as the age after which a child is held responsible for the crimes he commits but there arises a question that the age of puberty is not same for children irrespective of the gender. In the books which are representatives of different schools of thought, the minimum age of criminal responsibility as a general concept is not discussed. Rather, in the discussion of different crimes or “*Jinayat*” the legal capacity is

¹ Javed Ahmed Ghamidi, *Al Bayan*, Volume 2,3, Published by Al-Mawrid.

² Ibid, Volume 5.

³ Sir William Blackstone, *Commentaries on the laws of England, Book the Fourth*, 7th Edition, published in 1775, p. 5.

⁴ Abu Dawud al-Sijistani, *Sunan Abi Dawud*, Hadith 4398.

considered in which the age factor is also present. Ibn Rushd in his book while discussing homicide, talks on the conditions of the murderer in which it is mentioned that different schools of thought are agreed that a murderer to be subjected to “*qisas*” (retributive punishment) should also be “*baligh*” (having attained puberty).⁵ In the section of “*siraqa*” (theft), he states that jurists are agreed on the condition of legal capacity⁶ and then he does not explain it further, which alludes again to the puberty of the person committing it.

In the book *Al-Hidaya*⁷, while discussing the illegal intercourse or fornication, opinion of jurist Muhammad is mentioned who opines that if a minor commits intercourse with a woman neither of them is punished. The opinion of Al-Shafi is also mentioned after that, according to which the woman is to be punished. Here again the word minor is mentioned but there is no specific age which is considered by these jurists as the age of majority for the purposes of criminal liability. As it is mentioned above that the age of puberty is not the same for all the children and it can also not be said with certainty that at the age puberty a child becomes mature enough to understand and differentiate between right and wrong and is also able to comprehend the consequences of his acts and during the adolescence, keeping in mind the hormonal changes and immature development of the brain he will effectively control his behavior. It is possible that a child attains puberty at a very young age at which he is not mature enough to be held responsible for his acts.

3. PAKISTAN AND MINIMUM AGE OF CRIMINAL RESPONSIBILITY

Pakistan Penal Code, 1860 is the major substantial criminal law which enumerates the offences and prescribes punishments for them. Chapter II mentions the general exceptions in which the minimum age of criminal responsibility is also provided. Before 2016 amendment in the code, the minimum age was 7 according to section 82. After the amendment, it has been raised to 10 years. Section 82⁸ states that,

“Nothing is an offence which is done by a child under 10 years of age.”

Wording of this section suggests that any act committed by a child under the age of 10 is not considered as an offense irrespective of the nature of the act. Specifying the age in the law restricts the whole criminal judicial system in this regard which might result in injustice as biologically it cannot be certainly said that a child after the age of 10 is fully capable of understanding the nature and consequences of his conduct and controlling his behavior due to immature development of the brain. To cope with this problem, section 83⁹ adopts a slightly more flexible approach. It states that,

⁵ Ibn Rushd, *Bidayat Al-Mujtahid Wa Nihayat Al-Muqtasid*, Volume II, translated by Imran Ahsan Khan Nyazee, p. 479.

⁶Ibid, p. 537.

⁷ Burhān al-Din al-Farghani al-Marghinani, *Al-Hidaya*, Volume II, translated by Imran Ahsan Khan Nyazee, p. 217.

⁸ *Pakistan Penal Code, 1860*, Section 82.

⁹ Ibid (n 8), Section 83.

“Nothing is an offence which is done by a child above ten years of age and under fourteen, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”

It technically raises the age realizing the uncertain nature of human mind so to avoid any possible injustice. This approach seems reasonable, but the question still stands whether 14 years of age should be generally considered as the age of maturity keeping in mind the biological uncertainties and immature development of the brain. As the matter is sensitive and the severe punishment to any person who does not deserve to suffer put a huge question mark on the whole justice system, which is to provide justice, much less suffering to innocent people. To further avoid any excess and injustice, in Chapter XVI (of offences affecting human body), section 299(a)¹⁰ defines adult as a person who has attained the age of 18 years. Likewise, section 299(i)¹¹ defines minor as a person who is not an adult. In section 306(a) of the code,¹² it is provided that *qatl-i-amd* (homicide) shall not be liable to *qisas* (retributive punishment) if the offender is a minor or insane. According to section 308(1) of the code,¹³ Where an offender guilty of *qatl-i-amd* is not liable to *qisas* under section 306, he shall be liable to *diyat* (blood money). It is also mentioned in the proviso of the section that if a minor has attained sufficient maturity, he shall be punished with imprisonment which may extend to 25 years. In section 337M¹⁴ it is provided that a hurt shall not be liable to *qisas* when the offender is minor but liable to *arsh* (*specified expiatory amount*) and *ta'zir* (*punishment other than Islamic punishments*) to be determined by the court having regard to the age of offender. In these provisions, more care and diligence have been performed to ensure the justice and to avoid any possible injustice so that no one without being culpable should get any severe punishment.

In The Offence of Zina (Enforcement of Hudood) Ordinance, 1979, section 2(a)¹⁵, adult is defined as a person who being a male has attained the age of 18 years or puberty and being a female has attained the age of 16 years or puberty. And according to section 5(a) and 5(b)¹⁶, *zina* (unlawful intercourse) is liable to *hadd* (Islamic punishment) if it is committed by a male adult and female adult. Likewise, the definition of adult is same in The Offence of Qazf (Enforcement of Hadd) Ordinance, 1979, where according to section 5,¹⁷ *qazf* (false imputation of *zina*) is liable to *hadd* if committed by an adult. In The Prohibition (Enforcement of Hadd) Order, 1979, the liability is not confined to an adult as according to section 3(1) and 3(2),¹⁸ whoever is guilty of manufacturing etc. of intoxicants is liable to punishment. No distinction as regard to age is mentioned. But according to section 8,¹⁹ only adults are liable to *hadd* for drinking. As we can see in these Islamic laws, there is no detail regarding maturity in the context of puberty is mentioned. Laws of Pakistan in general have adopted much flexible and

¹⁰ Ibid, Section 299(a).

¹¹ Ibid, Section 299(i).

¹² Ibid, Section 306(a).

¹³ Ibid, Section 308(1).

¹⁴ Ibid, Section 337M.

¹⁵ *The Offence of Zina (Enforcement of Hudood) Ordinance, 1979*, Section 2(a).

¹⁶ Ibid, Section 5(a), 5(b).

¹⁷ *The Offence of Qazf (Enforcement of Hadd) Ordinance, 1979*, Section 5.

¹⁸ *The Prohibition (Enforcement of Hadd) Order, 1979*, Section 3(1), 3(2).

¹⁹ Ibid (n 18), Section 8.

reasonable approach regarding the criminal liability in reference to children or minimum age. Now the question is whether fixing the age at 10 is reasonable or not and if it is not, then on what basis should any other age be fixed for that purpose.

4. THE WORLD AND MINIMUM AGE OF CRIMINAL LIABILITY

Below is the table showing different countries of the world along with the minimum age of criminal responsibility according to their domestic laws.

Countries	Age
England and Wales ²⁰	10
Scotland ²¹	12
Canada ²²	12
India ²³	7
Nigeria ²⁴	7
South Africa ²⁵	10
Germany ²⁶	14
France ²⁷	13
Japan ²⁸	14
China ²⁹	14
Russia ³⁰	14
Iran ³¹	9(females), 15(males) [Lunar Calendar]
Argentina ³²	16

5. PSYCHOLOGY AND MINIMUM AGE OF CRIMINAL LIABILITY

Human behavior is controlled by mind, and mind is undoubtedly a very sophisticated thing. It makes some people calm and some aggressive, some with a higher level of intelligence and some with comparatively low. Even these characteristics keep changing throughout specific time period in a person's life with the development of the brain. We can take the example of

²⁰ *Children and Young Persons Act, 1933*, Section 50.

²¹ *Criminal Procedure (Scotland) Act 1995*, Section 41.

²² *Criminal Code*, Section 13.

²³ *India Penal Code*, Section 82.

²⁴ *Criminal Code Act*, Section 30.

²⁵ *Child Justice Act, 2008*, Section 7.

²⁶ *German Criminal Code (Strafgesetzbuch)*, Section 19.

²⁷ *Penal Code*, Article 122-8, *Code of Juvenile Criminal Justice*, Article L11-1.

²⁸ *Penal Code*, Article 41.

²⁹ *Criminal Law of the People's Republic of China*, Article 17.

³⁰ *Criminal Code of the Russian Federation*, Article 20.

³¹ *Islamic Penal Code*, Article 146, 147.

³² *Ley 22278 - Régimen Penal de la Minoridad*, Article 1.

the frontal cortex which fully develops in mid-twenties and performs very crucial functions.³³ As explained by Robert Sapolsky,

“We utilize the frontal cortex to do the harder thing in social contexts—we praise the hosts for the inedible dinner; refrain from hitting the infuriating coworker; don’t make sexual advances to someone, despite our fantasies; don’t belch loudly during the eulogy. A great way to appreciate the frontal cortex is to consider what happens when it is damaged.”³⁴

As it is mentioned earlier that mind is a very complex thing, here is how Robert Sapolsky explains the complexity of the brain that performs the functions of the mind:

“There’s the brain—neurons, synapses, neurotransmitters, receptors, brain specific transcription factors, epigenetic effects, gene transpositions during neurogenesis. Aspects of brain function can be influenced by someone’s prenatal environment, genes, and hormones, whether their parents were authoritative or their culture egalitarian, whether they witnessed violence in childhood, when they had breakfast.”³⁵

It is evident from the above explanations that mind is not something which can be taken for granted. If we see the cognitive development of a child, it cannot be said that young kids lack emotional attributes or feeling of “right” or “good” and “wrong” or “bad”. Kids show rudiments of feeling someone else’s pain.³⁶ Robert Sapolsky states that:

“by around age seven, kids are expressing their empathy. By ages ten through twelve, empathy is more generalized and abstracted—empathy for “poor people,” rather than one individual (downside: this is also when kids first negatively stereotype categories of people).”³⁷

There is also a hint of sense of justice and a growing tendency of kids to respond to an injustice when someone has been treated unfairly.³⁸ These observations show that even the kids have natural understanding and feelings of good and bad or right and wrong. So, the question is whether too young kids should also be held criminally responsible.

Now if we dive deep into the behavior of a person during adolescence, it will open the gates of extremely complicated world. Adolescence is the age between 10 and 19 as defined by World Health Organization.³⁹ For the purposes of analyzing the minimum age of criminal responsibility this age period is very significant as this makes the setting of minimum age of criminal responsibly an arguable topic. During adolescence, due to immature development of

³³ Robert M. Sapolsky, *Behave*, Penguin Press 2017, p. 47.

³⁴ *Ibid*, p. 52.

³⁵ *Ibid*, p. 560.

³⁶ *Ibid*, p. 172.

³⁷ *Ibid*, p. 173.

³⁸ *Ibid*, p. 173.

³⁹ World Health Organization, *Adolescent health*, < <https://www.who.int/southeastasia/health-topics/adolescent-health>>.

the brain especially in relation to frontal cortex, behavior of a person remains aggressive, emotional and immature. As put in by Robert Sapolsky:

“Think about this—adolescence and early adulthood are the times when someone is most likely to kill, be killed, leave home forever, invent an art form, help overthrow a dictator, ethnically cleanse a village, devote themselves to the needy, become addicted, marry outside their group, transform physics, have hideous fashion taste, break their neck recreationally, commit their life to God, mug an old lady, or be convinced that all of history has converged to make this moment the most consequential, the most fraught with peril and promise, the most demanding that they get involved and make a difference. In other words, it’s the time of life of maximal risk taking, novelty seeking, and affiliation with peers. All because of that immature frontal cortex.”⁴⁰

And mentioned by John W. Santrock as:

“Nonetheless, early adolescence is a time when emotional highs and lows occur more frequently (Rosenblum & Lewis, 2003; Hollenstein & Lanteigne, 2018; Zimmerman & Iwanski, 2018). Young adolescents can be on top of the world one moment and down in the dumps the next. In many instances, the intensity of their emotions seems out of proportion to the events that elicit them. Young adolescents may sulk a lot, not knowing how to express their feelings adequately. With little or no provocation, they may blow up at their parents or siblings, projecting their unpleasant feelings onto another person.”⁴¹

6. CONCLUSION

After the above discussion it can be concluded that where a child from very young age develops natural feelings, emotions and understanding of right and wrong or good and bad with cognitive development, he is not fully mature during his adolescence to effectively control his behavior due to immature development of mind especially frontal cortex. Therefore, the criminal responsibility if put on a child should not be the same as mature adult. More logical approach would be to fix the young age like 10 or 12 as minimum age of criminal responsibility but the punishment prescribed should not be as severe as given to mature adults. There should be less severe punishment for adolescent children than mature adults after properly judging their maturity level as to understanding the nature and consequences of their conduct. Laws as to the extent of severity of punishment to the children in Pakistan need to be overhauled and there should be a detailed legislation on the punishments for the children. Besides, the approach adopted by Pakistan is logical and reasonable.

⁴⁰ Robert (n 33), p. 145,146.

⁴¹ John W. Santrock, *Adolescence*, Seventh Edition, p. 148.