



**JURISPRUDENTIAL AND LEGAL REVIEW OF THE LACK OF CRIMINAL LIABILITY OF IMMATURE PEOPLE IN THE ISLAMIC PENAL CODE (WITH EMPHASIS ON JURISPRUDENTIAL VIEWS OF IMAM KHOMEINI AND AYATOLLAH KHAMENEI)**

*Análise jurisprudencial e jurídica da ausência de responsabilidade penal de pessoas imaturas no Código Penal Islâmico (com ênfase nas visões jurisprudenciais do Imam Khomeini e do Aiatolá Khamenei)*

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## ABSTRACT

Based on what has been mentioned in the statute law, if a crime occurs with the existence of the three elements and the conditions defined in the criminal liability, the perpetrator should be punished. But at the same time, in the Islamic Penal Code, there are cases described as barriers to criminal liability; that is, despite the presence of these conditions, though a crime happens, its perpetrator is not considered as punishable. One of the cases addressed among the barriers to criminal liability is the issue of maturity. What is stated in this article is the jurisprudential and legal review of liability and maturity conditions in the barriers to criminal liability of the Islamic Penal Code (with emphasis on jurisprudential views of Imam Khomeini and Ayatollah Khamenei).

With regard to the title which is among the theoretical and legal-jurisprudential issues, initially, after determining the research sources, the necessary bibliography was compiled and note-taking and data collection were done through library and documentary methods.

Based on what was investigated, it was determined that according to the famous jurists, the age of puberty is 9 in girls and 15 in boys. Although maturity is attained at the age of 9 and 15, the issue of intellectual development and non-stupidity should be realized in addition to the signs of maturity that should appear so that these individuals can be considered as responsible.

**Keywords:** Maturity, jurisprudence, Islamic Penal Code, responsibility, criminal liability, civil liability

## RESUMO

Com base no que foi estabelecido na legislação estatutária, se um crime ocorrer com a existência dos três elementos e das condições definidas para a responsabilidade penal, o autor do delito deve ser punido. No entanto, ao mesmo tempo, o *Código Penal Islâmico* prevê certas circunstâncias que são descritas como impedimentos à responsabilidade penal. Isso significa que, apesar da presença desses elementos e condições, se tais impedimentos existirem, o infrator não será considerado punível.

Um dos fatores abordados entre os impedimentos à responsabilidade penal é a maturidade. O presente artigo realiza uma análise jurisprudencial e legal das condições de responsabilidade e maturidade dentro dos impedimentos à responsabilidade penal do *Código Penal Islâmico*, com ênfase nas visões jurisprudenciais do Imã Khomeini e do Aiatolá Khamenei.

Dado que o tema pertence ao campo teórico e jurídico-jurisprudencial, inicialmente, após a determinação das fontes de pesquisa, foi elaborada a bibliografia necessária e os dados foram coletados através de métodos bibliográficos e documentais.

Com base nas investigações realizadas, determinou-se que, de acordo com os juristas islâmicos mais renomados, a idade da puberdade é de 9 anos para meninas e 15 anos para meninos. No entanto, embora a maturidade física seja alcançada nessas idades, também é necessário considerar o desenvolvimento intelectual e a ausência de incapacidade mental. Apenas quando esses elementos estiverem presentes, os indivíduos podem ser considerados plenamente responsáveis.

**Palavras-chave:** Maturidade, jurisprudência, Código Penal Islâmico, responsabilidade, responsabilidade penal, responsabilidade civil.



## INTRODUCTION

Based on what has been mentioned in the statute law, if a crime occurs with the existence of the three elements and the conditions defined in the criminal liability, the perpetrator should be punished. But at the same time, in Articles 146 to 159 of Chapter Two from Part Four of Book One of the Islamic Penal Code ratified in 2013, there are cases described as the barriers to criminal liability; that is, despite the existence of these conditions, if a crime occurs, the perpetrator is not regarded to be punishable.

## STATEMENT OF PROBLEM

The issue of criminal liability for minors is one of the most challenging topics in Islamic law and legal systems based on Islamic jurisprudence<sup>1</sup>. In the criminal laws of the Islamic Republic of Iran, the age of criminal responsibility is determined based on religious puberty<sup>2</sup>, which results in a disparity between girls and boys. According to Article 140 and the note to Article 88 of the Islamic Penal Code (IPC) of 2013, minors (those who have not reached the age of religious puberty) are exempt from criminal liability, and hudud or qisas (retributive justice) cannot be applied to them. However, in specific cases, security and educational measures may be imposed on them (MOUSAVI et al., 2013). From a jurisprudential perspective, Imam Khomeini and Ayatollah Khamenei place special emphasis on Shari‘ah-based criteria in determining criminal responsibility. Imam Khomeini, in *Tahrir al-Wasilah* and other jurisprudential works, considers puberty as the primary criterion for criminal liability and holds that minors are not criminally responsible (NAYYERI, 2012). Similarly, Ayatollah Khamenei, while affirming the principle of non-liability for minors, emphasizes the necessity of proportionality between punishment and the child's understanding of the offense, linking judicial decisions regarding minors to broader societal interests (AHANGARAN et al., 2015). Despite the emphasis on the non-liability of minors, several challenges remain in this area:

1. Discrepancy in Determining the Age of Criminal Responsibility  
One of the main challenges is the difference in the age of religious puberty between girls (9 lunar years) and boys (15 lunar years). Compared to modern legal systems, these ages are considered relatively low (ROOZBEHAN et al., 2018).

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<sup>1</sup> Figh

<sup>2</sup> Bulugh shar‘i

2. Distinction Between Hudud, Qisas, and Ta‘zir Punishments  
 Certain punishments, such as hudud and qisas, are applied only after reaching religious puberty. However, in some cases, ta‘zir (discretionary) and rehabilitative punishments have been prescribed for individuals below the age of puberty (MOUSAVI et al., 2013).

3. Conditional Criminal Liability  
 Under new legal provisions, the possibility of assessing mental maturity (*rushd aqli*) exists for punishing some adolescents. This has led to a situation where some individuals, even after reaching puberty, remain exempt from criminal liability, while others are subject to punishment (NAYYERI, 2012).

4. The Role of Rehabilitation and Reformatory Measures  
 According to judicial policies in the Islamic Republic of Iran, rather than imposing strict punishments, educational and corrective measures are preferred for children. However, in practice, challenges remain in implementing these policies effectively (DILAWAR, 2018).

Jurisprudential and legal analyses indicate that, although the Islamic Penal Code (IPC) emphasizes the lack of criminal liability for minors, challenges such as discrepancies in the age of responsibility, the type and extent of punishments, and the ambiguity in the criteria for intellectual maturity persist. Therefore, a re-examination and reinterpretation of these laws, considering the jurisprudential views of Imam Khomeini and Ayatollah Khamenei, can help develop more practical solutions within the Iranian legal system.

### **SPECIFIC OBJECTIVE:**

The aim of this article is to explain one of the absolute causes of exemption from criminal liability (*childhood*) from the perspective of the Islamic Penal Code, with an emphasis on the jurisprudential views of Imam Khomeini and Ayatollah Khamenei.

At first, it is necessary to introduce a few terms related to the subject:

#### **1) MATURITY**

Maturity literally means the “development of sexual duties”) ANIS, IBRAHIM et al., *Bitā*, vol. 1, p. 70). In jurisprudential definition, maturity means “reaching manhood and leaving childhood behind” and this manhood is conventionally among the real inalienable affairs (GILANI, 1426 AH, vol. 3, p. 81).



In another definition from jurists, the late Mohammad Hassan Najafi has said that “by maturity, it literally means perception and reaching the age of nocturnal emission (emission of semen from man when sleeping) and sexual intercourse. This is due to the emergence of semen in the body and the stimulation of lust and discharge of the sperm that is the origin of human creation and is put in humans and animals for their survival according to the divine wisdom” (NAJAFI, 1988, vol. 26, p. 4) There are different types of maturity:

**Physical maturity:** Reaching physical maturity in humans does not differ much and is usually the end of 15 lunar years in boys and the end of 9 lunar years in girls.

**Maximum maturity:** It means to reach the stage of physical and mental strength.

**Intellectual and mental maturity:** Reaching intellectual maturity varies from person to person. One person may reach this stage around twenty years of age and another person at an older age and after reaching intellectual maturity, human intellectual growth does not stop but becomes more complete day by day. Usually, the age of intellectual growth is between 20 and 40 (JAFARI, 1997).

The age of puberty is 9 years in girls and 15 years in boys unless other signs of maturity, including nocturnal emission (emission of semen from man when sleeping) and pubic hair (under the navel and above the genital organ), appear before reaching this age. Since maturity has imperative rules and is the beginning of certain responsibilities and the proof of these rules at the age of 9 for girls cannot apparently be acceptable, even before reaching this age, they have been observed to reach the age of sexual maturity, but because it happens rarely, it cannot be the sign of normal maturation. Thus, I deemed it necessary to study this issue from the viewpoint of Quran and narrations in addition to dictionaries and jurists’ views.

## MATURITY IN QURAN

This issue has been stated in several verses in the Divine Word as follows:

- 1- “When your children reach puberty, they should get permission”.<sup>3</sup>
- 2- “And do not even go near the property of the orphan - except that it be in the best manner - till he attains his maturity”.<sup>4</sup>

## MATURITY IN NARRATIONS

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<sup>3</sup> Surah Noor, Verse 59

<sup>4</sup> Surah An’am, Verse 152

First is the narration quoted by Imam Sadiq (AS) from the Prophet Muhammad, in which the prophet (PBUH) told Ali (AS) in his will: “After the period of nocturnal emission (emission of semen from man when sleeping), there is no orphanhood” (HORRE Ameli, 1414 AH, vol. 1, p. 32).

Second, Ammar says: I asked Imam Sadiq (AS) when payer becomes obligatory on boys. He answered: When they reach the age of 15 and if they have a nocturnal emission (emission of semen when sleeping) before 13 years of age, prayer becomes obligatory on them and they are obligated. As to girls, when they reach the age of 13 or menstruate before this age, they are obliged to say their prayers and become obligated (TUSI et al., 1986, vol. 2, p.381).

However, some narrations cannot be relied upon in terms of their validity. But although the above-mentioned narration has stated the age of puberty to be 13, the main basis for being mature is considered to be the appearance of the signs of maturity. Usually, these signs begin to appear since 9 years of age. But based on the investigations in Quran, narrations and the word of jurisprudents, it was found that maturity in Islam has two types: First is sexual maturity which means boys’ and girls’ reaching an age when their reproductive abilities have reached their full potential and they can naturally produce generations and if they do not reach this level of perfection, they are not mature and governmental and imperative rules are not obligatory on them. And second is intellectual maturity in which the ability to distinguish between good and evil is developed and the individual understands the rules. Regardless of the fact that in 9 years of age, girls reach sexual and instinctive development, since girls do not frequently become mature at this age and maturation at the age of 9 is precocious maturity, age of 9 cannot be considered as a sign of maturity because a sign can be realized when the signs of sexual (nocturnal emission) and intellectual maturity occur.

## 2) PUNISHMENT

Since a responsible person is entitled to punishment, we addressed this word here in literal and legal terms.

In dictionaries, this term means penalty (AMID,1986). In other words, punishment is the society’s reaction to the offender (ALIABADI, 1989).

In legal terms, it means the penalty imposed on the perpetrator of a crime. The concept of suffering is inseparable from the concept of punishment and indeed, suffering is a real characteristic of punishment (ALIABADI, 1989).

Ultimately, in law, the punishment is determined by the judge due to the commission of a crime as a sign of the society’s hatred towards the crime and its perpetrator. The purpose of punishment is the improvement of the offender, social defense and administration of justice. The penalty is

specified by the judge within the limits determined by the law. Punishment is personal and is the same for everyone) BAHERI, Vo. 2, p. 276(.

Hence, society determines the punishment in order to be in comfort and peace and make the offender face the penalty of his criminal act.

### 3) LIABILITY

In dictionaries, liable means questioned and committed (IBN, Mansur) In jurisprudence and law, a liable person is the one who assumes responsibility and is determined by the law; this is a rule. Liability, in jurisprudence and law, refers to the obligation created for the guilty person in front of law and to the benefit of the aggrieved party because of the loss incurred on him and the consequences of this act bring criminal, civil or correctional outcomes for the offender (ANSARI et al., 2009).

Liability: It means guarantee, commitment, responsibility, obligation to do something and to be committed (DEHKHODA et al., 1960). Or liability refers to responsibility for the violations of obligations and duties committed by a person, whether these obligations are legal or moral or religious (SAFAR, 1994).

In other words, liability means questioned and demanded and is frequently defined as “obligation and duty and what the person is responsible for” (HEMMATI, 2016).

In legal terms, liability means “legal obligation of a person to compensate for the loss he has incurred upon another person, whether this loss is the result of his own fault or the result of his activity” (JA’FARI, 2016).

To understand the real meaning of liability from various aspects, in addition to the existence of the commitment and obligation established by the competent authority, other factors and conditions should also be considered. Therefore, definition of criminal liability has not been explicitly stated.

Some believe that in jurisprudence, instead of liability, the term “guarantee” has been applied with the same meaning, which includes any kind of responsibility, including civic "financial" liability and criminal liability (TAJMIRI, 1994).

Further, when it comes to liability, as stated in the definitions of terms, jurists and jurisprudents always consider it as synonymous with guarantee and this liability is sometimes forcible liability; that is the will of the two sides does not have a role and the liability is imposed on the obligor without his consent and by the rule of law, like the liability for loss in which the responsibility is not based on the violation of the contract or breach of promise or the liability resulting from the conclusion of a contract, but liability is for an unpredictable incident that cannot be attributed to

anyone and no one can be condemned to compensate for the damage. Although apparently there may be no difference between criminal and civil liability, the following has been mentioned in a brief definition:

By civil liability, it means to compensate for financial losses and it usually has a financial aspect and is assessed by money while the purpose of criminal liability is to impose a penalty or one of the other criminal responses on the convict (MOHSENI, 1997).

## **TYPES OF LIABILITY**

### **A) CIVIL LIABILITY**

Civil liability, according to some, is to obligate the individuals to compensate for the damage inflicted upon other people or their property or animals. In other words, civil liability includes a person's legal duty toward another person regarding doing or quitting an act, whether the origin of responsibility is legal or material or its origin is legal regulations (JA'FARI, 1997).

Civil liability means: "A person's legal obligation to compensate for the damage he has inflicted on another person, whether this damage is the result of his own fault or the result of his activity. In jurisprudence, the term guarantee has been used with the same meaning, which means any kind of liability, including financial and criminal liability" (JA'FARI, 2001).

In its brief legal definition, it has been stated that civil liability is "a person's legal obligation to compensate for the loss and damage caused to another person as a result of an act attributed to him" (BARIKLOU, 2013).

According to a jurist, a "responsible" person is literally applied to someone who is questioned and called to account and the meaning of liability in legal terms is not far from its literal meaning since in society, liability or being responsible means that a person must be accountable for some of his actions and if this accountability occurs in the court of God or in the presence of conscience, the result is moral responsibility and if it occurs in front of the statute law, the responsibility we face is legal liability. Legal liability can, in turn, be divided into criminal and civil liabilities. Civil liability, in its broad sense, is also divided into two categories: Contractual liability and non-contractual (forcible) liability. "Civil liability", in its strict sense, includes only non-contractual liabilities and is referred to as forcible guarantee in jurisprudence and civil law. Thus, civil liability is a person's obligation to compensate for the damage inflicted on others as a result of the act attributable to him (TAHERI, 1418 AH).

## B) CRIMINAL LIABILITY

Criminal liability, as the name implies, refers to a responsibility in which punishment is accompanied by compensation for the loss. That is, anyone committing one of the criminal acts in the Islamic Penal Code should be punished by the rule of law.

Some believe that it is a person's obligation to be responsible for the outcomes and consequences of a crime. That is, criminal liability refers to the "ability" or "capacity" of a person to bear the criminal consequences of his criminal behavior (SAKI, 2013).

In the Divine Word, some verses have referred to the issue of obligation and liability as the following:

“And fulfill the covenant, for you will be called to account regarding the covenant”.<sup>5</sup>

In this verse, man has been recommended to fulfill his promise and consequently, accepting the covenant brings responsibility.

Criminal liability is a kind of personal obligation to account for the adverse consequences and outcomes of a crime or criminal phenomenon. From a criminal point of view, anyone, in addition to the realization of the intent to perpetrate the crime and malice or criminal fault, should generally have the capacity and common individual characteristics so that the occurrence of the crime can be attributed to him. As a result, a person is considered as responsible in criminal terms when he is the cause of an incident; that is, the incident can be attributed to that person. So, criminal liability is the product of attribution and attributability. By attributability, it means that the judicial authorities notice that in terms of physical and intellectual growth and power of will, the doer of the crime has the necessary capacity so that a causal relationship can be established between the crime and its cause. In fact, criminal liability is attained from the direct results of the attribution of a crime to its doer and in this respect, it can briefly be said that criminal liability is the capability of the attribution of the criminal act (HEMMATI, 2015).

Concerning the differences between civil and criminal liabilities, six cases have been stated as follows:

1- Civil liability is realized when damage is inflicted on a person (whether natural or legal). But criminal liability occurs when the damage is inflicted upon the society. Hence, civil liability essentially focuses its attention on protecting the individual whereas criminal liability primarily seeks to defend the society. In civil liability, support for the individual is manifested in the form of

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<sup>5</sup> Surah Isra, Verse 34

compensation for the loss of the aggrieved party. But in criminal liability, defending the society is manifested in the punishment of the perpetrator so that he is punished for his act that has undermined or compromised the order of society and this punishment becomes a lesson for others and prevents them from committing such acts in future.

2- In criminal liability, the punishment is heavy, difficult and irrevocable since in some cases, it may take the life and freedom of the offender (such as execution and imprisonment and the prohibition of political activities or exit from the country and so on) or damage his dignity and credibility. As a result, the legislator should restrictively and accurately consider his orders and prohibitions, the violation of which requires punishment.

3- In criminal liability, the punishment is for the perpetrator. But in civil liability, in some cases, the liability of some people is not directly the result of the act of the responsible person but is caused by the act of another person (like the responsibility of the guardian of the minor and insane who has committed a fault; this has been predicted in “Article 7” of Civil Liability Law). Moreover, in civil liability, damage payment does not necessarily lead to a reduction in positive asset items of the responsible person because in many cases, this damage is paid by his insurer while this issue is forbidden in criminal law and one cannot insure oneself against possible convictions for payment of amercement and, more importantly, against the penalty of imprisonment or execution.

4- In criminal liability, the penalty is basically proportionate to the committed offence while in civil liability, a slight error may cause a huge loss and the doer of the criminal act is condemned to fully compensate for it or even in some cases, the harm doer, without having fault, is recognized as responsible to compensate for the damage inflicted on another person. However, in criminal law, unintentional crime has an exceptional aspect and having bad intentions is one of the elements of crime and there is no case in which someone is considered guilty without having fault. But in civil law, a person may be liable for compensation without any bad intent and fault; for example, a person who unconsciously moves his leg during sleeping and breaks someone’s precious bowl is responsible for compensation according to the rule of “everyone wastes another person’s property is responsible” although he has committed no fault.

5- In terms of criminal procedure, the criminal case is presented by the public prosecutor and has special formalities and criminal courts have the competency to deal with this case and briefly, the public prosecutor pursues someone who is charged with committing a crime by bringing a lawsuit to a criminal court and, in this way, prepares the ground for his punishment. But in civil liability, it is the aggrieved party who should demand compensation for the loss he has incurred by bringing a lawsuit to the civil court. Therefore, in criminal and civil liabilities, both the claimers (public prosecutor and the aggrieved party) and courts (criminal court and law court) are different.

6- The scope of these two liabilities is also different. Some of the crimes, although there have more or less severe punishments, are not accompanied by civil liability because they do not cause damage to people, such as political crimes and vagrancy. On the contrary, some of the civil liabilities are also not considered a crime; for example, if the owner brings about changes in his land outside the conventional limits and in this way, damage is inflicted on the neighbor, the owner is responsible in civil terms but is not found guilty in criminal terms (TAHERI, 2015).

### C) MORAL LIABILITY

This issue should be investigated in the sacred law since moral liability is the responsibility with which the legislator has not interfered; just like man's responsibility towards himself or God or another person. The guarantee for accepting such a liability is only the conscience and inward matters (JA'FARI et al., 2001).

Based on this definition, it can be mentioned that by moral liability, it means that man should be responsible for the committed fault in front of God or his conscience. This liability is manifested in doing or quitting an act which is in opposition to religious teachings or ethical rules and conscience. But if the origin of the obligation to account is based on the external criteria and the common behavior of individuals in society and in front of the statute law, it is called legal, not moral, liability. Hence, moral liability is internal and personal and in order for the harm doer to be recognized as responsible, his personal conditions and circumstances and thoughts and conscience should be inspected. For better understanding of the differences between civil and moral liabilities, the following can be stated:

1- In moral liability, anyone who affects another person is morally responsible and his responsibility is internal and one cannot claim damages from the court. But civil liability has sanction or performance guarantee. Thus, these two are different in sanction.

2- Another difference is that in moral liability, infliction of damage is not a condition. But in civil liability, infliction of damage is one of its pillars.

3- The scope of these two liabilities also differs. In many cases, moral responsibility is created as a result of human error but it lacks civil liability. In other words, in many cases, payment of damage, though heavy, for minor mistakes is acceptable in terms of civil liability but is unfair in terms of moral liability.

4- In moral liability, in order to consider the individual as morally responsible, the fault must be proved. But in civil liability, fault is not a condition for creating responsibility.

5- Moral liability is personal and civil liability has a typical aspect and the infliction of damage leads to compensation for the loss. For instance, in many cases in the employer-employee relationship, the damage to the employee must be compensated by the employer while the employer may not be guilty (HEYDARI, 2015).

Thus, moral liability is somehow dependent on the thinking of individuals and its judge is the conscience and if a person does not consider himself as responsible, he cannot be prosecuted legally. But if he assumes the responsibility, it is very effective and inexpensive to prevent the violation of the rights of natural or legal persons.

#### **D) DISCIPLINARY LIABILITY**

It refers to the responsibility of maintaining order since all societies rely on the principles and rules that protect their order and survival. Violation of these disciplinary regulations is a breach of the specific rules of community groups, which is undoubtedly contrary to common interests. These interests may not be specified in the disciplinary regulations but if they are against the occupational prestige, they are faced with disciplinary sanction. For example, today we observe that disciplinary violations have been anticipated for judges and officials of the notary public or disciplinary officers.

Employed forces of the country are also subject to this kind of responsibility because in “Article 54” of National Employment Law, it has been stipulated that “the employee is required to obey the orders of his superior in administrative matters within the scope of the law and if he recognizes that the order of his superior is against the rules, he is obliged to inform his superior in writing that the order is in conflict with the rules and regulations. If after this notice, his superior confirms the execution of his order in writing, then the employee is required to execute the issued order”.

Although this liability is for all forces, disciplinary liability is principally based on the cases bringing responsibility, which are as follows:

1- The presence of a duty to perform or refrain from doing an act; this duty may be created due to legal regulations or social relations.

2- Awareness of the presence of a duty; because a person who is not aware of his duty cannot be recognized as responsible. The lack of awareness of the existence of a duty may be caused by the lack of intellectual and emotional powers or a defect in social education or the existence of a duty and its contents may not be communicated to the person.

3- Ability to perform a duty; inability of a responsible person to perform a duty may also be caused by personal or social factors.

## JURISPRUDENTIAL STUDY OF LIABILITY AND MATURITY AGE IN THE ISLAMIC PENAL CODE

Article 146: Immature people are not subject to criminal liability.

Imam Khomeini considered maturity as one of the conditions of the contracting parties and only a mature person can accept the responsibility for the transaction and its consequences (KHOMEINI, 1987).

Besides, he believed that the actions of an immature person in sale, peace, donation, loan, lease, deposit, borrowing and will are ineffective ((KHOMEINI, 1987).

But here, we briefly mention the arguments or narrations that refer to non-responsibility of children:

The Holy Prophet (PBUH) says: “Responsibility is removed from three persons: The sleeping man until he wakes up; the insane until he becomes good and wise and the child until he attains maturity” (MAGHRIBI, 2004).

Further, Imam Ali (AS) says: “There is no responsibility for the insane until he improves, no responsibility for an immature person until he attains maturity and no responsibility for the sleeping man until he wakes up” (QOMMI, et al., vol. 18, pp. 314, 316)

Article 147: The age of puberty is the end of 15 lunar years in boys and the end of 9 lunar years in girls.

In connection with the age of maturity, Ayatollah Khamenei was asked whether the criterion for the age of puberty in boys and girls is the solar or lunar years. He answered: “The criterion is the lunar years and it begins with nocturnal emission (emission of semen when sleeping) which is one of the religious signs of puberty. The criterion for being obligated and considering the religious obligations is that the person is religiously mature and wise in terms of customary law. But the levels of understanding and intelligence are not effective in this respect” (KHAMENEI, 1995).

However, the late Imam Khomeini has considered the signs of maturity as including the appearance of certain signs, regardless of the age of puberty:

Puberty in girls and boys has three signs:

- 1) Growing coarse hair on the pubes (under the abdomen and navel and above the genital organ) and thin hairs are not effective.
- 2) Emission of semen in wakefulness or sleep with sexual intercourse or nocturnal emission (discharge of semen during sleeping) or the like.
- 3) Age of puberty which is 15 in boys and 9 in girls.

In emancipation (prohibition of financial possessions) of a minor, maturity is not enough but he should also develop mentally and intellectually (KHOMEINI, 1425 AH).

Here, apart from the conditions of growing hair, emission of semen and age which have been mentioned for maturity, Imam Khomeini has considered intellectual development and non-stupidity among the conditions of maturity.

Since non-stupidity (intellectual acuity) is among the requirements of maturity in Imam Khomeini's view, the definition of stupidity is provided from his words for better understanding of the issue:

“A stupid person is the one who does not have a state that makes him maintain his property; he improperly consumes and wastes his property and his transactions are not based on sagacity and prevention of loss and he does not care about being deceived in deals. The intellectuals recognize such a person since he is not like them in relation to his property acquisition and use. A stupid person is legally incapacitated and his possessions in his property is ineffective in sale, peace, lease, donation, deposit, borrowing and the like and his incapacity\_ if his stupidity is connected to the minority time\_ is not based on the prohibition of the religious ruler. But if his stupidity is renewed after puberty and growth, it is based on the prohibition of the ruler; then, if he achieves development, his incapacity is removed but if his stupidity returns, the rule is entitled to incapacitate him (KHOMEINI, 1425 AH, vol. 3, p. 27).

Overall, concerning the attainment of maturity, Ayatollah Khamenei stated the same conditions as Imam Khomeini: Maturity in children is attained by one of the following signs: In boys, nocturnal emission or growing coarse hair on the pubes (under the abdomen and navel and above the genital organ) and reaching the age of 15 lunar years; in girls, menstruation or growing coarse hair on the pubes (under the abdomen and navel and above the genital organ) and reaching the age of 9 lunar years (KHAMENEI, 1425 AH, vol. 3, p. 27).

The age of puberty in girls is, according to the famous word, the end of 9 lunar years (KHAMENEI, 2015, vol. 1, p. 225, vol. 2, p. 298).

And some other have mentioned the following in a narration from Imam Sadiq (AS): “Boys become mature when they reach the age of 15 and if they have a nocturnal emission before 13 years of age, they are required to say their prayers and become obligated and also, when a girl reaches the age of 13 or menstruates before this age, she is also required to say her prayers and becomes obligated” (TUSI, vol. 2, p. 381).

As to the age of maturity, the Civil Code and the Islamic Penal Code<sup>6</sup> have accepted it and specify that “the age of puberty in girls and boys is 9 and 15 lunar years, respectively”.

But we can briefly say that although puberty is attained at the age of 9 and 15 years, in addition to the appearance of maturity signs, the issue of non-stupidity and intellectual development should also be realized so that these people can be considered as responsible. What has been said in the Islamic Penal Code and the Civil Code is consistent with the jurisprudential views of Imam Khomeini and Ayatollah Khamenei.

## CONCLUSION:

The causes of exemption from criminal liability fall into two categories:

1. Absolute causes, which completely eliminate criminal responsibility, such as childhood, insanity, and coercion.
2. Relative causes, which partially exempt an individual from criminal liability, such as intoxication and sleep.

Our research focuses on the first category, where the offender cannot be punished or subjected to security measures, as childhood is an absolute cause of exemption from criminal liability and falls outside the age of criminal responsibility.

## REFERENCES

AHANGARAN, Mohammad Rasool; ABBASI, Zahra. The age of criminal responsibility in children: Some of Islamic views. *International Journal of Pediatrics*, 2015, 3.4.1: 777-787..

ALIABADI, Dr. Abdul Hassan, Criminal law. Tehran: Ferdowsi Publications, 1989, vol. 2.

AMID, Hassan, Amid Dictionary. Tehran: Javidan Publications, 11th Edition, 1996.

ANIS, Ibrahim et al., Al-Mu'jam al-Wasit, Majma' al-Lughat al-'Arabiyyah. Tehran: Naser Khosrow Publications, Second Edition, Bita, vol. 1.

Ansari, Mas'oud & Mohammad Ali Talebi. Encyclopedia of Private Law (3 volumes). Third Edition, Tehran: Jangal-e Javedaneh Publications, 2009, vol. 3.

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<sup>6</sup> The Islamic Penal Code, ratified in 2013, Article 147, and the Civil Code, Note of Article 1210: “Maturity is attained at the end of 15 lunar years in boys and the end of 9 lunar years in girls”.

BAHERI, Mohammad, General criminal law. Tehran: University Press, vol. 2.

BARIKLOU, Ali Reza, Civil liability. Tehran: Mizan Publications, Fourth Edition, Spring 2013.

DEHKODA, Ali Akbar. Dekhoda Dictionary, vol. 42, Tehran: University Press, 1960.

DILAWAR, Malak Naeem. A Shariah Appraisal of Pakistan's Juvenile Justice Act, 2018. *Available at SSRN 4716168*, 2024.35- Roozbehan, M. D., Hashem, H., & Natter, M. A. (2018). *The Proportionality of Crime and Punishment in Gradual Criminal Liability of Children*.

GILANI, Foumani, Mohammad Taqi Behjat, Jame' al-Masail (Behjat). 5 volumes, his office, Qom - Iran, Second Edition, 1426 AH, vol. 3.

HEMMATI, Gholam Reza, What is the criminal liability? Ettela'at Newspaper. Legal and Judicial Articles. 13/3/2016 see: babafars.ir.

HEYDARI, Ahvan, Civic pamphlet 4: Civil liability. Visit: 14/11/2015, see: [www.bargozi.deha.com/tag](http://www.bargozi.deha.com/tag).

HORRE Ameli, Mohammad ibn Hassan, Tafsil Wasail al-Shia ila Tahsil Masail al-Sharia. Research by Sheikh Mohammad Razi, Dar Ihya al-Turath al-Arabi, Qom, 1414 AH, vol. 1, 18.

IBN, Manzur, Muhammad ibn Mukarram, Lisan al-Arab.

ISLAMIC Penal Code, ratified in 2013, Article 147.

JA'FARI (Ayatollah), Ya'qub. Ya'qubi interpretation. Qom: Hijrat Publishing., 1376 AH. vol. 5.

JA'FARI Langroudi, Mohammad Ja'far, Terminology of Law. Tehran: Ganj-e Danesh Publications, 2001.

KHAMENEI, Sayyed Ali, Muntakhab al-Ahkam (Anthology of Juridical Judgments). Preparation by Fayyaz Hossein al-Ameli, Hassan Muhammad, Senabs, Bahrain, Dar al-'Ismat, Bitā.

KHAMENEI, Seyyed Ali, Ajwibat al-Istifta'at. Tehran: Islamic Revolution Publishing, 2015, vol. 1, 2.

KHAZAEI, Dr. Manouchehr, Pamphlet of general criminal law. Tehran: Shahid Beheshti University, 1987-1988.



KHOMEINI, Seyyed Ruhollah Mousavi, *Tahrir al-Wasilah*. Translated by Eslami, Ali, 4 volumes, Islamic Publications Office affiliated with Qom Seminary Teachers Association, Qom, Iran, 21st Edition, 1425 AH.

KHOMEINI, Seyyed Ruhollah Mousavi, *Tahrir al-Wasilah*, 2 volumes, Qom: Matbu'at Dar al-Ilm, First Edition, 1987, vol. 2.

MAGHRIBI, Qazi Nu'man. *Da'a'im al-Islam*. 2 volumes, Qom: Dar al-Ma'arif, 2004.

MOHSENI, Morteza, *General criminal law course*. vol. 3: Criminal liability. Tehran: Ganj-e Danesh Publications, 1997.

MOUSAVI, S., & Yusoff, J. M. *A legal analysis of the minimum age of criminal responsibility in Iran's new penal code*. 2013

NAJAFI, Muhammad Hassan ibn Muhammad Baqir, *Jawahir al-Kalam fi Sharh Sharayi' al-Islam*. Tehran: Al-Maktabat al-Islamiyyah, 1988, vol. 26.

NAYYERI, M. H. *An Overview of Iran's New Islamic Penal Code*. Brunel University(2012).

QOMMI, Sheikh Saduq, Muhammad ibn Ali ibn Babuyeh, *Man la Yahduruhu al-Faqih*. Translated by Ghaffari Ali Akbar and Mohammad, 6 volumes, Tehran: Saduq Publishing, First Edition, 1409 AH.

SAFFAR, Mohammad Javad, *Legal personality*. Tehran: Dana Publishing, 1994.

SAKI, Mohammad Reza, *General criminal law*, vol. 2: Criminal liability. Tehran: Jangal-e Javedaneh Publications, 2013.

SHAFE'EI, Ja'far, *Criminal liability of legal persons*. Master's thesis in Criminal Law and Criminology, Islamic Law and Teachings Institute, Jameat al-Mustafa al-Alamieh, 2011, *ibid*.

TAJMIRI, Amir Timur, *Civil rights*. Tehran: Afarineh Publications, 1996.

THE HOLY QURAN. Translated by Ayatollah Naser Makarem Shirazi

TUSI, Abu Ja'far, Muhammad ibn Hassan, *Tahzib al-Ahkam*. Fourth Edition, Tehran: Dar al-Kutub al-Islamiyyah, 1986, vol. 2.



TUSI, Abu Ja'far, Mohammed ibn Hassan, Al-Istibsar fi ma Ikhtilaf min al-Akhbar. 4 volumes, Tehran: Dar al-Kutub al-Islamiyyah, vol. 5, 1984, vol. 1.

TAHERI, Habibollah, Civil rights (Taheri). Vol. 2, Qom: Islamic Publications Office affiliated with Qom Seminary Teachers Association, 1418 AH.

THE Civil Code, Note of Article 1210: "Maturity is attained at the end of 15 lunar years in boys and the end of 9 lunar years in girls".

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