

AGE BEING A FACTOR OF CRIMINALITY AND ITS IMPACT ON FELONIOUS RESPONSIBILITY IN PRACTICAL LEGISLATION

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Abstract:

Age is one of the factors that criminology examines as an individual factor related to the person of the criminal and which directly affects his criminal behavior. The crime is not related to a specific age stage, but the establishment of criminal responsibility or not varies according to age, depending on the foundations of criminal responsibility adopted by positive legislation. The juvenile is not treated as an adult in terms of criminal liability, given his physical, mental and psychological composition, which necessitates a gradual assumption of criminal responsibility for the criminal behavior he commits.

Keywords: *age; factors; criminality; responsibility; legislation.*

INTRODUCTION:

The law and the crime are as old as the human being. The behavior contrary to the criminal legal system is described as a “crime,” The person who commits this behavior is called a “criminal,” who is subject to a criminal penalty stipulated in the penal legislation.

The criminal phenomenon is a general social phenomenon for all societies across all times.

Therefore, it was subjected a study from both sides legal and scientific, so that the legal study is based on research into the content of the positive legal rule, the violation of which entails a criminal penalty, while the scientific study relates to the study of the factors of criminal behavior, its purpose, resistance, remedy and correction, which took the form of various studies on the factors of crime and how to confront it within the framework of what is known as criminology.

Criminology is a newly developing science whose started in the early of the twentieth century. It has relied on the point of view and specialty of each researcher, which has resulted in different definitions of this science. The jurist Ferry, one of the most prominent founders of this science, defined it as: “the science that includes all the criminal sciences, especially criminal law, which does not diverged from being one of the legal chapters of this science,” while those who give criminology a narrow definition opposed this definition. They considered it a factual, positive science that differs from criminal law, which is considered a legal or basic science, and therefore each of them is independent of the other they not intervene in each other¹.

In its preparatory work in 1950, the Second Congress of Criminology relied on the narrow definition of criminology, that is, it considered it to be the science that investigates the causes or factors of the criminal phenomenon and its movement², whether those factors are individual or social, and which push the criminal to commit the crime.

One of the individual factors related to the criminal’s person that directly affects his criminal behavior is the age factor. A person goes through many stages in his life from the moment of his birth until his life ends. At each stage of his life, a person is affected by many changes that affect his constitution and psychology on the one hand, and the environment that surrounds him. On the other hand, these changes have an impact on human behavior and thus on the criminal phenomenon.

The crime is not related to a specific age stage. It may be committed by a child, a young person, or an elderly person. However, whether or not criminal responsibility exists varies according to age, depending on the foundations of criminal responsibility adopted by positive criminal legislation

During this paper research, we will address the impact of penal legislation on studies conducted by criminology on age, as it is one of the individual factors that affect an individual’s criminal behavior.



This subject has a massive importance given to its connection to criminology on the one side and criminal law on the other side, as the latter benefits from the studies conducted by criminology in the field of age to develop and advance its rules. Studying the age of the criminal, especially the young person, has a major role in knowing the reasons leading to his crime, and thus determining the criminal legal rules that suit his situation.

The problematic is: how did the penal legislator deal with the age of the perpetrator? Was he influenced by the studies and results reached by criminologists regarding age as an individual factor that prompts an individual to commit crime?

The analytical approach was relied upon to study this topic, by analyzing the outcome reached by scholars about age and crime on the one hand, and analyzing the penal texts and their view of the age of the perpetrator of the crime.

To give a response on this problematic, the study was divided into two main axes. The first dealt with criminology studies on age, while the second devoted it to the position of statutory legislation on the effect of age on the establishment of criminal responsibility.

1. Criminological studies of age:

There are many internal factors related to the criminal's person, which in one way or another affect his commission of the crime, and they differ from factors external to the criminal's person. In order to explain the cause of criminal behavior, criminologists tried to investigate these causes and factors, most notably age. They based their studies on dividing the stages of a person's life and their relationship to criminal behavior:

1.1 The stages of human life:

It is recognized that criminal behavior is linked - quantitatively and qualitatively - to a person's age. This is a fact confirmed by criminal statistics, which classify crimes according to the age of the criminal³. In order to clarify the effect of age on criminal behavior, researchers divided the stages of life into four stages: childhood, adolescence, maturity, and finally old age⁴. We will try to explain each two stages in a separate section as follows:

1.1.1 The stages of childhood and adolescence:

These two stages begin from birth until the age of 18 years, and these two stages are linked to each other

1.1.1.1 Childhood stage:

This stage is determined by the period between birth and adulthood, which usually occurs at the age of twelve, and it is an important stage in the formation of the individual's personality. During this period, the child is completely dependent on his mother at the beginning of his life, and does not begin to understand the environment surrounding him and acquire his social needs until the age of Advanced (seven or eight) years of age. Starting from this age, he begins to try to disobey his parents, and problems may arise that concern criminology⁵.

1.1.1.2 Adolescence and young adulthood:

This stage, in turn, is divided into three periods as follows:

A- The pre-pubertal period: This stage begins from 11-12 years in girls, and from 13-14 years in boys, and is characterized by the growth of stature and muscles, a change in the voice in males, and the appearance of breasts in females.

B- The period of puberty: It begins at approximately thirteen (13) years in females, and approximately fifteen (15) years in males. This period indicates the onset of menstruation in girls and nocturnal emission in boys.

C- The period after puberty: It is characterized by an increase in the chest and an increase in the appearance of distinctive sexual characteristics until the age of sixteen or seventeen in females, and until eighteen in males⁶.

The most important features of this stage in general are the following:

- The physical strength of the juvenile or adolescent increases significantly, and the change appears in the secretions of his glands, which increases the secretion of the pituitary gland, which is located



at the bottom of the head and controls the functions of the rest of the body's glands, and the secretion of the thyroid gland increases, which affects a person's desire to attack. The sexual instinct is also activated without Find satisfaction consistent with the law.

-The juvenile's tendency towards leaving the family and rebelling against the restrictions imposed on him, out of his desire to express his personality and satisfy his ego.

The imagination is sparked within the underage, his love of adventure grows, the power of emotion overcomes the control of the mind, and his ability to self-control weakens, which sometimes makes him vulnerable to the external influences surrounding him.

The underage is greatly affected by environmental factors, given that his personality is still shaky and unstable. If the external influence is present, this may push him to criminal behavior, and criminologists determine that the influence of environmental conditions on a girl is stronger than on a boy⁷.

1.1.2 Maturity and old age stages:

These two stages extend from the age of 18 years until the end of a person's life:

1.1.2.1 Maturity stage:

This stage extends for a long period of a person's life, starting from the age of eighteen until the age of fifty, and it is considered one of the most dangerous stages in a person's life according to criminologists⁸, so they divided it into two periods as follows:

-The period of early maturity (the period of youth): It extends from eighteen to twenty-five, during which growth does not stop and the nervous system is completed. However, this period is attached to the stage of adolescence, so it is not independent, because it does not differ from it in terms of the occurrence of organic, mental, or psychological diseases⁹.

This period is considered one of the most dangerous periods during which crime is most common, as it accounts uniquely for a quarter of the total amount of crime, and in some cases it approaches a third of it.

-The period of true maturity: This period extends from the age of twenty-five to fifty, and the individual's life in this period is characterized by stability, as he has determined the type of work, his place of residence, and the choice of his wife, and this is reflected in his actions and behavior, as he becomes rational and feels responsible, which reduces the severity of his crime¹⁰.

1.1. 2. 2 Aging stage:

According to criminologists, this stage begins after fifty years of age and continues until the end of the individual's life. During this stage, weakness in physical abilities increases, and is accompanied by states of psychological instability and anxiety, as the individual may feel insecure due to his referral to retirement and the end of his service, and he also feels the calmness of the sexual instinct and dullness sensation and indifference to life events and the control of emotions, and from here begin the worries of old age related to illness, the absence of friends and even children, and the difficulty of meeting the demands of living, which makes the individual gradually isolate himself from society and its institutions¹¹.

No matter what the individual goes through during this stage has an impact on his criminality, as it decreases significantly compared to the previous stages.

1.2 The relationship between the stages of growth and an individual's criminal behavior:

The relationship between crime and lifespan, and whether there are potential differences between different groups of individuals, is more controversial among criminologists. For example, Hirshi and Gottfredson (1983) argue that age has a direct effect on crime that cannot Interpreting it with other variables, the association of crime with age is linked to certain stages in an individual's life, as the life cycle affects his attitudes and behavior and works to encourage or discourage him from participating in crime. However, such factors have varying effects on individuals, which means that the effect of developmental stages on An individual's criminal behavior varies from one person to another depending on the availability of other factors that may push him to commit crime ¹².

Criminologists have tried to link what distinguishes each stage of an individual's life with his or her criminality, quantitatively and qualitatively, as follows:



1.2.1 An individual's criminal behavior during childhood and adolescence:

1. 2. 1. 1 Criminality in childhood:

Criminal statistics do not record a significant number of crimes at the stage when the individual is still a child, not only because he is not criminally responsible, but also because he does not have the physical strength that would make him capable of committing criminal behavior, as well as because he has few social relationships¹³.

However, some studies conducted indicate that serious indicators of antisocial behavior are not rare between the ages of five and seven and some of them have been discovered in those who later became professional criminals¹⁴.

1.2. 1. 2 Crime in the modern stage (adolescence):

The proportion of juvenile crime to the total number of crimes increases in the direction of increase from the beginning of the stage to the end. Statistics have recorded that crime begins at approximately the age of twelve and increases proportionally with increasing age until eighteen, that is, it increases as the age of the juvenile increases, and the period of youth is characterized by certain types. Of the crimes that appeal to juvenile criminals rather than others. Perhaps the most frequent of these crimes are crimes of assault on property, crimes of physical harm, and finally crimes of assault on honor¹⁵:

Money crimes: The juvenile is overwhelmed by many desires and demands that he wants to achieve, and his lack of financial resources is an obstacle to that, which may push him to commit money crimes, especially theft, because it is the easiest of these crimes and does not require more than boldness and adventure. These are two things that characterize this stage of life. Statistics have shown that the money crimes committed by juveniles exceed half of the total crimes they commit, and that theft crimes are ten times the amount of fraud crimes they commit¹⁶.

-Crimes of physical harm: Among the crimes that occur frequently among juveniles are crimes of physical harm. This is due to what we previously indicated, which is that the physical strength of the juvenile increases during this period, so he sometimes resorts to using it to attack others, out of pride in his new strength and in confirmation of his personality¹⁷.

- Crimes of assault on honor: The sexual instinct awakens at this stage, and becomes active and active, filling the child with self-esteem. His curiosity and ignorance of sexual matters push him to discover this change, and this desire may lead him to commit scandalous acts with his colleagues of the same gender, even if it matures. If his sexual instinct is straight towards the opposite sex, the juvenile may slip into the path of crime in order to satisfy it by committing moral crimes¹⁸.

1.2.2 Criminal behavior of the individual during the stages of maturity and old age:

1.2.2.1 Criminality during maturity:

Here we distinguish between crime during youth and the period of true maturity:

-Criminality in terms of type and in youth: Audulfe Quetelets is considered one of the "founders" of criminology. He is a French astronomer and mathematician who was one of the first to realize the continuous relationship between age and crime, in a study he published in 1831 on the tendency to crime at different ages, where he. He examined national crime statistics in France for the years 1826-1829, and discovered that crime increased with age, reaching its peak at the age of 25 and then decreasing sharply after that, due to the physical strength the individual enjoys at this age, and his social environment expands. It helps him with the possibility of inclination to crime¹⁹, and here we are that the so-called period of youth or early maturity is the most dangerous period of life in that, one French statistics has proven that the perpetrators of crime during this period represent 31% of the total number of convicts, and that the perpetrators of misdemeanors at this age have Their percentage reached 24% of them. Statistics in both Italy and Germany point to the same fact²⁰.

Crimes committed during youth vary between crimes against persons and property, such as crimes of simple theft and forcible theft, crimes of assault on honor²¹, crimes of assault on life and bodily integrity, and abortion crimes, which reach their peak in quantity during this period. This may be due to the fact that women are more Exposure to pregnancy during other periods, and finally unintentional crimes such as murder and accidental injury that result from driving cars at high speed, and this is linked to the impulsiveness and recklessness that characterizes this stage²².



-Criminality in quantity and quality during the period of true maturity: As we previously mentioned, this period extends from the age of twenty-five to fifty, and is characterized by the predominance of crimes of theft and breach of trust between the ages of twenty-five and thirty-five, then their percentage begins to decline after that, to be replaced by fraudulent crimes. Which increases after the age of thirty-five. French statistics have shown that perpetrators of the crime of theft who are over thirty-five years of age represent only 20% of thieves, while perpetrators of the crime of fraud (fraud) after this age represent 57% of fraudsters. Crimes of assault on honor and prestige also reach their highest rate in the period between the ages of forty and fifty, and this is due to the fact that the disputants in this period of life do not have the physical strength to resort to violence, so they do not find a way out other than crimes of assault on honor and prestige, the first of which is defamation. And slander²³.

1.2. 2. 2 Crime in old age:

The crime of the elderly in terms of quantity represents the lowest percentage of crime in all stages of life except childhood. However, this does not make them immune from committing crimes. All that matters is the difference in the quality of crime at this stage, as the elderly commit less crimes that require physical force. Such as violent crimes. On the other hand, their rate of committing other crimes that do not require physical effort increases, such as white-collar crimes, which some criminal statistics show are committed by males at this stage of life. These statistics also prove the tendency to use drugs among older men and women. As for crimes of assault on honor that may be committed by elders, the victims are mostly children because they are unable to resist, and this is because rape crimes require the use of violence and force²⁴.

The increase in crimes committed by the elderly in recent years may be due to economic difficulties on the one hand, and in addition to the increase in life expectancy and improved health status on the other hand, crime of the elderly²⁵.

2. The position of statutory legislation on the effect of age on the establishment of criminal liability: Criminal liability is only borne by those who are qualified to do so. An individual may commit a crime and not be held accountable for it because there is not a constant correlation between committing it and bearing responsibility for it. It is not sufficient for criminal liability to merely commit criminal behavior, but rather the perpetrator must have awareness and freedom of choice, which are its basis. We will try to clarify the concept of criminal liability, and the extent to which age affects the gradation of criminal liability:

2.1 The concept of criminal liability:

We will discuss the definition of criminal liability, and then explain the basis of that liability in criminal legislation:

2.1.1 Definition of criminal liability:

Here we will explain the jurisprudential definition of criminal liability, then the legal definition:

2.1. 1. 1 The jurisprudential definition of criminal responsibility:

Odeh Abdel Qader defined criminal responsibility as: "A person bears the consequences of his forbidden actions that he performs voluntarily, not under compulsion, and he is aware of their meanings and consequences. Whoever performs an act without his will is like an unconscious or coerced person, and whoever performs a forbidden act willingly but without realizing its meaning, like an insane person or a child, is not accountable." criminally for his action"²⁶ .

Some jurists also defined criminal liability as: "a duty imposed on a person to bear the consequences of his criminal behavior, by being subject to the legally prescribed punishment."²⁷ Others defined it as: "a person's suitability or eligibility to bear the penalty prescribed for the crime he committed,"²⁸ meaning "the person must bear the consequences of his criminal behavior as determined by the law"²⁹

What is noted from this definition is that criminal liability has two basic elements, the first of which is the behavior criminalized by the text of the law, and the second of which is the sinful will that directs that behavior, which must emerge from the awareness and choice of its owner. Thus, the legally stipulated punishment cannot be imposed unless the perpetrator of the criminal behavior is held criminally liable.



Accordingly, criminal responsibility does not encompass all forms of criminal punishment, whether punishment or precautionary measure, but rather includes only the form of punishment as compensation for the criminal behavior committed, given that the precautionary measure can be applied even to the insane, even though he is not criminally responsible for his criminal actions.

2.1.1.2 What is meant by criminal liability legally:

Criminal liability is among the most important basic theories in criminal law, but criminal legislation neglected to clearly define its features and limited itself to mentioning some of its provisions, such as its contraindications. The Algerian legislator dealt with the provisions of criminal liability in Chapter Two of Chapter Two of the Penal Code in Articles 47 to 51 bis³⁰ in which he limited himself to referring to the impediments to liability of the natural person as well as the responsibility of the legal person.

2.1.2 The basis of criminal liability in statutory legislation:

Capacity is considered the basis for criminal liability, and it is a specific characteristic of a person that is not linked to his act or his psychological position regarding that act. Capacity is not complete for a person except with the availability of the elements of awareness and freedom of choice:

2.1.2.1 Perception (discrimination):

Perception, or what is called discrimination, is related to a person's ability to realize the social value of his behavior³¹, which varies from one person to another according to his age, and this is what penal legislation, including Algerian legislation, has adopted.

Legislation has relied on an external sign that indicates awareness. The Algerian legislator considered the age of criminal discrimination to be thirteen (13) years. According to Article 49 of the Penal Code, if a child who has not completed thirteen years of age commits a crime, he is not subject to a criminal penalty, but merely Protection or breeding measures. Also, according to Article 56 of Law 15-12 relating to child protection³², a child under the age of ten is not subject to criminal prosecution. As for a delinquent child whose age is between ten and thirteen years, he is, according to Article 57 of Law No. 15-12, subject to protection measures or refinement.

However, in the case of a lack of awareness, as is the case with the insane, criminal responsibility³³ does not arise, that is, no criminal punishment is applied to him, but rather merely security measures by placing him in a hospital institution for mental illnesses³⁴.

2.1.2.2. Freedom of choice:

Freedom of choice in the criminal field is related to a person's ability to browse possible forms of behavior and choose the best one from his point of view, so that this freedom may be restricted either by external restrictions related to the circumstances surrounding him or internal restrictions related to the human constitution and inclinations, which differ from one person to another as well as for the person. one depending on the circumstances.

A person becomes unfit to bear criminal responsibility if the person's circle of choice narrows, extends and accompanies the person for a period of time and becomes one of his characteristics and a general character that governs his behavior, which makes him lose his capacity³⁵.

The Algerian legislator recognized the role of freedom of choice in establishing criminal liability, which is through Article 48 of the Penal Code, which considered the person forced to commit the crime to be an uncontrollable force that prevents him from liability, and this is due to his lack of freedom of choice under these circumstances.

2.2 extent of age's influence on the gradation of criminal liability:

Criminal responsibility, as we explained above, does not depend on the availability of freedom of choice and awareness of the person committing the legally criminal behavior. However, awareness is not at the same level for a single person, but rather it grades according to the stages of his life, and on its basis, the person's criminal responsibility is graded. We will show the gradation of criminal responsibility according to age, and then we will show the connection between criminology studies on age and the gradation of criminal responsibility:

2.2.1 Graduation of criminal liability according to age:

Criminal responsibility is graduated according to statutory legislation according to age, given that the awareness on which criminal responsibility is based is not the same across the stages of a person's



life. Rather, the child is born with no awareness and then gradually grows until it becomes fully developed. That is, the more awareness and awareness the child has, the more he will bear criminal responsibility about his criminal behavior.

Penal legislation has adopted the approach of grading criminal responsibility according to the child's gradation of awareness, and thus made young age an obstacle to criminal liability. However, they differed in determining the age at which the child is considered distinct and aware of his actions and therefore criminally responsible. Most legislation considered that a child who did not reach the age of seven without awareness and is not criminally accountable for any criminal behavior he commits³⁷. Some of them make the age of 12 the age at which the child's criminal responsibility begins if he commits a criminal act by law³⁷, while the Algerian legislator has set reaching the age of ten in order for the child to be considered criminally responsible³⁸.

Upon reaching the age of maturity determined by criminal legislation, the child becomes criminally responsible for the criminal behavior he commits, but his responsibility differs from the responsibility of an adult. Legislation has divided the child's criminal responsibility into stages in which the child's responsibility varies according to his age and before he reaches the age of criminal maturity. We mention here the stages that he specified. The Algerian legislator is as follows:

-A period between ten and thirteen years: According to Article 57 of Law No. 15-12, a child who commits criminal behavior is subject to protection or edification measures. This is confirmed by Article 49, first paragraph of the Penal Code, as only protection or education measures are applied to a child who has not completed 13 years of age, provided that he is only subject to reprimand in the articles of violations³⁹.

-A stage between 13 and 18 years: Here, according to Article 49 of the Penal Code, paragraph three, the minor may be subjected either to protection and education measures, or to reduced penalties specified in Article 50 of the Penal Code.

2.2.2 Correlation of criminological studies on age and the gradation of criminal responsibility:

According to what criminologists have found, the rate of crime changes from one age stage to another, and this is due to the physical and psychological changes that a person goes through, as a person is born lacking awareness and discrimination, and gradually develops over time until he is complete, and thus he is eligible for criminal responsibility for crimes committed by him.

There is a close connection between the stages of human life established by criminologists and the stages of gradation of criminal responsibility in statutory legislation. The childhood stage in criminology begins from birth until adulthood (approximately 12 years), during which the rate of crimes in the child decreases for reasons related to his physical composition and the narrow scope of his relationship. Socially, even if he commits a legally criminal behavior, most legislation considers him not criminally responsible due to his lack of awareness, which is the basis of criminal responsibility.

With regard to modernity (adolescence), which, according to criminologists, expand from twelve to eighteen years. Throughout the time, the juvenile undergoes organic and psychological changes, and the external environment also has a notable impact on his behavior. The ratio of juvenile delinquency to the total consensus of criminality from the first stage to the last is progressive in the direction of increase, that is, it increases as the juvenile ages⁴⁰.

Over here criminal liability also advances according to the development of the juvenile's perception, starting from a simple admonition to protective measures, education or discipline, up to light penalties compared to an adult.

As a result, it is simple that age has a remarkable impact on the sequence of criminal liability, a little one is not considered the same as an adult in terms of criminal liability. Stated to his physical, mental and psychological construction, his capacity to conceive the social esteem of his behavior is gradual, and not all at one time, that requires a gradual claiming of criminal responsibility for the criminal conductance he commits⁴¹.



CONCLUSION:

Through our study, which focused on the effect of age as an individual criminal factor related to the individual on criminal liability in statutory legislation, we reached a number of results that we summarize as follows:

The percentage of crime committed by a person varies according to the stages of his life, which criminologists have linked to physical, psychological and environmental factors surrounding the person, so that each stage is characterized by a specific amount and type of crime.

A person's criminal responsibility does not exist unless the elements of awareness and freedom of choice are available. Accordingly, an insane person, a child who lacks awareness, or a person under duress will not be criminally responsible for legally criminal acts, but precautionary measures can be applied to them that are consistent with their inherent criminal danger.

- Man-made legislation has adopted a policy of assigning criminal responsibility to a minor, as it does not treat him or her as an adult until he or she has completed his or her awareness.

The studies concluded by criminologists on age are linked to the gradation of criminal responsibility, as the stages of human life established by criminology are largely identical to the stages of gradation of responsibility in criminal legislation, especially with regard to the stages of childhood and adolescence.

- Criminology, although it is a purely theoretical science that deals with crime as an individual and social phenomenon, trying to investigate its causes and determine the extent to which these causes contribute to creating the phenomenon of crime, the studies carried out by its scholars have contributed to the development and progress of penal legislation.

Based on our findings, we recommend the following:

It would be preferable for positive legislation to take into account the studies and results of criminology when establishing the legal principles governing the establishment of criminal liability, not only in childhood and adolescence, but also in other stages of life, especially old age.

- Organizing training courses and workshops for law students on the criminal factors that contribute to the criminal phenomenon, in order to come up with rules that may reduce this phenomenon.


It is preferable for statutory legislation to apply protective measures rather than punitive measures to the juvenile who pursues the path of crime in order to protect and reform him, taking into account the social, psychological and physical circumstances of the juvenile. Applying criminal penalties to him does not contribute to reducing crimes as much as it creates a professional criminal in Society after mixing with criminals inside penal institutions in which the minimum rules of proper penal treatment are not applied in light of the overcrowding of these institutions, and the difficulty of providing appropriate conditions for the prisoner within the economic conditions experienced by each country.

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