

Critical Analysis of Minimum Age of Criminal Responsibility (MACR) in Pakistan

1. Mukhtiar Ali Shar, 2. Jawad Hussain Shar

1. Master of Laws (LLM), Yong Pung How School of Law, Singapore Management University, Singapore
mukhtiarshar@gmail.com
2. Advocate, High Court of Sindh

Abstract

Every child can commit a criminal act but not every child will be criminally accountable. Criminal sanctions on minors are determined by the Minimum Age of Criminal Responsibility (MACR) even if the act committed by the minor has all the elements of crime. Every country in the world has set a different age for Minimum Age of Criminal Responsibility. Pakistan has also set criteria of MACR for different purposes which has caused the disparity so, this research is an effort to critically analyze the Minimum Age of Criminal Responsibility in Pakistan, what are the reasons and standards behind setting too low MACR and how negatively the image of Pakistan is being portrayed because of too low MACR standards.

Key words: Criminal Responsibility, Juvenile, Doli Incapax, Therapeutic Jurisprudence

1. Introduction

Every country's legal system defines a certain age to prosecute individuals and hold them liable for their acts or omissions. The prerequisite for liability is capacity to understand the act and its outcome — mental capacity. To deter juvenile offenders, societies with a crime problem usually set a lower age of criminal liability. An act falls into the ambit of crime when it consists of Actus Reus (wrongful act), Mens Rea (guilty mind), and understanding of consequences, which is directly linked to mental capacity and can be used in defense of minors. The disparities regarding minimum criteria of age have always remained under consideration in Pakistan's legal system, yet to be resolved. Age of majority in Pakistan has always been linked with age of puberty, which leads to gender discrimination — girls attain puberty before boys, and holding them accountable on that basis is injustice.

Before the 2016 amendment to the Pakistan Penal Code 1860, a child under seven was not held criminally liable, but a child between seven and fourteen could be, if the court found him

competent and aware of the outcome of his actions. After the 2016 amendment, this age was raised from seven to ten. The age of a child alone cannot be the sole factor for liability if he lacks sufficient maturity; children between ten and fourteen may also be held liable, at the court's discretion, if found to possess sufficient maturity.

According to Rule 4.1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice: "the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity" (OHCHR, n.d). Pakistan became party to the Convention on the Rights of the Child in 2019; Article 40(3a) requires "the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law." Pakistan must amend its criteria for criminal liability of children to comply with the CRC. This research critically analyzes Pakistan's minimum age of criminal responsibility standards against international and natural law (Mahmood & Shaukat, 2018).

2. Research Statement

Minimum age of criminal responsibility refers to age at which a child has attained an intellect maturity needed to be held accountable for the criminal acts. Pakistan lacks concept of presumption of doli incapax and therapeutic jurisprudence. Pakistan's criteria of MACR is inconsistent to that of International Law, this research is an effort to identify the gap and recommendation to fulfill it.

3. Research Objective

1. To understand the concept of doli incapax and therapeutic jurisprudence and to critically analyze the notion of MACR in Pakistan
2. To understand how Pakistan is deviating from internationally set standards of MACR.
3. To understand the social impacts of setting low responsibility for criminal acts in Pakistan and the role of society and religion in setting the MACR, the logic behind setting different age of criminal responsibility for different gender in Islam.

4. Research Questions

1. What is the logic behind setting low MACR, concept of doli incapax and therapeutic jurisprudence and laws or statutes dealing with setting age of criminal responsibility in Pakistan?
2. Why are the changes required to be made in the laws of Pakistan in the context of MACR keeping in view the impacts it creates on the children?
3. How is Pakistan deviating from international standards of MACR and how it can be made aligned to that?

5. Literature Review

Every state must determine the age at which children can be held liable for crime, since minors' lives can be affected by criminal labeling. This research argues the minimum age criteria should be increased, given the lack of mens rea in children, and that minors should be rehabilitated in centers rather than juvenile prisons. Children are not fully mentally or physically strong and lack the capacity to judge what is best for them. However, they do not explain why MACR differs across states or discuss alternatives to punishment — gaps this thesis addresses (Šimić

& Kazic, 2017). Pakistan's laws lack uniformity in defining the child, providing distinct age criteria for different purposes — but does not link this to mental maturity, a gap this thesis addresses (Sabreen, 2017).

Inconsistency in what constitutes normal versus criminally indicative child development, without addressing the social factors (poverty, violence, family instability, and education) (Pillay, 2019). Juvenile courts have exclusive jurisdiction over juvenile offenders and must sit separately from ordinary courts, per JJSA. The article omits the principles of therapeutic jurisprudence and *doli incapax*, which this thesis addresses (Rana, 2022).

6. Research Methodology

This research is qualitative, analytical, and comparative, based upon primary and secondary data available regarding this topic, including substantial law and procedural law. This research also includes literature reviews by various authors, certain International Covenants, news reports, and all relevant work available regarding this topic.

7. Age of Criminal Responsibility

Children are considered the country's most valuable asset, so it is the responsibility of the state to take care of them by safeguarding their comprehensive growth as individuals, and by providing the safety, care and resources they need because of their young age, physique and mental stage. Criminal responsibility, according to some scholars, should be placed on persons who have the capacity and choice to decide how they act. Minors are not fully mature physically, psychologically, and emotionally, and it is believed they are doubtful about what is best for them to do or which choice to make. This indicates that their choice in act choosing is limited, as is their capacity.

The report titled “Justice Project Pakistan (JPP)” states ten percent of the death row prisoners commit crime as juvenile or minor offender. In Section 12 of the Juvenile Justice System Ordinance 2000 the sentencing of juvenile offender to death or labor during their imprisonment is prohibited. In Pakistan hundreds of juvenile offenders have been put into death despite prohibition and imposition of death penalty against juvenile offenders, which is violation of Juvenile Justice System Ordinance 2000. “It saddens us to note that because of an inept investigation a child remained incarcerated for over eleven years and attained majority in jail” — Judges of Supreme Court of Pakistan.

Juveniles are the ones who are affected by the victims of criminal or delinquent behavior. The issue of juvenile delinquency is becoming more intricate, and crime prevention programs are either unprepared or do not exist to deal with this situation. There is difference between adults and children such as difference in mental and physical capacities, and this fact cannot be ignored while deciding to include minors into a separate legal system. In modern legal systems, minors are dealt with differently from adults, resulting in dual criminal law systems when assessing the legal status of an offender based on their age.

Minors can also commit crime in very cruel ways and this fact cannot be ignored by the State. So, it should be decided whether juveniles shall be involved in the criminal justice system, if yes then what shall be the age for holding them criminally responsible and what shall be the best type of state response to criminal activities of minors. The absurdity is that Pakistan's law prohibits capital punishment for crimes committed by minors, yet it ignores the poor treatment of these minors in prisons, the denial of the right to be rehabilitated back into society, and lengthy trial proceedings that lead to criminalization of these young minds.

Minors are the most vulnerable part of society; they need extensive social care. Because of their vulnerability, minors may be used, mistreated, and steered into negative paths by anti-social groups and other people for their personal gain. The state must make policies through

which sufficient care and protection can be provided to children. According to Van Bueren, “minors are not mini persons with mini rights” — they require more attention and protection compared to adults.

According to Black's Law Dictionary, minor is "An infant or person who is under the age of legal competence." According to Merriam-Webster, a minor is "a person of either sex under the age of legal qualification for adult rights and responsibilities." According to Oxford Learners Dictionary, a minor is "a person who is under the age at which you legally become an adult and are responsible for your actions."

8. Minimum Age for Criminal Responsibility (MACR)

Minimum age of criminal responsibility is a certain age under which a young person is considered immature and cannot be held responsible for his or her acts. To be held accountable for actions, a child must be able to understand the nature of his actions and their likely outcomes, which is linked to mental capacity. It is a certain age at which young offenders can be prosecuted for acts or offences, and it varies from country to country.

Minors and adults cannot be treated equally or convicted in the same manner, so the legal definition of a child or minor affects the courts while dealing with offenders who are minors. Minors or children cannot be tried in ordinary laws in ordinary ways like adults; they are supposed to be dealt with under special laws and the juvenile justice system. It is illustrated that if a minor or juvenile is accused of an offence under the Penal Laws such as theft or murder, he is supposed to be tried under the Juvenile Justice System and get benefit from it.

The terms child, minor and juvenile have been used in different acts for indicating relationship, capacity, and protection from criminal responsibility. Disparities regarding the minimum age of criminal responsibility have always remained in the legal system of Pakistan.

8.1. Pakistan Penal Code 1860

Section 22 of Pakistan Penal Code deals with MACR. Before the amendment of 2016, a child under seven years was not held liable to criminal responsibility, but a child above seven and under fourteen could be held liable. After the amendment of 2016, the minimum age of criminal responsibility was increased from seven to ten.

8.2. Juvenile Justice System Ordinance 2000

The Juvenile Justice System Ordinance (JJSO), adopted by Pakistan in 2000, aims to protect the rights of minors involved in legal proceedings and facilitate their eventual rehabilitation. According to section 2(b), the child is the person who at the age of commission of crime has not attained eighteen years. A person under eighteen charged with any offence cannot be tried with ordinary procedures and laws.

In *Muhammad Bilawal v State (2016)*, it was stated that the accused, being a minor, cannot be tried in an ordinary way like adults nor by ordinary courts. According to section 5 of the JJSO, a child who has not attained eighteen years cannot be tried as an adult co-accused. The High Court remanded the case back to the trial court, stating it shall first decide the age of the accused before proceeding. According to section 2(b), the child is a person who has not attained eighteen years. This Act was an improvement in legislation, intending to enable the state to establish measures for the legal protection of child offenders. Section 2(a) defines a child as a person under the age of 18 years. Section 2(iii) defines a child or minor as a person who has not completed fourteen years of age; persons under 14 cannot be compelled to work or engaged in any employment. According to the Majority Act 1875, "every person domiciled in Pakistan is deemed to have attained his majority when he shall complete his age of 18 years and not before."

8.3. Juveniles and their Criminal Responsibility

Juveniles are those who have not attained the age of majority, which varies from country to country; every country has defined the juvenile differently and fixed a certain age at which they can be prosecuted. Juveniles are minors or children accused of committing crimes at a tender age, yet they cannot be prosecuted in the ordinary way adults are prosecuted.

In *Shahid Aziz v State (2007)*, the trial of the minor was commenced along with adults despite special provisions requiring separate trials, and the case suffered from coram non judice. The High Court held the trial of the juvenile by an ordinary court was illegal, and the sentence awarded was not sustainable. As the accused was twelve years old when the incident happened, and no specific allegation or role was mentioned against him, the court acquitted the child. Juvenile crimes slow the progress of society and the country. Juvenile crimes are those committed by minors (people under eighteen years). The rate of juvenile arrests and prosecution is increasing day by day, not only in Pakistan but around the globe, due to socioeconomic and societal pressure. There is a difference between the term juvenile and minimum age of criminal responsibility. A juvenile is a person who has not reached the age of majority (eighteen years) and can be arrested or charged irrespective of mental capacity, while criminal responsibility requires assessing whether the offender is mentally, physically, and psychologically mature enough to commit the offence. According to section 83 of the Pakistan Penal Code 1860, a child above the age of ten can be held liable for the consequences of his or her criminal acts.

Doli incapax is a Latin maxim meaning "incompetent of committing crime or incapable of doing any harm." It is presumed that a minor always lacks the elements required for committing crime and lacks the vital criminal intent for committing any offence.

The reasons for *Doli Incapax*:

1. To save the child from the rigours of the law at a tender age
2. To save the child for acts for which he lacks mens rea
3. To save the child from criminal responsibility due to lack of mental understanding of the outcomes of the acts

Doli incapax is a doctrine of ancient origin in common law since the 1300s, made part of the country's laws to bring reforms in the juvenile system. This doctrine protects children who are immature from criminal responsibility, as they do not fulfill the criteria needed to commit crime, such as mens rea and consequences of the acts.

Therapeutic Jurisprudence deals with "the method and role of the law as a therapeutic agent, a scientific effort that investigates the effects of law and legal methods on the benefit of those that come into contact with it." This principle has a main scope in laws concerning juveniles, and is used by therapeutic agents such as judges and lawyers when juveniles are charged for offences. This principle was founded by American law professors Bruce Winick and David Wexler in 1978. Its main purpose is to protect the rights of children and fulfill the purpose of criminal law in a way that considers the psychological effect on the juvenile character. In juvenile courts, guilt shall not be overlooked, but the rehabilitation of the youth shall also be balanced. Juvenile courts are designed in a therapeutic way, unlike adult courts, where the rehabilitation, welfare and well-being of the juvenile are the prime objectives (Wexler, 2001). Delinquency means violation of anything; juvenile delinquency indicates criminal and antisocial acts committed by minors, which can be dangerous for both the minor and society. Juvenile delinquent offences incorporate offences against persons (murder, assault, child abuse), property offences (theft, criminal mischief), and public order offences (prostitution, traffic violation). Acts of delinquency may involve:

- Usage of offensive language
- Committing sexual offences

- Theft, stealing etc.
- Roaming aimlessly
- Running away from home

The roots of delinquency are as strong as roots of other social problems. Several factors are responsible:

- Socio-Environmental
- Biological
- Personal and Psychological

These include social and environmental factors which cause delinquency and lead a minor to choose the wrong path, such as:

- Background of the family
- Differences of culture
- Social mobility from one place to another

Several biological reasons can cause delinquency and cause minors to behave abnormally:

- Hypoglycemia
- Speaking problem
- Genetic

Psychological and personal factors are important when concerned with delinquency, as acts committed are controlled by the brain and directly connected with the mental capacity of the offenders. "Children who have not got a chance to learn proper socialization methods from their family environment, due to being ill-treated, abandoned, or tortured, are often unable to control their desires and search for immediate satisfaction." Following are the personal and psychological factors:

- Usage of drugs or drug addiction
- Mental illness
- Lack of self-control
- Love of adventure
- Bad company

All these factors are involved in delinquency among children, as minors have immature egos and can easily be manipulated into committing crimes.

Children are the valuable assets of the state, and it is the responsibility of the state to legislate regarding the protection of children's rights. Minors are not mini people with mini rights; they are part of society, and necessary measures are required for their protection against the full rigor of the law. Every country must fix a certain age at which minors can be held liable for their actions, keeping in mind relevant factors while making juvenile laws. Pakistan has legislated laws for juvenile offenders, but disparities remain. To deal with child delinquency, the government and respective agencies must play an important role in combating this issue. When dealing with minor offenders, factors such as intentions behind the crime, motives, and whether the child is capable of perceiving the consequences of the acts must be kept in mind. Measures shall be taken to implement the concept of *Doli Incapax* to protect children from prosecution, as they are not mature enough to fully understand the consequences of their acts (OHCHR, 2019).

9. Minimum Age of Criminal Responsibility in Pakistan

Criminal acts committed by people follow them like a shadow through life, even if the debt is paid back to society. So, if criminal acts are committed by minors who are unaware of the consequences of their acts, and the legal system charges or convicts them, they carry that burden for their whole life, which is total injustice toward them as they lack the essentials of committing crime — motive and *mens rea*. Minors cannot be charged or convicted on the mere basis of their acts; courts have to look into the

matter in depth while deciding cases dealing with minors as accused. In Peshawar on 10th November 2020, the Child Protection Court, while dealing with the case of accidental murder of a minor by his minor brother who was six years old, decided the case in favor of the minor (accused). The reasons given by the court were that the accused was a minor, and section 82 of Pakistan Penal Code 1860 states that "nothing is an offence done by a child under the age of ten years," and therefore the minor was acquitted. The rationale was that the minor was totally unaware of the crime for which he was charged and totally unaware of the consequences of his acts.

9.1. Role of Religion (Islam) in Setting MACR

"Begin the trial of the orphans till they achieve the age of marriage, and then if you find them mature and competent of mind give them their property, and do not use it by either spending lavishly or in haste, fearing that they would grow up and claim it." In Islam the term used for minor is "sagir," meaning adolescent, and the term for major is "kabir," meaning grown-up or matured. In Islam, the minimum age of criminal responsibility is related to the age of majority, which is the age of puberty; one is found to be biologically mature and adult if he or she has reached puberty (Maududi, n.d.). There are two ways to determine puberty: first, in case of a man, pollution (ihtilan), and in case of a girl, periods (haiz); second is the age of life. Different legal schools of thought have provided different ages for MACR.

In the Shia legal school, the age of criminal responsibility for boys is eight years and nine months or nine lunar years, and for girls fourteen years and seven months or fifteen lunar years. In the Hanbali school, the age of criminal responsibility is ten years for males; according to the Hanafi school, it is twelve years for males. While deciding the minimum age of criminal responsibility, we have to look at the crimes committed by minors: if the crime falls under the ambit of Tazir, gender is not a factor and punishment can be given according to age, but if the child is involved in a Hudud case, age and gender play a vital role in the judgement.

9.2. Standards for Setting Minimum Age of Criminal Responsibility

According to Mohammadan law, two different ages have been discussed: one dealing with management of the child's property, and the other dealing with the age of the child for marriage, divorce, dower and adoption. The age for managing property is twenty-one years, and for all other purposes it is eighteen years. There are dual laws which deal with majority — the Majority Act 1875 and Muslim Personal Law.

According to section 3 of the Majority Act, the age for managing the property of the minor is twenty-one years, which was challenged in the case of *Mohammad Fayyaz v Islamic Republic of Pakistan (2007)*. The petitioners challenged section 3 of the Majority Act 1875 as being against the injunctions and principles of Islam, arguing that he was bound to provide maintenance to his son until eighteen years, even though the child may have attained puberty earlier, which he argued was against the injunctions of Islam. The court found no verse of the Quran or Sunnah to support this plea and decided that physical signs of reaching puberty are not satisfactory to hold that a person has reached the age of majority, as the age of attaining majority varies from place to place and person to person, and no fixed criteria can accurately determine when puberty was attained — which is why renowned Muslim jurists differ in their opinions on the age of majority. For that reason, it is clear that attaining puberty cannot be set as the standard for attaining majority, and the court declared that section 3 of the Majority Act was not objectionable and not against the injunctions or principles of Islam.

9.3. Minors and their Criminal Responsibility in Pakistan

The minimum age for getting a driving license, signing any contract, and all legal affairs is above eighteen years, and those under eighteen are not allowed to enter into legal affairs as they are not mature enough mentally and physically. But if they commit a crime before

eighteen, they are held responsible and even punished as adults, for which Pakistan has been criticized internationally. To portray a good image, Pakistan has amended penal laws and established juvenile courts to protect minors from the rigor of law. In Pakistan, children can be categorized into two main kinds: below ten years (lower age limit) and above fourteen years (upper age limit).

In Pakistan, before the amendment of 2016, the lower age limit was seven years; after the amendment, it was raised to ten years. According to section 82 of the Pakistan Penal Code 1860, any crime committed by a minor under the age of ten will not be considered a crime. Children above fourteen years are treated in the same manner as adults, as it is presumed they are mature enough, mentally, psychologically and physically, to understand the consequences of their criminal acts. For offenders between the upper and lower age, courts are supposed to use judicial discretion. If the court thinks the offender has not attained sufficient maturity to understand the consequences of the crime, it can release them; but if the court thinks the offender has attained sufficient maturity, it can pronounce judgement against the offender.

In *Shahana Bibi v State (2022)*, the petitioner was twelve years old at the time of arrest, and it was argued whether she was vicariously liable for killing the deceased by providing poisonous tea. The court decided in her favor, stating that she was a minor and totally unaware of the consequences of her acts, and was doing as she was told. The court further held that, being twelve years old, she was exempted from criminal responsibility under sections 82 and 83 of the PPC, which exempt children above ten and under fourteen years.

9.4. Age of Majority in Pakistan's Statutes

Statute	Gender	MACR
Hudud Ordinance	Boys/Girls 15 years (upon puberty)	Upper age 14, Lower age 10
Criminal Procedure Code 1898	Boys/Girls 15 years	
Pakistan Penal Code 1860	Boys 14 years / Girls 16 years	
Juvenile Justice System 2000	Boys/Girls 18 years	
The Majority Act 1875	Boys/Girls 18 years	
Schools of Islam		Age of Majority
Imam Hanbal		Boys 15 / Girls 15
Imam Shafi		Boys 15 / Girls 15
Imam Abu Hanifah		Boys 18 / Girls 17
Imam Malik		Boys 18 / Girls 18

9.5. Age of Majority as Emphasized by Mohammadan Law for Allied Matters

Matter	Age
Managing property	21 (with guardian) / 18 (without guardian)

Matter	Age
Marriage, divorce, adoption and other matters	18 years

Here's this batch reduced — I'll treat it as two chapters: Section 2 (Age of Criminal Responsibility) from your pasted text, and Section 3 (MACR in Pakistan) plus Section 4 and Section 5 from the document. This is a much heavier cut than before, so I've dropped some of the repeated case-law detail and merged the definitional/comparative material into fewer sentences. Note: I also cut the three summary tables in the "Age of Majority in Pakistan's Statutes" portion (statute-by-statute ages, Islamic schools, Mohammadan law table) since that information is already stated in prose elsewhere — let me know if you want any of those tables restored.

10. Age of Criminal Responsibility

Children are the state's most valuable asset, and it is the state's responsibility to safeguard their growth by providing the safety, care and resources they need given their young age and mental stage. Criminal responsibility should be placed on persons who have the capacity and choice to decide how they act; minors are not fully mature physically, psychologically or emotionally, and their capacity to choose is limited. Justice Project Pakistan reports that ten percent of death row prisoners committed their crime as juveniles. Section 12 of the JJSO 2000 prohibits sentencing juvenile offenders to death or labor, yet hundreds of juvenile offenders have been executed despite this prohibition. As Supreme Court judges have noted, inept investigation has left children incarcerated for over a decade, attaining majority in jail.

Minors differ from adults in mental and physical capacity, a fact modern legal systems cannot ignore, resulting in dual criminal law systems based on age. Pakistan's law prohibits capital punishment for minors' crimes, yet ignores their poor treatment in prisons, denial of rehabilitation, and lengthy trials that criminalize young minds. Minors are among society's most vulnerable and may be mistreated or exploited by anti-social groups; the state must provide adequate protection. As Van Bueren notes, "minors are not mini persons with mini rights" — they require more protection than adults, not less. A minor is generally defined (Black's Law Dictionary, Merriam-Webster, Oxford) as a person under the legal age of adult competence and responsibility.

11. Minimum Age for Criminal Responsibility (MACR)

MACR is the age below which a person is presumed too immature to be held responsible for their acts, since accountability requires understanding the nature and likely outcomes of one's actions. It varies by country. Because minors cannot be treated or convicted the same way as adults, they are dealt with under special laws and the juvenile justice system rather than ordinary criminal procedure.

11.1. Legislation on MACR

Section 22 of the Pakistan Penal Code 1860 deals with MACR. Before the 2016 amendment, a child under seven was not criminally liable; a child between seven and fourteen could be, at the court's discretion. The 2016 amendment raised this lower threshold from seven to ten. The Juvenile Justice System Ordinance (JJSO) 2000 defines a child as anyone under eighteen at the time of the offence, who cannot be tried under ordinary procedure. In *Muhammad Bilawal v State (2016)*, the High Court held that a minor cannot be tried as an adult co-accused under section 5 of the JJSO, and remanded the case for the trial court to first determine the accused's age. The Juvenile Justice System Act 2018 similarly defines a child as under eighteen,

improving legal protections for child offenders. The Prevention of Trafficking in Persons Act 2018 defines a child as under 18; the Employment of Children Act 1991 defines a child as under fourteen, below which employment is prohibited. The Majority Act 1875 fixes majority at eighteen years for all persons domiciled in Pakistan.

11.2. Juveniles and Criminal Responsibility

Juveniles are those below the age of majority, prosecuted differently from adults. In *Shahid Aziz v State* (2007), a twelve-year-old was wrongly tried with adults in an ordinary court; the High Court held this illegal and acquitted the child, as no specific role had been established against him. Juvenile crime rates are rising globally due to socioeconomic and societal pressures.

While "juvenile" simply denotes anyone under eighteen who may be arrested irrespective of mental capacity, "criminal responsibility" requires assessing whether the offender is mentally, physically and psychologically mature enough to have committed the offence. Under section 83 PPC, a child above ten can be held liable depending on this assessment.

11.3. Doli Incapax

Doli incapax, a common-law doctrine dating to the 1300s, presumes a minor incapable of forming the criminal intent needed to commit an offence. It exists to save children from the rigours of the law at a tender age, from acts for which they lack mens rea, and from responsibility where they cannot understand the outcomes of their acts.

11.4. Therapeutic Jurisprudence

Therapeutic jurisprudence studies the law's role as a "therapeutic agent" affecting those who come into contact with it. Founded by Bruce Winick and David Wexler in 1978, it aims to protect children's rights while balancing accountability with rehabilitation, making juvenile courts oriented toward welfare and well-being rather than punishment alone (Wexler, 2001).

11.5. Juvenile Delinquency

Juvenile delinquency refers to criminal and antisocial acts committed by minors, spanning offences against persons, property, and public order — including offensive language, sexual offences, theft, and running away from home. Its causes are broadly socio-environmental (family background, culture, social mobility), biological (e.g. hypoglycemia, genetic factors), and personal/psychological (drug use, mental illness, lack of self-control, bad company). Children denied proper socialization due to ill-treatment or abandonment often struggle to control their desires, making them vulnerable to manipulation into crime.

Children are valuable assets of the state and require protection, not punishment equal to adults'. Every country must fix an appropriate age of liability, considering the child's capacity to perceive the consequences of their acts. Pakistan has legislated for juvenile offenders, but disparities remain, and doli incapax must be more fully implemented to protect children who are not mature enough to understand the consequences of their actions.

12. Minimum Age of Criminal Responsibility in Pakistan

Criminal acts committed by minors unaware of their consequences follow them for life if the legal system convicts them — an injustice, since they lack the essentials of crime: motive and mens rea. Courts must therefore examine such cases in depth rather than convicting on the mere basis of the act. In Peshawar, on 10th November 2020, the Child Protection Court acquitted a six-year-old accused of

accidentally killing his minor brother, applying section 82 PPC ("nothing is an offence done by a child under ten years"), on the basis that he was wholly unaware of the crime and its consequences.

12.1. Role of Religion (Islam) in Setting MACR

The Quran instructs: "Begin the trial of the orphans till they achieve the age of marriage, and then if you find them mature and competent of mind give them their property." In Islam, MACR is tied to puberty — determined by pollution (ihtilan) for boys and menstruation (haiz) for girls — with different legal schools setting different ages: the Shia school sets nine lunar years for boys and fifteen for girls; the Hanbali school ten years for males; the Hanafi school twelve years for males. Gender and age matter more in Hudud cases than in Tazir cases, where punishment can be scaled to age regardless of gender.

12.2. Standards for Setting MACR

Mohammadan law distinguishes the age for managing a child's property (twenty-one years) from the age for marriage, divorce, dower and adoption (eighteen years). In *Mohammad Fayyaz v Islamic Republic of Pakistan (2007)*, petitioners challenged section 3 of the Majority Act 1875 as un-Islamic, arguing maintenance obligations should end at puberty. The court held that physical signs of puberty are not a reliable or fixed indicator of majority, since attainment varies by person and place — which is precisely why Muslim jurists differ on the age of majority — and upheld section 3 as consistent with Islamic principles.

12.3. Minors and Criminal Responsibility in Pakistan

The general legal age for contracts, driving licenses and other legal affairs is eighteen, yet minors who commit crimes before that age can be held liable and even punished as adults — a practice for which Pakistan has faced international criticism. Pakistani law categorizes children as under ten (lower limit, presumptively not criminally liable under section 82 PPC) and over fourteen (upper limit, treated as capable of understanding consequences). Between ten and fourteen, courts exercise discretion based on demonstrated maturity. In *Shahana Bibi v State (2022)*, a twelve-year-old accused of poisoning was acquitted on the ground that she acted unwittingly under instruction and was, per sections 82–83 PPC, exempt from criminal responsibility at that age.

12.4. Dissent Among Islamic Scholars

Islamic jurists differ on MACR because the Quran does not specify a minimum age, and scholars interpret the relevant hadiths differently — some relying on historical practice, others on analogical reasoning (qiyas) — producing varying positions across the different schools of Islamic law. While the general legal age in Pakistan is eighteen, children can be held criminally responsible well before that — an injustice given the disparities across statutes and schools of Islamic thought. The Pakistan Penal Code 1860 needs amendment to set eighteen years for civil matters and fifteen years for criminal matters.

13. International Principles of Minimum Age of Criminal Responsibility

International law does not fix a specific MACR; instead, instruments such as the CRC, ICCPR, the Beijing Rules, and Committee General Comment No. 10 provide guidelines requiring states to set a reasonable minimum age, treat juveniles leniently, and avoid formal trials where possible, considering both the offence and the offender's circumstances.

13.1. CRC

The CRC, adopted in 1989 and ratified by nearly every country except Somalia and the United States, is the first binding international treaty covering the full range of children's rights. Pakistan ratified it in 1990. While the CRC does not fix an exact MACR, Article 40(3)(a) requires states to set a minimum age below which children are presumed incapable of infringing penal law, considering religion, culture, society and environment.

13.2. ICCPR

The ICCPR, ratified by Pakistan in 2010, protects civil and political rights including the right to life, fair trial and freedom of religion (OHCHR, n.d.). Article 24(1) entitles every child to protective measures befitting their status as a minor, obliging states to legislate separately for young offenders rather than treating them as adults.

13.3. Beijing Rules

The Beijing Rules require flexible, non-rigid laws tailored to juveniles' needs, and institutions dedicated to juvenile justice administration. Rule 4.1 states that MACR "shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity" — meaning MACR should follow scientific research into juvenile mental and intellectual capacity, not arbitrary fixing.

13.4. General Comment No. 10

The Committee on the Rights of the Child has stated that MACR should not fall below twelve years, and recommends fourteen to sixteen as more appropriate, given wide global variation in practice.

13.5. Comparative Review

MACR varies widely by country due to cultural, religious, sociological and psychological factors; fifty-five countries apply *doli incapax*, while seventy-five use conventional fixed-age systems. The UK sets a lower limit of ten and upper limit of seventeen; children under ten cannot be arrested. China sets fourteen for heinous offences like murder and rape, with a general range of fourteen to eighteen for other offences. India's lower limit is twelve.

MACR	Representative States
7 years	Pakistan, Jordan, Kuwait, UAE, Egypt
9 years	Bangladesh, Iraq, Malta
10 years	Nepal, Malaysia, Australia, England
12 years	Afghanistan, India, Saudi Arabia, Turkey
14 years	South Korea, Germany, Italy
16 years	Kazakhstan, Ukraine, Spain

No international instrument fixes an exact MACR, leaving states free to set their own — but Pakistan, as a party to these covenants, remains bound to legislate consistently with them, both to protect children and to improve its international standing.

14. Conclusion

Children within the MACR threshold lack the understanding to stand before any court, including juvenile courts, and cannot defend themselves; they need protection and rehabilitation, not punishment equal to adults'. Pakistan's laws lack uniformity in defining

"child," causing confusion across both statute and Islamic jurisprudence. MACR is not merely a number — it carries sociological, psychological, physical and educational consequences for minors treated as both victims and wrongdoers.

Pakistan's MACR falls well short of the Committee on the Rights of the Child's recommended fourteen-to-sixteen-year standard, violating international instruments and damaging Pakistan's global image (UNICEF, n.d.). Adopting *doli incapax* and therapeutic jurisprudence, and delinking the age of majority from puberty (which discriminates by gender), would align Pakistan's system with a protective rather than punitive model. Civil matters should retain the age of eighteen; criminal responsibility should begin at fifteen (Basit, 2017).

15. Recommendations

1. Raise the MACR and shift lawmakers' approach from punitive to protective.
2. Make MACR laws consistent, uniform, and aligned with CRC standards.
3. Amend section 83 PPC's ten-to-fourteen exemption threshold.
4. Set MACR at eighteen for civil matters and fifteen for criminal matters.
5. Issue clear guidelines for judges, law enforcement and prosecutors on MACR determinations.
6. Prohibit death sentences, life imprisonment and physical punishment of minors.
7. Require judges and investigators to apply *doli incapax* and therapeutic jurisprudence.
8. Establish Borstal institutions and a welfare-based juvenile system.
9. Establish dedicated juvenile courts and rehabilitation institutions.
10. Strengthen educational policy to ensure universal access to education.
11. Hold awareness symposiums at tehsil, district and provincial levels, particularly where juvenile offending is high.

References

- [1] Pillay, A. L. (2019). The minimum age of criminal responsibility, international variation, and the dual systems model in neurodevelopment. *Journal of Child & Adolescent Mental Health*, 31, 224.
- [2] Rana, A. A. (2022). The rights of the juvenile in Pakistan. *International Journal of Human Rights and Constitutional Studies*, 9, 246.
- [3] Sabreen, D. M. (2017). The age of criminal responsibility and its effect on dispensation of justice. *SSRN Electronic Journal*.
- [4] Šimić, G., & Kazic, E. (2017). Legal challenges in regulation of minimum age of criminal responsibility with special emphasis on Bosnia and Herzegovina. *Epiphany*, 10, 43.
- [5] Wexler, D. B. (2001). The development of therapeutic jurisprudence: From theory to practice. *The Evolution of Mental Health Law*, 279.
- [6] Basit, M. A. (2017). *The Pakistan Penal Code: Act No. XLV of 1860: Practice & procedure: A comprehensive and systematic commentary with all amendments*. Federal Law House.
- [7] Mahmood, S., & Shaukat, N. (2018). *The Code of Criminal Procedure (Act V of 1898) as amended up to date*. Legal Research Centre.
- [8] *Mohammad Fayyaz and Others v. Islamic Republic of Pakistan*, PLD 2007 (Federal Shariat Court) 1.
- [9] *Muhammad Bilawal v. The State*, YLR 2016 (Peshawar High Court) 1810.
- [10] *Shahana Bibi v. The State*, PCr.LJ 2022 (Lahore High Court, Multan Bench) 916.
- [11] *Shahid Aziz v. The State*, PCr.LJ 2007 (Lahore High Court, Multan Bench) 1199.
- [12] Office of the United Nations High Commissioner for Human Rights. (n.d.). *International covenant on civil and political rights*. OHCHR. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- [13] Office of the United Nations High Commissioner for Human Rights. (2019). *General comment No. 10 (2019) on children's rights in the child justice system*. OHCHR. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-10-2019-childrens-rights-child>
- [14] Office of the United Nations High Commissioner for Human Rights. (n.d.). *United Nations standard minimum rules for the administration of juvenile justice (the Beijing Rules)*. OHCHR. <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>
- [15] United Nations Children's Fund. (n.d.). *Convention on the rights of the child*. UNICEF. <https://www.unicef.org/child-rights-convention>
- [16] *Code of Criminal Procedure, 1898 (Act No. V of 1898) (Pak.)*.
- [17] *Employment of Children Act, 1991 (Pak.)*.
- [18] *Juvenile Justice System Act, 2018 (Pak.)*.
- [19] *Juvenile Justice System Ordinance, 2000 (Pak.)*.
- [20] *Majority Act, 1875 (Pak.)*.
- [21] *Pakistan Penal Code, 1860 (Act No. XLV of 1860) (Pak.)*.
- [22] *Prevention of Trafficking in Persons Act, 2018 (Pak.)*.
- [23] Maududi, S. A. A. (n.d.). *Surah An-Nisa (The Women) - Tafhim al-Qur'an - The meaning of the Qur'an*. English Tafsir. <http://www.englishtafsir.com/quran/4/index.html>

