



## Research Paper

### Recognizing Criterion of Discretion in Children: Comparative Study of Islamic Denominations' Jurisprudence

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## Abstract

Discretion (*tamyīz*) is a stage of human development, which usually begins in childhood. The discussion of the effects of discretion and actions of a discerning child depends on knowing the limits of discretion. This research, which is applied in purpose, descriptive in nature, and is done on library data, investigates the limits and criteria of discretion. Age, being a teenager, performing the operation correctly, the height of the child, the fall of milk teeth, and finally the understanding and knowledge of the child are among these criteria. However, the basic rule of discretion is the cognitive criterion; A child who recognizes the nature of his actions, profit and loss, and good and bad, is considered a discerning (*mumayyiz*). Because of the existence of differences in children's perception and the impossibility of having a single standard for it, age as a discerning factor that indicates the recognition and discretion of a child is the best criterion, which in the language of hadiths and jurisprudence is the age of 7 years in worship acts and the age of 10 years in transactions.

## Keywords:

*Discertion, Child, Islamic Denominations.*

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## Extended Abstract

### 1- Introduction

In jurisprudence, children are divided into two periods based on their ability to discern: those who lack discernment are referred to as "non-discerning," while those who possess it are called "discerning." Since there are legal implications and rulings concerning the actions and deeds of children based on their ability to discern, understanding the criteria for discernment becomes necessary. The age criterion, cognitive criterion, physical criterion, correct execution of actions, and the onset of puberty are among the criteria mentioned in the narrations and the words of both Shi'a and Sunni jurists. These criteria are outlined as follows:

1. **\*\*Age Criterion\*\***: One of the criteria for discernment is age. Various narrations introduce ages between 6, 7, 9, and 10 years as appropriate for teaching and disciplining children. Most Sunni jurists consider the age of seven as the age of discernment, which is also stated in the laws of some Islamic countries, including Egypt. In Shi'a jurisprudence, a foundational age has been established for certain actions of children. The age of seven generally marks the beginning of the period of discernment. At this age, discernment is in its initial and simple stages and gradually develops. Therefore, for some obligations, this initial level of discernment suffices, while for others, further development is necessary. This is evident in narrations that encourage prayer at seven years old and fasting at ten years old, emphasizing the importance of this stage.

2. **\*\*Cognitive Criterion\*\***: Another fundamental criterion for discernment is cognitive ability. In early childhood, individuals lack perception and understanding; however, gradually, depending on their environment and upbringing, their comprehension of life matters matures and evolves. After a certain period, a child can distinguish between good and evil and recognize the benefits and harms of their actions. A child who reaches such understanding is considered discerning; for instance, if a child understands that "selling is relinquishing ownership" and "buying is acquiring wealth," or, according to Sunni jurisprudence, comprehends the addressing and responds appropriately ("understands the addressing and replies"), he possesses discernment. The fact that Shi'a jurists explicitly state that "a discerning child is one who can differentiate between good and bad," while Sunni jurists refer to "understanding addressing and providing response" indicates this cognitive criterion. Cognitive criteria serve as precise benchmarks for evaluating the cognitive abilities of children. Age acts as an indicator for identifying these cognitive skills.

3. **\*\*Physical Criterion\*\***: Another criterion for discernment is physical capability. Certain actions require physical strength and ability from a child; thus, performing these actions depends on their physical capabilities. For example, the ability to fast demonstrates such physical strength.



Physical capability serves as an indicator of discernment because a child with this ability is recognized as discerning. Although physical strength is one of the distinguishing indicators, it serves as a criterion and limit in matters of worship. In most areas of transactions, physical capability is not considered. Therefore, it cannot be regarded as a comprehensive criterion.

4. **\*\*Correct Execution of Actions\*\***: Another criterion identified for discernment is performing an action according to its conditions and requirements. Some acts of worship or transactions are only valid when executed correctly according to their conditions. As a sample, according to the narrations and statements of jurists, divorce and slaughter are realized when the husband (طالق) fulfills the conditions of divorce and the slaughterer (ذابح) meets the conditions of slaughter. The adherence to the conditions of divorce and slaughter by the husband and slaughterer occurs when they are aware of these conditions, and awareness is essential for understanding and comprehension. However, this criterion is not applicable in all areas of jurisprudence.

5. **\*\*Onset of Puberty\*\***: Another indicator of discernment is being at the threshold of puberty; according to narrations and juristic statements, a child nearing puberty may still be subject to certain rulings, allowing them to perform specific actions correctly. This indicator reflects prior discernment. In addition to these criteria, a child's height and the loss of their baby teeth have also been considered indicators of discernment; in

one narration, losing baby teeth (*ithqār*) signifies this stage—when children's baby teeth begin to fall out and permanent teeth emerge. While these two indicators align with age-related benchmarks and medical knowledge, they cannot serve as precise bases for legal rulings. Thus, it can be concluded that a discerning child possesses cognitive readiness in matters related to worship in general while being physically prepared to perform acts such as prayer, fasting, and pilgrimage.

## 2- Method

This research, was carried out based on the descriptive-analytical method and with reference to library sources. Referring to books on the history of jurisprudence, the principles of jurisprudence and comparative jurisprudence and their relations with each other, it explores the the Recognizing Criterion of Discretion in Islamic Denominations' Jurisprudence assumptions

## 3- Result

having both cognitive growth and physical development suffices. Even though their cognitive abilities may still be in early stages, this level is adequate; hence narrations mention signs such as "when he understands prayer" or "when he can fast." However, in transactions, stronger cognitive abilities are required for a child to engage in trade effectively. A child must fully understand the essence of contracts' components—such as sale, mortgage, lease, reward contract (*ju'ālah*), divorce, and acknowledgment—before undertaking them. If he lacks comprehension regarding these transactions' nature or conditions, naturally their transaction will not be valid.



The opinions of jurists who stipulate that parental consent is necessary for a child's transaction likely reflect concerns about the child's weak cognitive capabilities; thus, it requires parental consent for protection. The concept of legal incapacity regarding children indicates that the legislator provides protection for children due to their lack of maturity. However, in cases where a child's maturity is sufficient, his actions can be deemed valid. For instance, in matters such as slaughter and divorce—according to some jurists—if a child possesses the ability to perform the act of slaughter and adheres to the necessary conditions for both slaughter and divorce, his actions are considered valid. This aspect of a child's maturity typically begins at the age of seven, which is commonly recognized as the onset of discernment.

#### **4- Conclusion**

Discretion (*tamyīz*) is a stage of human development, which usually begins in childhood. The discussion of the effects of discretion and actions of a discerning child depends on knowing the limits of discretion. This research, which is applied in purpose, descriptive in nature, and is done on library data, investigates the limits and criteria of discretion. Age, being a teenager, performing the operation

correctly, the height of the child, the fall of milk teeth, and finally the understanding and knowledge of the child are among these criteria. However, the basic rule of discretion is the cognitive criterion; A child who recognizes the nature of his actions, profit and loss, and good and bad, is considered a discerning (*mumayyiz*). Because of the existence of differences in children's perception and the impossibility of having a single standard for it, age as a discerning factor that indicates the recognition and discretion of a child is the best criterion, which in the language of hadiths and jurisprudence is the age of 7 years in worship acts and the age of 10 years in transactions

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Each of the four authors contributed in some way to writing this article; but the amount of their participation is as follows

Abdullah mokhtari 50%

Amir Barani 50%

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