

The Localized Institutional Construction of the “Malice Supplies the Age” Rule in the Governance of Crimes Committed by Young Minors

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Abstract: The XI Amendment to the Criminal Law of the People’s Republic of China adjusted the age of criminal responsibility, but limitations remain. This paper introduces the “malicious age supplementation” system, which presumes that minors lack criminal responsibility in principle, but can still be held criminally liable if there is sufficient evidence to show that they acted with malice at the time of the crime. Based on China’s judicial practice, a specific construction plan for China’s age of criminal responsibility system is proposed. The “malicious age supplementation” system meets China’s legal needs and is practically feasible, providing a systemic reference with both theoretical and practical value for the governance of juvenile delinquency in China, promoting the development of China’s juvenile criminal responsibility system, and achieving a dynamic balance between social interests and the rights of minors.

Keywords: Age of criminal responsibility; Juvenile delinquency; “Malicious age supplementation” system; Localization

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1. Current status of juvenile delinquency in China

Data from the China Association for the Prevention of Juvenile Delinquency reveals a trend of increasingly younger juvenile offenders in China. In 2010, the crime rate among 12–13-year-olds was less than 0.3% (0.16% and 0.25%), while the crime rate among 14-year-olds surged from 12.1% to 27.75% in just four years (2009–2013). According to 2013 judicial data, 14-year-olds accounted for over 50% and 33% of serious violent crimes, including intentional homicide and robbery, respectively. Judicial statistics from 2017 show that the average age of juvenile offenders was between 14 and 14.5 years old; analysis of data from a 2011 symposium indicates that approximately one-tenth of juvenile first-time offenders committed their first offense during primary school (ages 7–13). Professor Li Meijin’s research points out that the average age of first-time offenders or violent offenders in China is 12.2 years old, with the majority of crimes occurring in the 13–14 age group, highlighting the particularly pronounced trend of younger offenders under the age

of 14. The proportion of serious crimes committed by juveniles under the age of 14 continues to rise, a phenomenon that deserves high vigilance from all sectors of society^[1].

Juvenile delinquency is not only shown in the quantity of criminal actions, but also in the intensity of violence used. It has been found that most juvenile crimes are violent, and more than fifty percent of them involve beatings, coercion, and other types of violence, often accompanying theft and threatening behaviors. From a psychological viewpoint, “anger and irritability” are among the three main causes of juvenile delinquency; when emotional control is poor, violent crimes are more likely to happen. The severity of juvenile crimes is similar to some adult crimes, and some unexpected events have taken place recently: the rape and murder case, which caused much attention in 2004, named Zhao Libao; the violent attack incident involving a 13-year-old boy in Sichuan in 2016 (pouring petrol on a female teacher during a robbery); the gang murder case in Shaanxi in 2018; the sexual abuse and murder of a child in Liaoning in 2019 (called Cai); and the shocking case of child abuse in Hanzhong, Shaanxi in 2021 (the 13-year-old offender inflicted cruel methods like breaking bones and disfiguring on a six-year-old child). These unforeseen occurrences indicate that juvenile delinquency has developed from common crimes to serious social crimes, presenting new issues to public security.

2. The extraterritorial application and normative value of the maliciously supplemented age system

2.1. Theoretical overview of the maliciously supplemented age system

The Malice Supplies the Age rule is a prevalent legal system in Anglo-American countries for assessing the criminal liability of children. If a child is below the legal age of criminal responsibility, but it can be shown that they had evident criminal intentions and malice, and were able to comprehend the results of their actions, the law may, under certain circumstances, regard them as criminally liable. This system helps to control juvenile crimes, fills the shortcomings of the present age-based criminal responsibility regulations, and contributes to preserving social order and safeguarding the lawful interests of children.

This system mainly targets a particular age group, especially for minors aged from 12 to 14. Considering the psychological and physical development of minors, and evaluating juvenile crimes carefully, these minors are still immature in both body and mind, and the liability for their crimes may cause some risks. Therefore, much attention should be paid. This system is implemented only when a minor commits a serious offense that is strictly prohibited by criminal law. The purpose of adding false ages is to guide the minors towards the right way by means of education and corrective measures, requiring the guardians to discipline them strictly, provide psychological treatment, and perform community corrections. Through non-criminal methods, it maintains the seriousness of the law while fulfilling the special protective needs for minors.

2.2. Feasibility of localizing a “malicious age supplementation system”

2.2.1. The scope of the “combination of leniency and severity” policy

China’s criminal policy of “combining leniency with severity” corresponds to the value orientation of the “malicious age supplementation” system, serving as the policy foundation for the localization of the “malicious age supplementation” system. In the area of juvenile delinquency management, China has always maintained the judicial principle of “education as the main approach and punishment as a supplement,” upheld the idea of “leniency without indulgence,” and emphasized the importance of “equal emphasis on

punishment and leniency,” thus forming a comprehensive governance method with Chinese characteristics, which shows the government’s cautious attitude towards the strength of punishment. At present, there is an increasing number of serious crimes committed by teenagers, and the juvenile delinquency management system has some shortcomings. Countering with “education, persuasion and rehabilitation” is not enough to meet the requirements ^[2]. The power of punishment is important in specific prevention (preventing re-offending) and general prevention (controlling potential crimes), and the standard use of punishment can better achieve the purpose of crime prevention. The criminal law system of China stresses the combination of leniency and severity as well as the combination of punishment and education, which is in line with the spirit of the malicious age supplementation system. Modern criminal policies support the localization of the “malicious age supplementation” system and urgently need to establish a preventive mechanism based on criminal penalties to prevent juvenile violent crimes. This can enhance the efficiency of governance, safeguard social security and stability, further improve the juvenile justice system of China, and realize the unity of legal justice and humanistic care.

2.2.2. Aligned with the legislative trend of the “Amendment (XI) to the Criminal Law of the People’s Republic of China”

The “malicious age supplementation” system reduces the age requirement for criminal liability, paying attention to the malicious intention of minors, strengthening the legal deterrent effect and making it hard for possible criminals to judge the upper limit of their impunity, thus aiding in controlling criminal tendencies. The Amendment to the Criminal Law (XI) has decreased the age of criminal responsibility to 12 years old, dealing with the rigidity of the age rule and meeting the demands of society in handling serious juvenile crimes. By imposing strict conditions and including the step of “approval by the Supreme People’s Procuratorate,” it prevents the excessive extension of the scope of responsibility. Both regulations coordinate the protection of minors with the preservation of public interests, preventing “age exemption” from being a cover for serious juvenile crimes and avoiding severe punishment for minors.

The “malicious age supplementation” system shows that the minor’s behavior is “malicious,” indicating they realize their actions are illegal and can differentiate between good and evil, thus making up for the age difference to punish them. In the Amendment to the Criminal Law (XI), the criteria for judging “serious circumstances” involve evaluating the subjective malice to decide if a person should be held responsible, considering both the actual consequences of the crime and the subjective assessment of malice. This wider interpretation gives some flexibility to the legal work, representing a local adjustment of the “malicious age supplementation” system. Although the country’s Amendment to the Criminal Law (XI) does not mention the term “malice,” the procedure of “prosecution approved by the Supreme People’s Procuratorate” is similar to a rigorous examination method. The Supreme People’s Procuratorate flexibly implements the requirement of “strict proof” when examining the social harm of a case, the perpetrator’s subjective malice and the possibility of re-offending, avoiding the problems caused by a rigid age-based system and ensuring fairness in each case.

The age supplementation system, which adopts a two-level method of “age presumption plus malicious evidence,” overcomes strict age limitations, investigates the relationship between physiological age and mental maturity, and maintains the special protection for minors in combination with the demands of social security. The formulation of the country’s criminal liability age system should be based on the actual situation

of the gradually decreasing age and increasing severity of juvenile delinquencies, combining the experiences from abroad with own requirements to solve the internal conflict between rigid age norms and early crimes, balancing the two values of “maximizing the child’s best interests” and ensuring public safety, and advancing the modernization of juvenile criminal policies.

2.3. Limitations of the existing laws

Article 17, Paragraph 3 of the Amendment to the Criminal Law (XI) reduces the age of criminal responsibility to 12 under certain conditions. This change is made in response to the increase in serious crimes committed by young children, overcomes the previous age limit, introduces a conditional trial system, maintains a balance between the punishment for the crime and the safeguard of rights, applies the principle of “education first”, and enhances the correction system for minors. Nevertheless, it still has some practical limitations.

The Eleventh Amendment to the Criminal Law stipulates that minors aged from 12 to 14 shall bear criminal responsibility if they commit “serious offenses” with the agreement of the Supreme People’s Procuratorate. However, the vague terms “serious offenses” and “particularly cruel methods” do not have definite standards, leading to different judgments in similar cases and affecting the uniformity of the law. The definitions of “serious offenses” by various judicial departments are different, giving judges certain flexibility and resulting in inconsistent rulings in similar criminal cases, thereby decreasing the effectiveness of judicial fairness. The approval process of the Supreme People’s Procuratorate is complex and time-consuming, which reduces the efficiency of case handling; the approval must be reported to several judicial departments, increasing both judicial and economic expenses. Additionally, local judicial agencies face difficulties in demonstrating that minors “carried out the act intentionally although the consequences were serious,” making it hard to prove their guilty mind.

The Eleventh Amendment of the Criminal Law allows the age of criminal responsibility for intentional homicide and intentional injury resulting in death or serious disability to be reduced to 12 under certain circumstances. However, this might cause younger children to commit other serious crimes instead of these two offenses, thus making it hard to hold them criminally responsible. This regulation does not consider the different and complicated juvenile delinquencies, which causes management difficulties. At present, there is no related regulation in the country’s Criminal Law for children under 12 who commit crimes. Only those aged 12 to 14 are prosecuted under special conditions and with the approval of the Supreme People’s Procuratorate. The strict and unclear enforcement standards of these regulations further aggravate the problem. A specific age limit is not suitable for taking into account the individual differences among children, which may lead to unfairness in the judicial process.

3. Improvement of the system of criminal responsibility age for minors

3.1. Improve relevant regulations for the transition of children aged 12–14.

3.1.1. Detailed definition of “serious circumstances”

Article 17, Paragraph 3 of the Criminal Law Amendment (XI) states that “serious circumstances” are judged based on the total situation of the illegal acts and the intentional evil of the crimes committed by the minors aged between 12 and 14. These situations involve objective factors such as the kind of criminal organization, criminal intention, frequency of offenses, conditions of the victims, and whether serious injuries have

occurred. Subjectively, it considers the motives, intentions, and aims. In judicial practice, the evaluation of “serious circumstances” is significant in cases involving young minors. A comprehensive judgment of “serious circumstances” should take into account the special details of each case, balancing justice with the rights of development of minors.

The “malicious age supplementation” concept is incorporated into the system for judging the serious circumstances of crimes committed by young people. Besides the usual objective factors like the type of act and the resulting harm, some indicators to assess malice are included, which cover the subjective malice features such as the completeness of criminal planning, the use of counter-investigation methods, and the subsequent provocative behavior. In judicial practice, a “three-step evaluation method” is carried out: firstly, psychological evaluation determines the ability to recognize and control the crime; secondly, criminological scales decide the level of subjective malice; and finally, a comprehensive judgment is made according to the social investigation reports. This new approach can avoid the rigid use of age and reduce the misuse of judicial power.

3.1.2. Improve the “approval and prosecution” procedure system

The unique characteristics of China’s system for approving prosecution of minors are not fully reflected in practice, and the institutional design for the procuratorate to exercise the power of approving prosecution differs to some extent from other domestic legal provisions. It is crucial to ensure the fairness of the prosecution approval process and continuously improve relevant procedural mechanisms ^[3].

- (1) Approval of the initiation of prosecution proceedings: Research on intentional homicide and intentional injury cases involving young minors must be done systematically in two aspects: territorial jurisdiction and hierarchical jurisdiction. Territorial jurisdiction mainly depends on the place where the crime was committed and secondarily on the place of residence, which helps the procuratorate to know the situation and evidence of the case. As for hierarchical jurisdiction, the lower-level procuratorates are in charge of screening the case leads. If the cases are considered as “malice,” they should be reported to the expert committee on malice of the provincial procuratorate. The procuratorates at the same level will start the reporting procedure, are acquainted with the local conditions, and can get a clearer understanding of the case details. This kind of system makes full use of the advantage of knowing the case well in the locality and maintains the consistency of the judicial standards.
- (2) The hierarchical review mechanism for approving prosecution: When initiating prosecution approval procedures, grassroots procuratorates are subject to jurisdictional limitations and must report and obtain approval at each level. Higher-level procuratorates, through substantive review, comprehensively examine the substantive content of cases, ensuring appropriate handling of serious and complex cases, avoiding judicial injustices due to insufficient review, and improving case quality. A multi-tiered review system enhances efficiency and fairness in case handling, ensures the continuity and consistency of judicial procedures, simplifies judicial processes, scientifically allocates responsibilities, improves the effectiveness of substantive review at all levels of procuratorates, enhances the overall quality of judicial review, and strengthens the review function.
- (3) Institutional design for the connection between approval decision and procedure: The approved procedural steps require a dual mechanism: first, a decision to prosecute to ensure judicial fairness and seamless integration with ordinary criminal proceedings, guaranteeing uniformity in evidence,

procedure, and substantive handling; second, a decision not to prosecute to establish an organic link between judicial procedures and educational rehabilitation, collaborating with professional correctional institutions to help minors reintegrate into society. By constructing this dual mechanism, officials can prevent potential social risks arising from lowering the age of criminal responsibility, balance the value needs of social defense and the special protection of minors, and ensure deep synergy between the criminal justice system and the protection of minors.

3.1.3. Adjusting the scope of criminal liability

Under my country's Criminal Law, minors aged 12 to 14 who commit crimes can only be prosecuted for intentional homicide, intentional injury resulting in death, or causing serious injury with particularly cruel means resulting in severe disability, with the approval of the Supreme People's Procuratorate. However, with societal development and changes in juvenile delinquency, limiting the application to only these two offenses is too narrow and ineffective in addressing other serious crimes.

- (1) Increase penalties for serious violent crimes: Modern forensic psychology studies show that the young people who can commit such serious violent crimes have psychological and cognitive abilities and criminal liability levels close to those of adults of full criminal responsibility age. For example, the "robbery case of a 13-year-old in Jinchuan, Sichuan" mentioned before, the criminal intention and actual damage of the offender were very serious. Concerning the motive, he committed robbery with the purpose of unlawful possession, indicating a clear knowledge of its unlawfulness; concerning the method, the use of violent means causing serious injuries to the victim shows his complete control over the act. Taking into account the premeditation, execution, and harmful results of the crime, it can be concluded that the offender had criminal liability capacity. This intentional "being aware of the law and breaking it" attitude is basically different from the abnormal behavior of general teenagers.

Including serious violent crimes like robbery resulting in serious injury within the criminal responsibility of minors between 12 and 14 years old is very important. Besides intentional murder and intentional assault, such crimes cause more danger to society than the usual juvenile offenses, so it is necessary to improve the legislation to achieve the appropriateness between the crime and the punishment. The revision of the law may take into account a two-level decision-making process: clearly stipulating the range of crimes at the substantive level, and imposing strict requirements for the psychological evaluation and evidence investigation at the procedural level. By referring to the "malicious age supplement" system, the procurators should carry out professional assessments on the criminal ability and intention of the minors, in order to avoid the arbitrary application of the age of criminal responsibility. A harmonious balance between protecting the rights of minors and realizing social justice can be attained through the combined use of clear laws and strict judicial implementation.

- (2) Increase penalties for sexual assault: More sexual assault cases are found in children at younger ages. The present laws are not strict enough to punish the crimes committed by minors under 14 years old, so some cases cannot be reported because the offenders are below the legal age of criminal responsibility. For example, there is "a 13-year-old boy in Guangdong sexually abusing an 8-year-old girl" and "a female student in a primary school in Lantian County, Shaanxi Province, was attacked by four boys on campus" ^[4]. In these two cases, the criminals were less than 14 years old, and according to the "People's Republic of China Law on the Protection of Minors" and the "Criminal Procedure Law of the People's

Republic of China,” they did not satisfy the conditions to file a case and were therefore not brought to trial. This situation where the criminals avoid criminal punishment because of their young age not only brings much injustice to the victims and their families, but it also has a serious effect and challenge on the law, moral standards, and public safety. At present, Chinese law mainly adopts non-culpable methods such as admonishing and psychological guidance for dealing with juvenile offenders, which lacks a long-term behavioral correction system. This also indicates the particular provisions and practical difficulties in Chinese law concerning the handling of juvenile delinquents.

Considering sexual assault as part of the criminal responsibility for minors of this age group, particularly for serious actions like using violence, coercion, or sexual assault on very young girls, enlarges the scope of sexual assault crimes, determines aggravating factors, facilitates the identification of sexual assault, and reinforces the judicial interpretation. This can effectively close the present gaps in the criminal law that protect minors from sexual assault, increase the effectiveness and fairness of the law, and effectively prevent the rising trend of sexual assault cases involving minors at an earlier age. It is beneficial for protecting the physical and mental health of minors and is in accordance with the international trend of improving the protection of minors.

3.2. Localization path of the “malicious age supplementation system”

3.2.1. Clarify the definition of “malicious intent”

The “malice to make up for the age of irresponsibility” rule makes up for the inability of the minor to bear criminal responsibility by showing his/her subjective malice. Its main point is to decide whether the minor has the ability to recognize and control. The definition of “malice” in the UK demands that the minor should recognize the unlawfulness and immorality of his/her own behavior objectively, which is not quite in accord with the actual requirements of the country’s criminal law. The aim of criminal law is to prevent crimes rather than merely punishing behavior that is morally bad. For minors aged 12 to 14, it is necessary to prove that they have a clear knowledge of the illegality of their actions and exhibit a deliberate lack of control or an intentional pursuit of the behavior before “malice” can be confirmed.

In the Chinese judicial procedure, the existence of “malice” is based on the following three essential points: Firstly, concerning the social investigation mechanism, the procuratorate investigates the family background, visits schools and communities to obtain detailed information about the child’s family relations, educational conditions, social environment and personality traits, and then prepares a public investigation report to serve as the objective basis for deciding “malice.” Secondly, at the psychological evaluation system level, psychological experts apply standardized psychological assessment tools and professional evaluation techniques to assess the suspect’s intellectual ability, emotional state and behavioral intentions, and submit scientific evaluation reports to offer professional suggestions for the judicial decision. Lastly, within the framework of the case reference system, intelligent databases are utilized to compare and analyze the circumstances and litigation procedures. The judges are supposed to study similar cases, establish a mechanism to explain the differences, and maintain uniformity in discretionary judgments.

3.2.2. Clearly define the applicable age range for criminal responsibility

Setting 12 years old as the lower limit for serious crimes and properly using the “malicious age supplement” rule between 12 and 16 years old can establish a scientific, reasonable, and proper system for holding

minors criminally responsible according to the national conditions of China ^[5]. According to the data, the physiological and psychological maturity of minors in China has increased by about 3 years compared to 20 years ago, and their intelligence has greatly improved. Now 12 years old is the age when minors mostly commit serious crimes. The twelfth amendment of the Criminal Law has reduced the minimum age of criminal responsibility to 12 years old.

As a party to the Convention on the Rights of the Child, China ought to set up an appropriate lower age limit for criminal responsibility. The implementation of the “malicious age supplement” system should protect the legal rights and interests of minors, define its application range, and prevent all juvenile offenses from being dealt with by the criminal procedure. It is necessary to maintain the principle of “protecting the young” together with the principle of doing what is best for the children, and take into account the social conditions and cultural backgrounds of China to make the age criterion acceptable to the public. When determining the minimum age for criminal responsibility, the following aspects should be considered: evaluating the minor’s capacity to comprehend and control his/her actions at the time of committing intentional crimes and his/her rational judgment towards the nature, consequences and illegality of his/her actions; and taking into consideration the “protecting the young” idea in the traditional Chinese culture and the current social situation ^[6].

3.2.3. Clarify the standard of proof for “malice”

To establish a system of standards for proving “malice” in juvenile delinquency cases, a multi-dimensional and scientific identification mechanism should be established.

The system thoroughly examines the five significant aspects of the defendant and establishes a comprehensive factor evaluation model, which includes family environment, parental education and aggressive behaviors in the family; educational attainment, academic success and intellectual ability; inclination towards antisocial and aggressive conduct in society; effects of major life events and traumas; and personality traits before and after the crime, the motive of premeditation and the sense of responsibility, constructing a three-dimensional subjective wickedness structure.

Based on this foundation, a professional identification system including child psychiatrists and psychologists is established. The evaluation of mental condition involves tests of intelligence; the examination of behavioral characteristics investigates the hidden motives for criminal acts; and the study of social risks is carried out to evaluate the influence of social relationships and behavior. These three scientific approaches guarantee the expertise and impartiality of the judgment on subjective malice.

According to the experienced law of Anglo-American and the judicial practice in China, a “beyond a reasonable doubt” standard of proof is formed. It mainly consists of the credibility of evidence (basic evidence directly proving malice), the clearness of argument (formal argument excluding other possible interpretations), and the systematized consistency (linking all the processes together and being strictly tested). This comprehensive recognition method, by integrating the study of social factors, professional evaluation systems, and high standards of proof, can effectively solve the problem of conviction in juvenile crimes, guaranteeing the correctness of the prosecution and the feasibility of the judiciary.

4. Conclusion

The increasing trend of juvenile delinquency and the younger age of offenders have posed new challenges

to China's criminal responsibility system. Although the Criminal Law Amendment (XI) has lowered the minimum age of criminal responsibility under specific circumstances, practical problems remain, including unclear standards for determining serious circumstances, a limited scope of applicable offenses, and insufficient evaluation of minors' subjective culpability. This paper argues that the localized application of the "Malice Supplies the Age" rule provides a feasible solution to these issues by combining age requirements with assessments of subjective malice, psychological maturity, and behavioral capacity. Meanwhile, improving the standards for identifying malice, optimizing prosecution procedures, and establishing a multidisciplinary assessment mechanism can further enhance judicial fairness and consistency. Overall, the localization of this rule can contribute to a more scientific and individualized juvenile criminal responsibility system, achieving a better balance between the protection of minors' rights and the maintenance of public security while promoting the continued improvement of China's juvenile justice system.

Disclosure statement

The author declares no conflict of interest.

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