



Research Paper

The Role of Need in Validity of Verifying Reasons of Criminal Affairs

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Abstract

Changes in human societies have created various needs that, if not met, would cause distress and constriction. Islamic jurisprudence has therefore paid special attention to meeting the needs of people. Throughout history, this effort is seen in all religious schools, despite differences in their attitudes. However, Sunni jurists have paid more attention to it than Shi'ites, and subsequently, it is more apparent in their fatwas and judicial decrees. One area of focus in meeting needs (*hājāt*) is the substantiation of claims in general and the substantiation of crimes in particular. Using the library and analytical-descriptive method, this research proves that since proof is something that makes the truth obvious, seemingly through accepting indications as proof and the legitimacy of inferring religious laws based on the availability of needs, which has been a common way between early jurists in different jurisprudential matters, the possibility of extending it to criminal cases is valid as well, especially if the most proofs or the only ones are based on people's needs. Therefore, relying on needs for permitting the use of new strategies and methods of proving a crime, such as image, voice, and so forth, not only does not contradict the purposes of Shari'a, but is also compatible with actualization of justice. Obviously, in addition to utilizing traditional evidence, new cases have a complementary role, and if they are not available, they have a substitute role as required; also, they can be cited as legal reasons when there is no doubt in the authenticity of describing them to people.

Keywords:

proof of crime, criminal affairs,
evidence, need, necessity, context.

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Extended Abstract

1- Introduction

Alongside the growth and expansion of human societies, new needs and requirements emerge in all aspects of life. Ignoring these often leads to serious challenges for both individuals and society. On the other hand, many of these needs seem to conflict with Islamic jurisprudence and legal rulings. Not every need can be fulfilled simply because it is necessary or as an excuse to alleviate hardship. This issue has compelled jurists and legal scholars to develop laws and issue rulings based on valid and religiously sanctioned needs.

The field of proof of crimes and various methods of crime detection has always been subject to change. Need has played an undeniable role in proving crimes and issuing judgments in cases such as fingerprinting, vague confessions, ambiguous confessions, and oath-taking. Today, with the advent of technology and its rapid expansion, and the emergence of new communication devices and modern technologies like digital audio and visual tools, the ground has been prepared for their use in crime detection. However, the status of these new technologies as evidence of a crime, or as presumptions, circumstantial evidence, or additional knowledge for the judge, is a subject of debate and disagreement among legal scholars and jurists. The extent of their credibility in proving crimes is a serious point of contention. Therefore, addressing the issue of the impact of need on evidence of crimes, especially from the perspective of the legislator, in order to better implement justice, prevent the violation of rights, and pay attention to the emerging and essential needs of society and individuals, is inevitable. In this research, using a descriptive-analytical method and a library-based approach, after conceptualizing the terms "need," "evidence," and "circumstantial evidence,"

the study aims to explain the jurisprudential and fundamental bases of inferring rulings based on the need for circumstantial evidence in light of the needs of the time, and to examine the role of circumstantial evidence based on need in proving crimes with an emphasis on modern technologies from the perspective of the five schools of Islamic jurisprudence. After analyzing and evaluating the opinions and arguments, the prevailing opinion will be stated with justification.

2- Method

This research was conducted using a descriptive-analytical method and a library-based approach

3- Result

Proving a crime is not always possible through explicit confession, primary testimony, judicial knowledge, or oath; the evidence for proof is not limited to a specific number or type and includes anything that reveals the truth. Therefore, the general and specific needs of individuals require resorting to new methods in proving crimes and identifying criminals.

While abandoning a principle altogether is not permissible, Islamic law has, in many cases, legislated and permitted alternative rulings in place of primary rulings when there is a need. On the other hand, with the advancement of technology, new methods have emerged, and when proving crimes through conventional methods is not possible, one can turn to these new methods, which are considered substitutes for the conventional ones.

Electronic evidence and remote testimony are modern methods used in the judicial process. For proving crimes committed in the digital realm using tools like Telegram, WhatsApp, Telex, and digital, magnetic, optical, and electromagnetic devices, traditional evidence alone is insufficient. Judges often need to rely on electronic



evidence such as audio or video recordings, emails, and text messages, as well as remote testimony to establish the truth. These tools are often the only way to identify the perpetrator and determine the nature and location of the crime in such cases. Ignoring these valid needs would lead to significant hardship, prolonged legal proceedings, a backlog of cases, and the violation of individuals' rights, which contradicts the objectives of Islamic law. Given the need and the unconfined nature of evidence in proving a claim, these can sometimes be used as independent evidence or as a presumption to supplement the judge's knowledge and form the basis of a judgment. However, reliance on such evidence to prove crimes should only occur when there is certainty that it has not been tampered with.

Whether need leads to hardship or facilitates people's affairs, it can serve as a basis for issuing criminal judgments. It is not necessary for the situation to reach a point of absolute necessity. However, not every need can justify a departure from the principles and foundations of Islamic law and serve as a basis for issuing judgments. Therefore, regulating judgments based on need, especially in the criminal justice system, is essential.

4- Conclusion

A crucial point to consider is that allowing for a flexible approach to evidence in criminal cases might be perceived as leading to an expansion of admissible evidence and consequently, a higher rate of convictions. This could seem to contradict the fundamental principles of

criminal law, which presume innocence, and the spirit of Islamic law, particularly the principle of "der'" (rejection of doubt). However, it must be recognized that the primary goal of justice is to uphold equity and eliminate injustice. Therefore, using legitimate means that can contribute to this fundamental goal is permissible. Moreover, the mere existence of doubt in proving a crime, even in cases involving hadd offenses, does not prevent the imposition of a punishment. Even with credible witnesses or a confession, the possibility of error always exists. Thus, as long as the evidence is legally permissible and has a sound basis in Islamic jurisprudence, it can be relied upon. In this specific case, this evidence:

- Firstly, aligns with the important objective of achieving justice.
- Secondly, there is sufficient justification for its legal permissibility and validity.
- Thirdly, it is only used when the probability of its accuracy is very high.

5- Funding

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6- Authors' Contribution

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7- Conflict of Interest

Authors declared no conflict of interest

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