



Research Paper

Feasibility of Invoking Cultural Norms in Mitigating or Modifying Hudud Punishments (From the Perspectives of Imamiyyah Jurisprudence, Iranian Criminal Law and Hanafi Jurisprudence)

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Abstract

In contemporary societies, the coexistence and interaction of diverse cultures highlight the importance of invoking cultural norms as a form of defense in criminal cases. Defendants often attempt to justify their actions and seek to mitigate or avoid punishment by appealing to their cultural backgrounds. Despite the lack of evil motive in some crimes, considering cultural beliefs, especially in cases where malicious intent is absent, to some extent is desirable, provided these beliefs do not lead to criminal behavior. Accordingly, major legal systems typically consider such defenses when determining sentences.

Although the research background indicates that such defenses in the Iranian criminal justice system are primarily applicable to discretionary punishments (*ta'zīr*), this research seeks to explore "whether cultural norms can also serve as a basis for mitigating or altering the fixed punishments (*hudūd*)?" Findings suggest that some mechanisms within the Islamic jurisprudential system are compatible with this concept. This indicates that crimes deserving *hudūd* may also, from various perspectives, be subject to cultural defenses. Consequently, a novel and culturally informed interpretation of this significant aspect of Islamic criminal law is offered. Using the descriptive-analytical method, in addition to the perspectives of both *Imāmī* jurisprudence and Iranian criminal law, this article examines the Hanafi jurisprudence regarding the issue to provide more comprehensive research outcomes.

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Extended Abstract

1- Introduction

In the contemporary world, characterized by the proliferation of diverse cultures within societies, the exploration of how cultural norms influence legal and judicial systems has become increasingly pertinent. One notable phenomenon in this context is the use of cultural norms in the defense arguments of accused individuals. This issue gains significant relevance when defendants seek to justify their actions by referencing their own cultural norms, aiming to mitigate or even avoid punishment altogether. Thus, examining the impact and feasibility of such defenses within various legal frameworks, particularly within the Iranian criminal justice system, is of considerable importance.

This paper aims to explore the dimensions and implications of invoking cultural norms in criminal defenses, addressing the associated challenges. Given that different legal systems and the Iranian criminal justice system generally acknowledge the significance of cultural defenses in sentencing, this study will analyze the existing legal and jurisprudential frameworks to assess the potential for incorporating such defenses. Key areas of focus include the impact of a lack of malicious intent on sentencing, the applicability of Islamic jurisprudential principles concerning non-Muslims and disbelievers, and specific legal, judicial, and executive instances where cultural norms are particularly considered.

By conducting a thorough examination and detailed analysis, this paper intends to offer new insights that could serve as a basis for reconsidering legal practices and judicial approaches concerning crimes punishable by Islamic law. The ultimate goal is to provide a novel perspective on Islamic criminal jurisprudence that accommodates cultural considerations, thereby enhancing the alignment of legal

systems with contemporary cultural realities.

2- Method

This research is based on library sources, including books, articles, and other relevant documents. The study has been conducted using an analytical-descriptive method with a comparative perspective of Imamiyyah Jurisprudence, Iranian Criminal Law, Hanafi Jurisprudence, and Afghan Law.

3- Result

The findings of this study reveal several significant insights into the role of cultural norms in the context of criminal defense within the framework of Islamic law and the Iranian legal system.

1. **Cultural Norms as a Defense Mechanism:** The research indicates that in diverse societies, invoking cultural norms has become a relevant strategy for defendants seeking to justify their actions. Defendants often perceive their actions as culturally acceptable and attempt to leverage these cultural norms to avoid or reduce punishment. This highlights the growing importance of understanding cultural contexts in the adjudication process.
2. **Impact on Sentencing:** Although the absence of malicious intent in crimes linked to cultural norms suggests that such acts should not be equated with those driven by criminal intent, it is crucial to ensure that acknowledging these norms does not inadvertently contribute to the normalization of criminal behavior. This balancing act is essential to prevent the potential undermining of legal standards.



3. **Legal System Reactions:** Various legal systems, including Iranian criminal justice, generally recognize the influence of cultural defenses during sentencing. However, previous research has maintained that the boundaries of these defenses are narrowly defined and remain contentious. This study, through its exploration of Islamic jurisprudence, provides new perspectives on how cultural defenses might be integrated into existing legal structures.
4. **Jurisprudential Insights:** The study identifies several key jurisprudential concepts within Islamic law that could accommodate cultural defenses. These include the potential impact of ignorance of legal and cultural norms on sentencing, the special considerations for non-Muslims or new converts regarding their knowledge of Islamic principles, and specific cases where leniency might be applied due to cultural misunderstandings. The research finds that certain Islamic legal principles, such as the permissibility of discretion for the judge (ta'zir), could offer more flexible interpretations in light of cultural contexts.
5. **Practical Applications:** The study highlights practical examples in three areas: legislation, judicial decisions, and execution. Notably, in cases such as defamation where the perpetrator's ignorance of the term's meaning is a factor, and in cases involving non-Muslims where cultural ignorance might mitigate the severity of the punishment, there is evidence of

existing flexibility within the system. This suggests that cultural norms can have a tangible impact on how crimes are judged and punished.

In summary, this study provides a nuanced understanding of how cultural norms intersect with legal principles in the context of Islamic criminal law. It proposes that while traditional interpretations of legal texts may not explicitly address cultural defenses, there is room within the jurisprudential framework for accommodating these considerations. This could lead to a more culturally sensitive application of Islamic criminal law and contribute to a broader re-evaluation of legal standards in diverse societies.

4- Conclusion

This study underscores the growing significance of cultural norms in the realm of criminal defense within the context of Islamic law and the Iranian legal system. As societies become increasingly diverse, the invocation of cultural norms by defendants has emerged as a crucial factor in legal proceedings. Defendants often view their actions through the lens of their cultural practices and seek to leverage these norms to mitigate or avoid legal penalties.

The findings reveal that while the absence of malicious intent in crimes tied to cultural practices suggests a need for a nuanced approach to sentencing, it is imperative to ensure that the recognition of such norms does not inadvertently endorse criminal behavior. The balance between cultural sensitivity and adherence to legal standards is vital to maintaining the integrity of the judicial process.

The research demonstrates that various legal systems, including Iran's, recognize the relevance of cultural defenses in sentencing decisions, though the boundaries of this recognition remain a subject of debate. Through a detailed



analysis of Islamic jurisprudence, this study presents new insights into how cultural defenses can be integrated within the legal framework. It highlights several jurisprudential concepts that offer potential flexibility, including the consideration of ignorance of legal norms, the special status of non-Muslims, and the discretionary powers of judges.

Additionally, practical examples in legislation, judicial interpretation, and execution show that there is existing flexibility within the legal system for accommodating cultural considerations. This flexibility is evident in cases where cultural misunderstandings or ignorance influence the application of legal penalties. In conclusion, while traditional Islamic legal texts may not explicitly address the notion of cultural defenses, there is potential within the jurisprudential framework to incorporate such considerations. This study suggests that a more culturally sensitive application of

Islamic criminal law is feasible and can contribute to a more equitable legal system that respects the diversity of societal norms. Future research and legal reforms could further explore these possibilities to enhance the compatibility of Islamic law with contemporary multicultural realities.

5- Funding

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6- Authors' contribution

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7- Conflict of Interest

Authors declared no conflict of interest.