

The Importance of Proving the Accused Crime According to Islamic Sharia, Afghan Legislative Documents, and Scientific Perspective

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ABSTRACT

Allah Almighty, in the Holy Quran, commands that the most honoured and respected among you in the sight of Allah is the one who possesses the most piety, as He says:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ. (الحجرات/ ١٣)

Translation: O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted. (Al-Hujurat: 13)s

Furthermore, He commands the establishment of justice and points out that the establishment of justice is a means to achieve piety, as He says:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ. (المائدة/ ٨)

Translation: O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do. (Al-Ma'idah: 8)

In order to approach Allah Almighty through our profession and to achieve both worldly and eternal happiness, how can we ensure justice in the criminal framework, which leads to closeness to Allah and eternal salvation? In pursuit of answering this question, I conducted this research to provide, through a scholarly effort, glad tidings of worldly and eternal happiness to colleague's workers in the field of justice.

Fortunately, by the end of this research, I concluded that:

To prevent someone from being unjustly punished or to ensure that the rights of individuals are not violated, and to ensure that a guilty person does not escape without facing the consequences of their criminal actions, and to maintain trust in the judicial and justice-enforcing authorities, the greatest thing is that the right of Allah Almighty can't waste. it is essential to have accurate proof of the crime. This is the only way to achieve criminal justice, obtain the satisfaction of Allah Almighty, and protect society from the harmful phenomenon of crime.

Keywords- Proving the Accused Crime, Islamic Sharia, Afghan Legislative Documents.

I. INTRODUCTION

We praise Him and send blessings upon His noble Messenger. As for what follows, I seek refuge in Allah from the accused Satan. In the name of Allah, the

Most Gracious, the Most Merciful. Allah Almighty says in the Holy Quran:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَنْ تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْحَبُوا عَلَىٰ مَا فَعَلْتُمْ نَادِمِينَ. (الحجرات: ٦)

Translation: "O you who have believed, if there comes to you a disobedient one with information, investigate, lest you harm a people out of ignorance and become, over what you have done, regretful. (Al-Hujurat: 6)

And as the Prophet Muhammad (PBUH) said:
يُعْطَى النَّاسُ بِدَعْوَاهُمْ، لَدَاعِجَالٍ أَمْوَالٌ قَوْمِيَوْمِئِذٍ هُمْ لَكِنَ الْبَيْتَةَ عَلَى الْمُدَّعِيِ وَالْيَمِينِ عَلَى مَنْ أَنْكَرَ.

Translation: "If people were given what they claimed, men would claim the wealth and lives of others; but the proof is upon the claimant, and the oath is upon the one who denies.

It is well known that humans are naturally and inherently social beings, and can't live in isolation from one another. Human society requires teachers, imams, judges, security personnel, doctors, engineers, shopkeepers, farmers, masons, blacksmiths, and other professionals to meet daily needs. Hence, humans are compelled to live among others in society.

However, it must be remembered that the peaceful, prosperous, and secure continuation of human social life is necessary, given that alongside positive qualities, human nature also harbors negative traits. These negative traits can, under certain social, economic, political, or environmental bad conditions, as a result along with some other factors and motivations, it dominates the positive attitudes of a person in such a way that some people are encouraged to attack others on themselves, property, and honor and cause them to commit crimes. disrupting the accepted social order, and causing significant harm to society. To control such situations and restore order, society must, based on social interests, prosecute and punish the offender to re-establish social order.

Since Afghanistan is an Islamic country, the application of divine law within the framework of Islamic criminal jurisprudence governs the prosecution of offenders who commit crimes subject to Hudud (fixed punishments) and Qisas (retribution), while discretionary punishments are governed by Tazir (disciplinary actions). Criminals are thus subject to judicial prosecution and punishment.

However, the question arises: Allah Almighty says that the most honored among you is the one who has the most piety, as He says:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ. (الحجرات/ ١٣)

Translation: "O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted. (Al-Hujurat: 13)

And He commands the establishment of justice and highlights that the establishment of justice is a means to achieve piety, as He says:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاَنُ قَوْمٍ عَلَىٰ أَلَّا تَعْلَمُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ. (المائدة/ ٨)

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In order to approach Allah Almighty through our profession and to achieve both worldly and eternal happiness, how can we ensure justice in the criminal framework, which leads to closeness to Allah and eternal salvation?

To answer this question, I conducted this research to provide, through a scholarly effort, glad tidings of worldly and eternal happiness to colleagues working in the field of justice.

II. LITERATURE REVIEW

The subject of proving crimes is included in the curriculum of the Faculty of Sharia (Department of Jurisprudence and Law) and the Faculty of Law and Political Science (Department of Law) under the Ministry of Higher Education. Dr. Mohammad Zarif Alam (Stanekezai) has written a book titled "Principles of Criminal Procedures, translated by Mohammad Nawab Khwakh, and published by Hamid Result Publishing House in 2017. Also, Prof. Dr. Hafizullah Danish, a professor at Kabul and Nangarhar universities, wrote a book titled Principles of Criminal Procedures, published by Mustaqbal Publishing House in 2019.

However, the problem lies in the fact that these writings discuss the means of proving crimes, but they do not specialize in discussing the importance of proving crimes in a detailed manner. In reality, this topic is crucial for achieving the main goal of criminal trials, which is the establishment of criminal justice.

III. RESEARCH METHODOLOGY AND MATERIALS

To better explain this title, first, we will discuss the research methodology, followed by the research materials and their analysis:

3.1. Research Methodology:

This research was conducted using the library method, utilizing authoritative sources to achieve reliable results and conclusions.

3.2. Research Materials:

Given our research topic ("The Importance of Proving the Accused Crime According to Islamic Sharia, Afghan Legislative Documents, and Scientific Perspective"), to effectively address this subject

scientifically and qualitatively, it is necessary to examine it under several different discussions:

3.2.1. Divine Law Requirements:

Islamic Sharia, as a religion of nature, contains laws that correspond to human nature, as Allah Almighty states in the Holy Quran:

وَيَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَن تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْحَبُوا عَلَىٰ مَا فَعَلْتُمْ لَتُبَيِّنَنَّ ۙ (الحجرات: ٦)

Translation: O you who have believed, if there comes to you a disobedient one with information, investigate, lest you harm a people out of ignorance and become, over what you have done, regretful. (Al-Hujurat: 6)

Moreover, a Hadith states:

لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ، لَدَاعَجَالُ أَمْوَالِ قَوْمٍ وَدِمَاءَهُمْ لَكِنَّ الْبَيِّنَةَ عَلَى الْمُدَّعِي وَالْيَمِينِ عَلَى مَنْ أَنْكَرَ

Translation: If people were given what they claimed, men would claim the wealth and lives of others; but the proof is upon the claimant, and the oath is upon the one who denies.

Since recognizing the claimant and the defendant is the most fundamental task in the judicial profession, jurists have derived certain rules from the texts of Islamic Sharia to facilitate the work of judges, one of which is:

البينة للمدعي واليمين على من انكر

Translation: Evidence is required from the claimant, and an oath is required from the one who denies.

The concept is that to prove a judicial ruling, the judicial system of Islamic Sharia follows a procedure where when someone makes a claim against another, they must provide evidence to support their claim, and the one who denies it must take an oath. (Barakatullah Taib, 2012: pp. 210-211).

If judicial officials deviate from these divine commands of Islam and follow another path, they will, both in terms of belief and punishment, fall into the severe wrath and anger of Allah (SWT), similar to the fate of disbelievers, wrongdoers, and transgressors, as He says:

١) وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ (المائدة/٤٤ آيت)

1) And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers. (Al-Ma'idah: 44)

٢) وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ (المائدة/٤٥ آيت)

2) And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers. (Al-Ma'idah: 45)

٣) او كما قال: وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْفَاسِقُونَ (المائدة/٤٧ آيت).

3) And as He said: And whoever does not judge by what Allah has revealed - then it is those who are the defiantly disobedient. (Al-Ma'idah: 47)

Here's the English translation of the provided Pashto text:

3.2.2. The Demand for Human Law

Among human laws, Article 20 of the Afghan Penal Procedure Code, concerning the handling of punishable crimes, mandates adherence to the principles of Islamic Sharia. It states that officers responsible for judicial prosecution and investigation are obligated to collect, record, evaluate, and preserve evidence in an impartial manner according to the provisions of this law, without considering the benefit or loss to the suspect or accused.

Furthermore, Article 19 of the same law outlines the methods of proving punishable crimes, which include confession, witness testimony, documents, the identification of the suspect in a line up, and 15 different types of circumstantial evidence, which will be discussed in detail later.

Similarly, Clause 2 of Article 5 of the same law states that: "The investigating officer and judge cannot interpret ambiguous evidence against the suspect or accused, nor can they interpret the law's ambiguity to their detriment."

Additionally, Article 23 of the same law stipulates that the court evaluates the evidence for and against, and, considering the strength and weakness of the evidence, issues its judgment based on legally valid preferential evidence.

Moreover, Clause 1 of Article 20 states: "The accused is presumed innocent until proven guilty by a final ruling of a competent court" (Penal Procedure Code of Afghanistan, 1393: 20(1)).

3.2.3. The Demand of Human Nature

When examining the matter closely, the perpetration of a criminal act results in harm, primarily because it violates sharia and legal principles, and secondly, because it infringes on the rights and freedoms of others, causing harm to individuals or society. Ultimately, it affects the emotions and feelings of individuals and society, leading to mental insecurity.

Therefore, all these factors necessitate the existence of executive guarantees in the form of punishments to ensure order and discipline. On one hand, these guarantees protect society, and on the other hand, they contribute to the reform and rehabilitation of the rebellious and disobedient person (Mufti Muhammad Wali Hanif, 1297, Volume 1, pp. 26-27).

However, it should not be forgotten that these objectives can only be achieved when the guilt of the person under judicial investigation is established based on the perpetration of the crime. Consequently, this provides a moral satisfaction to the individual, their family, and society that the rebellious person is facing the consequences of their wrong actions. However, if someone is punished for actions without proof, for which they are not responsible, it leads to the creation of resentment instead of satisfaction. This resentment can manifest as a significant threat to the stability of social

order whenever an opportunity arises in the future (Muhammad Yusuf Zamani, 1394: pp. 1-2).

3.2.4. The Demand of Expediency

When a crime occurs, it is often committed in secret by the perpetrator, who may then try to deny their actions. Therefore, in the criminal procedure, there is a need to prove the crime. For this purpose, the investigative body is obligated to search for evidence to prove the crime and identify the real perpetrator, so they can be handed over to the hands of justice for the enforcement of sharia and legal rulings (Muhammad Zarif Alam Stanikzai, 1396: p. 170).

IV. CONCLUSION

Analysing and examining the above research topics leads to the following conclusions:

Proving the perpetration of a criminal act by individuals under judicial investigation by competent authorities plays a fundamental role in the administration of criminal justice, which includes two types of benefits:

Individual Benefit of Criminal Justice: This means that in cases where the perpetration of a criminal act is proven, no innocent person under judicial investigation can be unjustly tried and punished. They are only punished proportionate to the crime they committed. For example, in Islamic criminal jurisprudence, the proof of crimes subject to Hudud (fixed punishments) requires specific means of proof (confession, testimony of four qualified witnesses, and the manifestation of pregnancy according to some scholars). If the crime is not proven by these means but is instead proven based on forensic medicine, which is considered circumstantial evidence according to the criminal procedure code, then the perpetrator will not be subject to the had punishment for adultery. Instead, they will be punished according to the relevant prescribed punishments under the law, and if the accused is not proven guilty based on the relevant means of proof

reflected in the Penal Procedure Code, they will be acquitted.

Social Benefit of Criminal Justice: The social benefit of criminal justice is that when a crime is proven, no guilty person can escape trial and punishment. This leads to the restoration and reorganization of the disrupted order in society and also achieves the objectives related to punishments and security measures.

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