

CRIMINAL OFFENSES DURING EDUCATION - E-LEARNING AS A MODEL - OR PUNISHMENT, AND SIMILAR BEHAVIORAL SITUATIONS WITHIN CUSTOMARY LIMITS**Mohammad Ali G. Zuraib**

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ABSTRACT

This research focuses on addressing unintentional criminal cases occurring as a result of customary practices in educational practices, particularly in e-learning. It also examines disciplinary actions and the exercise of authority by individuals over their possessions.

This research comprises an introduction, two main sections, and a conclusion.

The introduction encompasses the significance of the research, its objectives, and previous studies.

The first section explores the legal consequences when an individual, within the bounds of customary practices, commits an act on his property that turns into a crime against others.

The second section delves into the legal implications of unintentional crimes that may arise during the exercise of education and discipline. Finally, the conclusion summarizes the researcher's findings and conclusions, accompanied by two appendices containing sources and references.

Keywords: *Guarantee - Behavior - Discipline - Education.*

INTRODUCTION

The issues of liability when a crime occurs are of significant importance in jurisprudence due to their connection to the essential needs of life and property. Therefore, in this research, I focused on addressing one aspect of these issues, which is related to matters not intended as initial aggression but rather arise from customary and habitual behavior, yet they result in damage. Particularly, since these issues may have practical implications in some contemporary cases.

The significance of these issues lies in their relevance to the field of jurisprudence, as they are accompanied by judgments that resemble measurable judicial precedents. Their importance stems from their connection to applied jurisprudence, which enhances the skill aspect for the student of jurisprudence, in addition to the cognitive aspect related to acquiring knowledge of the researched issues and judgments. Therefore, these important aspects can be summarized as follows:

1. Highlighting the impact of customary practices in regulating behaviors and delineating the boundaries of transactions, such that exceeding them warrants criminal liability.
2. Training to apply religious texts to the statements of scholars, and practicing the pathways of conflict resolution and preference among the opinions of jurists.
3. Excusing the mujtahids for their differences, considering it a result of the multiplicity of issues, the nuances of the matter, and the diversity of perspectives.

RESEARCH METHODOLOGY

In writing this paper, I relied on the inductive and analytical methods:

The Inductive Method: In gathering the scientific material, I adopted the approach of induction, examining foundational books and extracting relevant content, attributing the texts to their sources. When quoting verbatim, I enclosed the text within quotation marks "...". I referenced hadiths from their reliable sources, attributing them accordingly. If a hadith was from the two Sahihs or either of them, I cited it as such; otherwise, I extracted it from

the reliable books, mentioning the page, volume, chapter, and hadith number if numbered, clarifying its authenticity or weakness.

The Analytical Method: I analyzed the collected texts related to the issue, and through this method, the reasons that influenced the matter became apparent.

LITERATURE REVIEW

In my review of previous studies, I have not found an original study that focused on the aspect of the cause of disagreement in this issue and compiled it in a single framework.

1- The first demand: The conceptualization of the issue and the limits of "custom" therein:

Perishing through education would be comparable to a scenario where a parent sends their son to someone to teach him swimming and the child drowns, or when a parent sends their child to learn horseback riding and the child falls off the horse during the lesson and dies.

As for perishing through discipline, it resembles a situation where a parent strikes their child, a teacher punishes their student, or a husband chastises his disobedient wife—regular punishment, not brutal—which could lead to the death of the child or wife. (Al-Buhuti, M. 2000)

In the preceding examples, we observe the importance of adhering to custom in education and discipline, where there is no intention of criminality. It is evident that both education and discipline are circumscribed within the realm of custom, as regulating them within strict and precise boundaries is not feasible due to the variability of circumstances and conditions. Therefore, it was wise for the teacher and disciplinarian to undertake this responsibility in a manner that they deem beneficial and preventative of harm within the broad confines of customary practice. (Ibn Abidin, 1992)

2- The second demand: The opinions of jurists on the matter.

The jurists unanimously agree on prohibiting education or discipline with the intention of destruction, and on prohibiting transgression and exceeding customary practices, while arranging for safeguards in this regard. However, the point of contention lies in obligating the teacher or disciplinarian to provide assurance if they do not exceed the customary practices of education or discipline. Jurists have differed in this matter into two opinions:

The first opinion holds that the damage resulting from education and discipline is not guaranteed by the teacher or disciplinarian if they do not exceed or transgress customary practices. This is because education and discipline, when conducted in accordance with what is known and customary, are considered permissible actions, even encouraged. (Al-Kasani, 1986)

Any consequences arising from actions permitted by custom cannot be considered transgressions, and therefore, there is no liability on the part of the teacher or disciplinarian. (Al-Haskafi, M. A. 2002)

The second opinion involves holding the teacher and disciplinarian responsible for the death of the learner or student, and they are liable to pay compensation (diyah). This is because education and discipline are actions conditional upon the safety of the outcome. If death occurs as a result, it indicates that the teacher or disciplinarian has exceeded the reasonable limit, thus incurring liability for their transgression. (Al-Nawawi, Y. 1412 AH)

The second topic: Acting within the bounds of customary behavior in one's ownership and leading to harm to others, encompassing three demands:

1- The first demand: The Concept of Custom and Its Meanings:

We mean by 'customs': everything that is commonly accepted, recognized by the soul as good, and finds comfort in. In the terminology of Sharia jurists, customs (Al-'Urf) refer to what people are accustomed to and have adopted in terms of sayings, actions, or abstentions. It is also defined as what settles in the minds with the testimony of intellects, and is accepted by sound natures. ((Ibn Abidin, 1992)

2- The second demand: Examples of actions on property that may result in harm or destruction:

Examples of a person's behavior within the bounds of customs, which may lead to harm or destruction, are numerous and evolving with the renewal of people's customs and their changes. These include:

- Digging a pit on one's property where a passerby falls into it without permission.
- Lighting a fire on one's property for cooking or warmth, then sparks fly from it and ignite the neighbor's property, causing it to burn.
- If someone irrigates their garden to water it and weakens the wall of their neighbor, causing it to collapse on him and harm him.

If someone places a gutter on their wall, which falls on a passerby. (Al-Qarafi, A. I. 1994)

- If someone keeps a dog as a guard, and its barking startles the neighbor causing them to fall from a height.
- Whoever places a dog in their garden, causing harm to those inside without their knowledge.

Similarly, someone who erects a wall or sets up a pillar in their courtyard, causing someone to collide with it. (Al-Buhuti, M. 2000)

3- The third demand: Destruction as a result of the owner's actions on their property:

It is not permissible for a person to act in his property in a way that goes beyond what is customary and results in harm to others. For instance, igniting a huge fire in his courtyard that causes harm to his neighbors due to the spread of the fire or smoke to them. Also, such actions include hammering in his property if it shakes the walls of the neighbors or scatters them, as well as watering the land that leads to the destruction of his neighbor's walls, and similar actions that constitute a clear violation of the Prophet's saying, "There should be neither harming nor reciprocating harm.

If his behavior adheres to the boundaries of customary practice and does not show intent to encroach upon others, such as digging a pit on his property where a passerby falls into it without permission, or lighting a fire in his courtyard for cooking which the wind carries its smoke or sparks, thus harming his neighbor, and if this behavior results in harm or damage, then scholars have differed regarding this issue into two opinions:

The first opinion holds that a person has absolute discretion to act within the boundaries of his property as customary and known, even if it results in harm to others. The owner is not prevented from exercising his rights within his property, even if it harms his neighbor or others. Therefore, he is not liable for the consequences of his actions on his property - if they fall within the bounds of customary and agreed-upon practices - whether it results in a crime or damage. (Al-Kasani, 1986)

This view is justified by the following points:

- a) The owner, by acting within the bounds of custom on his property, is not considered an aggressor against the rights of others to warrant him being held accountable, as he has not exceeded the material boundaries of his property in his actions.
- b) One of the implications of the ownership contract is the absolute permission to act within the boundaries of ownership, without encroachment. Permission conflicts with liability. (Al-Nawawi, Y. 1412 AH)

The second opinion asserts that it is not permissible for the owner to act in his property in a way that absolutely harms others, even if the resulting harm is minor or customary. Therefore, he is liable for any harm or damage caused by his actions on his property to others, whether it results in a crime or damage. (Al-Haskafi, M. A. 2002)

RESULTS

- Customary practices govern all actions and serve as a recognized standard for the limits of transactions, with any violation thereof warranting criminal liability.

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- Permission for action, as well as permission for training and teaching, essentially encompasses an implicit condition of safety and non-aggression.
- The precision of the standards that governed the opinions of judges and jurists, and their depth.
- The attention of the heritage blog to the criminal and judicial aspects, and the mechanism for addressing those issues involving multiple and complex criticisms.

RECOMMENDATIONS

In light of the findings of the current research, the researchers conclude with several recommendations:

1. Emphasize the study of studying customs and their impact on jurisprudential rulings is significant.
2. Conduct deeper studies to define jurisprudence and knowledge in Islamic jurisprudence, specifying the concepts and terminologies used according to foundational, linguistic, and jurisprudential perspectives.
3. Analyze further evidence and texts related to Sharia and foundational principles.

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