

Presumption of Innocence in the Islamic Law

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Abstract: The principle of the Presumption of Innocence is one of the main principles of all modern legal systems. It is also an important right of the accused mentioned in the human rights documents. The principle simply means that an accused considered innocent until proved guilty by a competent court. Using the descriptive-analytical method, this article studies this principle from the Islamic Law perspective exploring its meaning, basis, and exceptions. The article finds that Islamic law recognizes this principle in its highest sources, That are the Holy Quran and Hadith (sayings and actions of the Holy Prophet Mohammad). The Prophet Mohammad (PBUH) himself and so Muslim jurist applied this principle in both civil and criminal cases. Furthermore, the article identifies two main exceptions of the Presumption of Innocence in Islamic law that are: transferring burden of proof from the plaintiff to the accused when there are reasonable doubts against him/her such as strangely enrichment of a public servant after employment and the second exception is the precautionary imprisonment; however the Muslim jurist have different views regarding

the application of the precautionary imprisonment which shows their doubts towards this measure specially when there are not enough proofs.

Keywords: *Presumption of innocence, Islamic Law, Sharia, Islamic maxims.*

INTRODUCTION:

The presumption of innocence is one of the basic principles of modern legal systems. It is the source for dozens of other rules such as personal liability, putting the burden of proof on prosecutors and plaintiff, interpretation of uncertainties and doubts in a favour of accused, limited use of prosecuting procedures that affect rights and freedom of an accused, impartial treatment of accused by the police, prosecutor and judge before, during and after the trial, etc[1: 17]. This principle is stated in international human rights documents [2: article 14; 3: article 66] and as well as in the constitutions of almost all current states that shows its importance and provides strong guarantees to it. Being declared in above documents paves the way for it to influence the whole domestic legal system because based on law's hierarchy, ordinary laws and regulations must be drafted and enacted in accordance with the constitution and applicable international norms. All this importance is because it has a tremendous role in protecting human's rights, freedom, and dignity. The Islamic Law also recognizes this principle and even some researchers consider

it one of *Sharia's Maqasid* (goals)[4:23]. Using descriptive-analytical research method, this article aims to provide answer to the question whether Islamic law recognizes the principle of the presumption of innocence or not? If yes, what value does it give to it? and finally is there any exception to the principle or not?

The meaning of “Presumption of innocence”

The presumption of innocence means that a person is considered innocent until found guilty by the absolute verdict of a competent court [20:984; 5: 221]. This concept is rooted in various Islamic jurisprudence maxims and phrased in different ways such as “Acquittal shall be the original state.” [6: 53; 7: 59], “Presumption of innocence is considered the main evidence” [6:51]. In addition to the aforesaid principles, there are many other sub-legal maxims in Islamic jurisprudence that support this concept such as “Certainty shall not be eliminated by doubt” [6:50; 7: 56], “The *Hudud* punishment can be repulsed in presence of doubts” [7:127; 12: 238], which means that doubt shall be interpreted in favour of accused, “Bringing witness shall be obligation of claimant and taking oath shall be the burden of disclaimer” [8:267], “Judge shall not perform judgement based on his/her pre-knowledge of the case” [9:363] and the principle of *Istishab* that means “Continuation of a certain state unit contrary is established by evidence” [10:20] “etc. Based on these principles, The Islamic law considers the accused innocent until found guilty, no matter if he/she has good or bad reputation in the society. This principle originated from a general Islamic jurisprudence maxim that says: “In principle everything is permissible” [11:11-15].

Basis of the “Presumption of Innocence” in The Holy Quran and Hadith:

The Holy Quran and Hadith contains various verses that are considered as the source of the principle of presumption of innocence in the Islamic Law. Some are direct to the case while some others are indirect.

Some of the direct basis include this saying of the Prophet Mohammad (PBUH) “Were people to be given everything that they claimed, men would [unjustly] claim the wealth and lives of [other] people. But, the burden of proof is upon the claimant, and the taking of an oath is upon him/her who denies”¹[12:10]. In another occasion, he said:” Everyone is born inherently pure²...” [13:379]. He also stated ““Avert the legal penalties from the Muslims as much as possible, if he has a way out then leave them to his/her way, for if the *Imam* (judge)³ makes a mistake in forgiving it would be better than making mistake in punishment.” [23:238]. Same statement is narrated from *Umar ibn Khatab*, the second Caliph, as well [14:514).

Beside above direct Hadiths, there are many verses in the Holy Quran that support this principle somehow indirectly such as: Frist Verse, “No soul burdened with sin will bear the burden of another. And We would never punish ‘a people’ until We have sent a messenger ‘to warn them” [Quran 17: 15]. According

¹ English Translation is taken from sunnah.com.

² The word “Fetra” in this Hadith means “inborn state” which is translated as pure.

³ The word “Imam” at this context means head of the state while hearing cases and issuing verdict, because at the early stages of Muslim history Caliphs were head of the state and judges at the same time.

to scholars, this verse talks about the principle of legality of crime and punishment [5:218], which support the principle of presumption of innocence. There are many other verses providing the same meaning [5:218]. Second verse, "As for those persons who charge chaste women with false accusations but do not produce four witnesses, flog them with eighty stripes and never accept their evidence afterwards" [Quran 24:4]. According to *Bukhari, Hilal bine Umayyah* accused his wife of committing adultery crime and claimed in front of the Prophet Mohammad (PBUH) that he himself has witnessed the scene, but the Holy Prophet told him "Bring your proof, otherwise you will have the prescribed punishment of *Qazf* (defamation) inflicted on you." [24:596] Here both Quran and Hadith are applying the principle of presumption of innocence. Third verse, "O you who have believed, if a wicked person brings you some news, inquire into it carefully lest you should harm others unwittingly and then regret what you have done" [Quran 49:6]. According to the most commentators of the Holy Quran [16:300], this verse was revealed when the Prophet Mohammad (PBUH) planned to dispatch a contingent to punish the tribe of the *Bani al-Mustaliq* based on false accusation of a government employee who were sent to collect *Zakat* (specific amount of money paid to the government by rich Muslims to be disbursed to the needy people) from them, that they had tried to kill him and refused to pay *Zakat*. Fourth verse, "And do not pursue that of which you have no knowledge. Indeed, the hearing, the sight and the heart - about all those [one] will be questioned" [Quran 17: 36]. In this verse, the necessity of research is stipulated in all cases, and human are forbidden to obey what they don't have knowledge about, otherwise, they will be responsible and questioned. Therefore, knowledge and certainty are pattern of cognition in everything, and suspicion, doubt, guess, prediction, and possibility are not reliable. And those who are judging, testifying, performing their duty or believing based on these criteria, are in fact deviated from the explicit command of Islam. Fifth verse, in many occasions Allah ^(SWT) forbids judgement based on assumptions which itself implies the principle of presumption of innocence, as he says: "O you who have believed, avoid much suspicion, for some suspicions are sins. Do not spy, nor should anyone backbite the other" [Quran 49:12].

According to Muslim scholars, when human being is born, he or she is like a blank paper and free of any sin, obligation, or responsibility and this is considered *Fetra* (the pure original state of human being). Therefore, whoever claims against a human being is obliged to prove the claim, because whatever were proven with certainty in the past, it will continue to be certain until it is denied by certain evidences [17: 339]. Numerous provisions originate from this principle including that the accused is not obliged to prove his/her innocence, because acquittal is the original state. Second, whenever the reasons for the accusation occur, the accused has the right to present his/her reasons to deny it. If the claimant does not have a reason, the accused is not obliged to give reasons to prove his/her innocence, because he/she is considered as innocent based on the principle of presumption of innocence. But in civil matters, the court notifies taking oath to the defendant and exceptionally accepts the oath of the defendant as a reason, because his side is strong due to the "principle of presumption of innocence"; therefore, weak reasons even taking oath are accepted from him, but the claimant is obliged to give evidence [18:25].

Exception of the principle of the presumption of innocence:

This principle has some exceptions in the Islamic Law, one of them is when reasonable doubt appears on accused side like in money laundering and illicit enrichment cases. The Second *Caliph*, Umar ibn Khattab, did not applied the principle of presumption of innocent in these cases where accused was a public servant, instead he used to apply his common rule: “From where you gained the assets?”. By this rule, he moved the burden of proof upon the accused whenever signs of illicit enrichment were noticed on his/her side, so he/she was to prove his/her innocence. There are many practical examples of applying this rule, for instance, Ahmad narrates that once Umar was passing across a building that was built with stones and plaster. He asked: For who is this? They replied that it belonged to one of his employees, the governor of Bahrain. He said: “Dinars and Dirhams show their necks out”. Then he investigated with the governor and confiscated half of his property. There are more examples of this [19:387}. According to Mohammad Zarqa, Umar used to record all financial assets of his Governors appointments and investigated with them periodically [20:1053].

Another exception, according to some Muslim jurists, is the precautionary imprisonment of some accused is based on reasonable doubts and specific conditions. While some other jurists, including *Abo Yousuf* (113-182 H), the Chief Justice of *Abbasids*, [21:164-165] and Ibn Hazem (384–456 H)[22:133], consider precautionary imprisonment based on doubts illegal, they believe that the accused can be imprisoned in precaution only when there are enough evidences against him/her. The four main school of Sunnah agrees that people with good reputation can't be subject to precautionary imprisonment based on doubts.

Findings and Discussion:

It has been established that the presumption of innocence is one of the main pillars of the Islamic Law. As it has been summarized, this principle is stated in various verses of the Holy Quran and Hadith, which that provide strong guaranties to the principle as based on the hierarchy of norms in the Islamic Law, the provisions of the Holy Quran lay on the top of legal pyramid followed by Hadith and finally human made norms including constitutions, laws ratified by parliaments, government regulations and jurist's doctoring etc. Given a divine value to the principle, forbid Muslims including legislator, to breach or neglect it. The value of this principles comes from its effective role in providing justice to the people and banning states from breaching human's rights and freedom. The author believes that providing justice was one of the main factors of rapid expansion of Muslim power in the early history of Islam.

Like any other legal principles and rules, it is possible that criminals and lawbreakers use the principle of “Presumption of Innocence” as a shelter and safeguard against legal prosecution and thus disrupt public order and national interests of the states. To restrict such misuse, the author discussed that the Islamic Law recognizes putting few exceptions on this principle. As explained, one of these exceptions is putting burden of proof on public servants when their properties seem to be increased strangely after employment. In the Islamic history, the second Caliph, *Umar ibn Khattab* applied this rule at the early days of Muslim history so widely. This seems to be interesting as this measure found its way to the

western laws just recently when fighting money laundering become too essential⁴. Afghan Legislator introduced this exception in its legal system just in 2017 in the new Penal Code. Another exception of the presumption of innocence, according to some Muslim jurists, is the precautionary imprisonment in existence of reasonable doubts and certain conditions; while some other jurists limit this procedure to instances where enough proofs are available. Because the pre-trial prosecuting measures including the precautionary imprisonment are not considered as punishment, therefore, it has been used widely in almost all criminal systems though in different scales; however the modern criminal legislators have been showing tendencies to introduce alternatives to imprisonment to minimize usage of imprisonment in general and precautionary imprisonment in special as it is applied on accused who might be proven not guilty after the trial. Afghanistan introduced alternatives to incarceration in its Penal Code in 2017.

The author thinks that this strong inclination towards alternatives to incarceration can also be seen in the thoughts of some early Muslim Jurists such as *Abo Yousuf*, the Chief Justice of Abbasids, and Ibn Hazm who were limiting usage of precautionary imprisonment in instances where enough proofs were existing. Although this is a divine principle of the Islamic Law, but in practice there are considerable examples of breaching this principle by some Muslim rulers and politicians against their rivals.

Conclusion:

Findings of the research show that the principle of Presumption of Innocence is not only recognized in the Islamic Law, but it is considered one of its main maxims that has influence on all branches of the Islamic Law. This maxim has roots in the highest sources of Islam, which are the Holy Quran and Hadith. Looking at the concept, exceptions, and implementation of this principle in the Islamic Law, proves that the Muslim Jurists were applying this principle in the early era of Muslim history in a most similar way that is applied today.

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