



# Foundations of the Differentiation of Criminal Proceedings in the Iranian Legal System

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## ABSTRACT

Criminal law, over many centuries, was established on principles that were firm and coherent, defined, explained, and systematized on the basis of idealized norms of what ought and ought not to be. Consequently, it presented a harsh, inflexible, and uncompromising image of criminal law, both in its substantive and procedural dimensions. However, in recent decades these very principles and foundations have been profoundly influenced by political, scientific, cultural, social, and even economic developments, to the extent that traditional penal principlism has faced major challenges. With the passage of time, and with the increasing technical specialization of criminal law and its gradual globalization, the global criminal justice system came to recognize that the era of uniform responses to crime and criminality had come to an end, and that criminal policies must undergo change. The Iranian criminal justice system has likewise not remained immune to these transformations and, over time, has witnessed and accepted differentiated forms of criminal proceedings. Nevertheless, since any change in this direction within the criminal justice system requires the existence of necessary and sufficient foundations to justify differentiation, the present study—using an analytical–descriptive method—examines the theoretical, criminological, jurisprudential (fiqh-based), and practical foundations of differentiated proceedings within Iran's criminal justice system. These foundations are regarded as constituting the basis of differentiated adjudication and, in the future, will also serve to justify differentiation in the handling of various crimes across different domains.

**Keywords:** *differentiated proceedings; legal foundations of adjudication; jurisprudential foundations of adjudication; practical foundations of adjudication; special proceedings.*

## Introduction

By examining the oldest and earliest rules and regulations enacted in human societies—whether established by rulers or derived from religious and metaphysical commandments—it becomes evident that the primary objective of those laws was predominantly punitive and sanction-oriented. To such an extent, some were of the view that there might be little need for criminal procedure, and that the mere existence of substantive law together with fair and impartial judges would suffice to resolve adjudication issues. However, in the contemporary era, in light of profound transformations across various fields—particularly within the criminal justice system—this claim is regarded as entirely obsolete and untenable. Accordingly, not only is the existence of criminal procedure necessary and indispensable for regulating society's response to criminality, but today, having moved beyond the Enlightenment era and its transformations, criminal law has distanced itself from its traditional principles and has



come to criminalize acts and behaviors that are often technical and specialized in nature. Therefore, in pursuit of purposive operation of the criminal justice system and the enhancement of the effectiveness of criminal policy, it is impossible to disregard the need to render adjudicative processes and reactions against crime and offenders rational and proportionate (1, 2).

Indeed, in the present era, the criminal justice system has come to realize that the age of uniform responses to criminality has come to an end (3).

For this reason, contemporary criminal policy is characterized by a multi-layered, pluralistic, and heterogeneous structure, and differentiated criminal proceedings are, in fact, reflective of this very multilayering. This is because penal principlism and the traditional model governing criminal procedure, in light of rapid and extensive transformations in human societies and the increasing complexity of social relations, are no longer capable of achieving such an objective—namely, a purposive criminal response to various types of crimes (4).

Accordingly, differentiated proceedings, following substantive criminal law developments, have emerged as an undeniable necessity in their modern form and continue to evolve progressively toward greater refinement.

Although the differentiation of criminal policy initially began with a binary approach to combating offenders, it soon shifted from dualism to pluralism and multilayered strategies. This transformation affected not only the principles and strategies of criminal policy but also reshaped the legislative criminal-policy discourse in both substantive and procedural laws, leading to their diversification. Linguistically, “differentiation” denotes separation and dispersion (5), and at first glance, differentiated proceedings may evoke the notion of specialized courts, thereby attracting criticism for allegedly conflicting with human rights and freedoms (6). Indeed, in the works of Iranian legal scholars, differentiation has often been employed in this sense of specialization of proceedings. However, differentiation in its proper meaning—as implied by the term itself—refers to fragmentation, dispersion, and the archipelagic structure of criminal procedure (4).

A review of the research background indicates that only one independent work has been devoted specifically to the foundations of differentiated proceedings, while other books and articles merely allude to its characteristics and features. Even this sole independent work, upon examination, lacks comprehensiveness and overlooks significant foundations that constitute the framework of Iran’s positive law. Therefore, what justifies the necessity and importance of the present study is the absence, to date, of any specialized research adopting legal, criminological, and practical approaches to examining the foundations of differentiated proceedings. Consequently, the fundamental question—namely, what the foundations of differentiated proceedings are in Iran’s positive law—has remained unanswered. In this regard, the present study seeks to examine the foundations of differentiated criminal proceedings within Iran’s positive legal system.

### **Theoretical–Criminological Foundations of the Differentiation of Criminal Adjudication**

As noted, criminological foundations may constitute one of the most significant bases for the differentiation of criminal adjudication. Among criminological theories—each of which has influenced the production of crime and the composition of criminal statistics—those theories that place the primary actors of criminal conduct, namely the offender and the victim, at the center of their analysis have paid greater attention to the differentiation of proceedings or criminal adjudication. Among these criminological theories are interactionism (labeling theory), differential association theory, clinical criminology, and security criminology, which will be examined in separate sections below (7-9).

### *Interactionism Theory*

This theory was developed in the 1960s by American criminologists and emphasizes the role and contribution of criminal justice institutions in the enactment of criminal laws, the criminalization of behaviors, and the manner of their application to citizens, ultimately influencing determinations of criminal liability and punishment within the framework of criminal procedure regulations. Interactionism is among the most prominent approaches focusing on how institutional reactions shape criminal identities (10, 11). Influenced by this branch of criminology, and with the aim of reducing the likelihood of attaching criminal labels to individuals, identity acquisition as offenders, and the persistence of some citizens in criminal careers, tolerance-oriented approaches such as decriminalization, depenalization, diversion, and differentiated criminal proceedings have gained prominence.

The teaching and outcome of interactionism theory, similar to abolitionist approaches, is that the intervention of criminal law in the penal process should be minimized and resorted to only when necessary as a last measure. To mitigate the negative effects of labeling, this perspective proposes that the criminal justice system's response to criminal behaviors should be based on diversionary policies. Every possible effort should be made to direct certain categories of offenders, through differentiated adjudication and responses, toward pathways separate from formal criminal justice processes—pathways that reduce contact with major components of the formal system and thereby diminish stigmatization and the likelihood of secondary deviance (6). For example, the establishment of specialized mechanisms for juvenile offenders, from the standpoint of interactionism theory, yields significant effects, as supportive procedures and differentiated judicial responses prevent the attachment of criminal labels and inhibit the internalization of criminal identity among children and adolescents.

### *Differential Association Theory*

This theory was first articulated in 1924 by the American scholar Edwin Sutherland in his work on criminological principles. According to this theory, individuals throughout their lives associate with various social groups—such as family, peer groups, and school groups—and because behavioral patterns differ among these associations, some patterns are compatible with the law while others are incompatible. Where patterns inconsistent with the law prevail, individuals exposed to such environments are more likely to adopt deviant patterns and thus engage in criminal behavior (12). In light of this theory, prolonged and intensive interaction with environments dominated by criminal patterns significantly influences individuals' inclination toward criminality. By emphasizing that behavior within a social environment is learned, Sutherland advanced a general theory of criminal behavior, arguing that all behaviors are learned in the same manner; the critical difference lies in what is learned, not how it is learned.

Differential association theory generally holds that criminal behavior is learned through interaction and communication with intimate others, whereby two core elements are acquired: techniques for committing crimes and definitions—values, motivations, drives, rationalizations, and attitudes—that support such behavior (8). In other words, the notion that criminality arises from association with offenders and that criminal techniques are learned through such interactions led to a new approach toward crime and criminal response, thereby fostering attention to differentiated criminal adjudication.

Accordingly, for example, frequent, intensive, and deep contact between children and offenders or norm-violating individuals may incline them toward disregarding legal and social norms. Hence, adopting appropriate measures to distance such individuals from environments characterized by norm-violating patterns can substantially reduce the

likelihood of developing criminal motivation and engaging in crime (13). In this manner, legislators, through differentiated approaches, seek to keep first-time offenders as far as possible from repeat and dangerous offenders. An example of this approach can be observed in Article 514 of the Criminal Procedure Code, whereby the legislator prohibits the detention of convicted persons and suspects in the same location.

### *Clinical Criminology*

This branch is an offender-oriented approach whose aim is rehabilitation, treatment, and the prevention of recidivism (14). As an applied strand of criminology, it seeks to combat the criminogenic causes and experiences of human behavior and is devoid of philosophical speculation. Clinical criminology generally has two meanings: an expansive (theoretical) meaning and a restrictive (practical) meaning. In its expansive sense, clinical criminology denotes the study of the individual criminal phenomenon, as opposed to criminal sociology, which focuses on the study of collective and mass offending—in other words, criminality. Thus, in the expansive sense, clinical criminology refers to the theoretical study of crime at the individual level. In contrast, the restrictive (applied) meaning refers to a multidimensional study of crime and the offender for the purpose of correcting and rehabilitating the offender in a manner that leads to the prevention of repeat offending. In this sense, clinical criminology is the application of criminological findings to the offender (15).

As a composite and practical discipline, this branch—drawing on the results of general and specialized criminological studies—examines the individual and his or her characteristics and, with awareness of the degree of dangerousness and the capacity for resocialization and conformity with social norms and standards, provides necessary “treatments” while pursuing the objective of distancing the offender from repeated criminal conduct. In other words, one of the most important functions of clinical criminology is to determine and propose methods of “treatment” for offenders based on their psychological and mental characteristics, the degree of their involvement in criminogenic pathology, and other social parameters. Beyond studying offenders and proposing treatment methods to prevent recidivism, clinical criminology also attends to methods of crime prevention as well as the supervision and custodial management of offenders (9).

Clinical criminology has borrowed its method from medical sciences: on the one hand, it entails an analysis of the criminal reality (which, in medical terminology, corresponds to examination), and on the other hand, it involves intervention aimed at resolving the problem (that is, treatment). Put differently, clinical criminology follows the medical model of “examination and treatment” of the patient, because part of its proposed solutions are medical in the literal sense. The remainder of its solutions are more cultural, social, economic, and educational in nature, amounting to a form of “social medicine.” For this reason, expressions such as “social clinic,” “family clinic,” and the like are employed (11).

Through this branch, rehabilitative measures and mechanisms for responding to offenders have been recognized, among which mitigation of punishment is one of the most prominent (7). The contribution of clinical criminology is the proposition that the criminal justice system should adopt a rehabilitative approach and, by using clinical instruments, pursue the correction and treatment of offenders—namely, the remediation of individual and environmental deficits and the reconstruction of their personality system. That is, by focusing on offenders’ dangerousness, and identifying its type and degree in order to diagnose the condition of norm-violators, it should seek to determine the most effective mode of response to them.

Accordingly, from this perspective, the objective in the criminal justice system is to create the conditions for offenders' return to a healthy social life and, consequently, the prevention of recidivism. Therefore, all measures undertaken within the criminal justice system to resocialize and reintegrate offenders into society are termed "rehabilitation." With this explanation, the criminal justice system, in order to achieve this purpose, must construct differentiated mechanisms for criminal adjudication so that, through the tools and capacities thereby made available, it can engage in the correction and treatment of offenders. For example, with respect to differentiated handling of minor offenses, one may argue that under this approach—given that the judicial authority, in dealing with perpetrators of minor crimes, sets aside punitive methods—such offenders do not become entangled in the complexities of the criminal process, and thereby the conditions for their reintegration into society are facilitated (16).

### *Security Criminology*

With the emergence of new forms of criminality—especially various forms of terrorist crime and organized crime—a wave of insecurity has arisen worldwide. This sense of insecurity marked the beginning of unprecedented adoption of security-oriented and repressive measures, implemented under the banner of combating terrorist acts and transnational organized crime and the call to establish security. Such measures signify the decline of the rehabilitative philosophy and a strong return to increasing penal severity toward chronic offenders in place of the logic of reform and prevention (15). This shift in approach has also affected the configuration and orientations of criminal policy. Thus, the guarantee of legal-judicial security—meaning the protection of citizens' rights and freedoms and the rights of suspects, accused persons, and convicted individuals—has been overshadowed by the guarantee of citizens' physical and financial security and public order (security-oriented criminal law). Social prevention of criminality has gradually yielded to restrictive situational prevention (17).

In security criminology, the primary focus is on the active core of offenders. Expressions such as habitual offender, resistant offender, persistent offender, and chronic offender are used to describe the dangerous offender. Rather than merely studying the offender's personality, security criminology analyzes risk and the branches of recidivism risk in the individual. Here, the analysis of crime-risk factors is conducted to predict and estimate the likelihood of risk realization, with a view to excluding the individual from society and incapacitating him or her. In this approach, the offender is a dangerous individual and, therefore, for the preservation and continuity of societal security, is deemed deserving of expulsion from society and neutralization. The security-oriented approach, distancing itself from offender-centered viewpoints of the social defense movement and positivist school and returning to classical perspectives, places its primary emphasis on the crime and is, in this sense, "offense-centered."

Within this view, the offender is treated as an economic actor who, through rational calculation of costs and benefits, decides to commit crime. The offender is not seen as a victim of social and familial constraints but as an individual similar to other members of society. Consequently, such an offender is not deserving of supportive or welfare-oriented measures, and clinical-criminology interventions aimed at correction and treatment to address root causes of crime are regarded as ineffective in preventing offending (2). In this perspective, the offender is considered a threat to others—a threat that endangers societal security. Hence, security ideology emphasizes harsh punishments, sometimes disproportionate to the committed offense, and uncompromising treatment of perpetrators in order to deprive them of criminal capacity and contain the risk of criminality.

Security ideology, in effect, is an approach that, on the one hand, intensifies supervision of offenders and offender groups, as well as the monitoring and control of individuals at risk of offending, to an extraordinary degree; and on the other hand, it negates offender rehabilitation and crime prevention under slogans such as “nothing works” and the claimed ineffectiveness of correction and treatment. The coercive result of this approach must be sought in the expansion of networks of social and governmental control and, additionally, the restriction—and in some cases elimination—of individual and social rights and freedoms.

Within the domain of security-oriented repressive criminologies, criminologists have employed multiple theories and labels. “Zero tolerance,” “new penology,” “actuarial (calculative/estimative) justice,” “just deserts” or the “justice model,” “dual criminal strategies,” and similar notions fall within this category (11). In general, however, the expansion and intensification of social and governmental control and surveillance networks over offenders, individuals at risk of offending, and sometimes even non-offenders can be regarded as a common feature of all or most of these tendencies. In these approaches, because the concern for security is prioritized over all other aims of the penal system, the offender is treated as an enemy of society, and criminal law does not seek to correct and treat such persons; rather, by intensifying control and surveillance, it pursues its principal objective (the provision of security). By contrast, in classical approaches influenced by the positivist school and modern social defense, the offender is considered capable of reform and rehabilitation; hence, the prospect of reintegration is deemed substantial.

Accordingly, in recent years, “security-oriented criminological approaches have provided the scientific basis for the strategy of differentiating criminal policy on the basis of typologies of offenders and committed offenses. The management of the risk of recidivism among chronic offenders and the risk of offending among dangerous individuals—through penal mechanisms of exclusion and incapacitation and criminological mechanisms of situational prevention (especially its technological form)—has made the guarantee of internal security its main objective” (17). Overall, within this criminological perspective, differentiation has entailed a form of intensified control and harshness toward offenders and even toward non-offending groups.

In the differentiated strategy of security-oriented criminological approaches, offenders are classified into two groups: high-risk/dangerous/chronic offenders and ordinary offenders. The first group is incapacitated through execution, long-term imprisonment, and penal mechanisms, while the second group—regarding control of dangerous individuals’ offending—is addressed through criminological mechanisms of situational prevention, which essentially amount to non-penal management of crime risk. This group is monitored and controlled within society and in the social environment. At the same time, by strengthening suitable targets and through environmental design, efforts are made to reduce these groups’ capacity to offend. Thus, a form of incapacitation policy is also pursued here—albeit non-penal incapacitation. In Iran’s procedural system, this perspective has likewise shaped differentiated proceedings, including: (1) special proceedings for organized crime and terrorism; (2) differentiated proceedings in combating cybercrime; (3) differentiated proceedings for major economic crimes and financial corruption; and (4) differentiated handling of cases involving particular categories of victims.

### **Jurisprudential Foundations for the Differentiation of Criminal Proceedings**

For a long time, one of the major and serious challenges of Islamic civilization has been the problem of establishing a rational and well-calculated harmony and mutual understanding between Islamic teachings and the needs and exigencies of each era, because in Islamic teachings—and within the corpus known as the Qur’an and

the Sunnah—norms are largely stated in general terms. For this reason, after the onset of the Minor Occultation, when Shi'i *ijtihād* took shape, jurists, with a rational approach, sought both to understand and internalize those teachings and perspectives and to adapt them to the needs and requirements of their own time. One of the most important of those needs was the “chapter of adjudication” (*bāb al-qaḍā'*), which, from the earliest period of Islam to the present, has been of great importance and has consistently confronted numerous emerging issues. At a time when transformation had to occur in all fields in step with scientific progress, *fiqh* and *ijtihād*—representing an evolved stage of juristic development from the era of the Imams—had to function as the operative mechanism; consequently, “dynamic *fiqh*” gradually emerged so as to demonstrate the true position of religion in interaction with the contemporary world.

This is especially so for a comprehensive religion such as Islam, which provides guidance for diverse dimensions of human life and can respond to all essential needs of human society—individual, social, political, judicial, economic, and even international relations with Muslims and non-Muslims. Accordingly, *bāb al-qaḍā'* constituted a principal challenge, and jurists endeavored—by employing *ijtihād* within the authentic and authoritative sources of the *Sharī'a*—to clarify the dimensions of adjudication and to resolve most newly arising issues through derived jurisprudential maxims. The more the era of occultation advanced, and the more jurists encountered complex and intricate topics, the more they sought to compile and articulate *fiqhī* maxims—so much so that, in *bāb al-qaḍā'*, scarcely any issue remained that could not be aligned with jurisprudential rules.

Although some legal scholars still maintain that procedural regimes were borrowed from French law and, in some instances, from common law and introduced into Iran's legal system, today, due to the efforts of jurists, it may be stated with confidence that the enrichment of legal writing within Iran's legal system is indebted to Islamic *fiqh*, and that the foundations of virtually any legal institution or structure can readily be extracted from *fiqhī* maxims. Undoubtedly, no single *fiqhī* maxim, in an independent manner, has directly examined the necessity of differentiated proceedings—the subject of the present research. Nevertheless, the *fiqhī* foundations from which the necessity of differentiated proceedings is inferred may be classified into six categories: the maxim of justice and equity, expediency (*maṣlaḥa*), the negation of hardship and intolerable burden (*nafy 'usr wa ḥaraj*), the “no harm” rule (*lā ḍarar*), and recourse to expert knowledge, which can then be analyzed in sequence.

### *The Maxim of Justice and Equity ('Adl wa Inṣāf)*

In the view of many jurists—particularly Imam Khomeini—equity and justice constitute among the most important pillars for implementing policy and adjudication in governance. Their essential cornerstone is the use of rational deliberation to prevent deviations and to guide and reform the Islamic community, such that the enactment, codification, and implementation of law with justice and equity at its core becomes the most effective factor in strengthening society and safeguarding citizens' rights. In Western countries, formed on the basis of modern legal systems, justice and equity within the common-law judiciary is regarded as a legal foundation invoked when the positive legal system reaches an impasse. Yet, the status of justice and equity—before its emergence as a pillar within Western legal systems—had already been articulated and emphasized in multiple forms within Islam.

In the Holy Qur'an, as the revealed scripture of Islam, numerous verses emphasize justice and fairness, including verse 135 of *Sūrat al-Nisā'*, from which the requirement of administering justice across all dimensions of individual and social life is understood. Further, it is narrated that al-Kulaynī reports from Imam al-Ṣādiq (peace be upon him),

in praise of justice and equity, that justice among people is sweeter than water reaching the thirsty, and how expansive justice is when it is applied—even if only in a small measure.

Accordingly, the foundations of both creation and legislation are built upon justice and equity, and after the victory of the Islamic Revolution, this position received even greater attention in Iran's legal and judicial system—so much so that one of its most important outcomes has been the necessity of emphasizing the protection of citizens' rights and the realization of justice across all judicial dimensions. Following the Revolution, gradual transformations were witnessed first in substantive laws and then in the procedural laws of adjudication. Justice and equity required that jurists and legal scholars process substantive and procedural rules within a framework described as dynamic fiqh and align them with judicial needs. Since society has moved day by day toward modernity and technical specialization, equity and justice demanded that Iran's legal and judicial system, for better realization of justice and fairness, proceed toward a fragmented and “archipelagic” model of adjudication. The earliest steps were taken through the establishment of specialized courts. Although there remains distance to full realization of differentiated proceedings in the true sense, the impact of justice and equity in this evolutionary trajectory cannot be denied.

### *The Maxim of Expediency (Maṣlaḥa)*

Expediency in Shi'i fiqh—particularly after the articulation and development of the theory of “Guardianship of the Jurist” (wilāyat al-faqīh) and “governmental fiqh” by Imam Khomeini—has acquired a foundational place in regulating social relations, administering government, and shaping adjudicative methods. What is meant by expediency here is the general and public interest (maṣlaḥat al-naw' / maṣlaḥat al-'umūm) of the Islamic community: an interest applied to preserve the system, secure justice, prevent social disruption, and guarantee citizens' rights. Jurists such as Imam Khomeini, Shahīd Ṣadr, Ayatollah Nā'īnī, and 'Allāma Ṭabāṭabā'ī have maintained that, in the domains of governance and adjudication, expediency is not merely a secondary element but among the most important criteria for identifying the relevant ruling and designing social policy. Imam Khomeini, in al-Bay' and Taḥrīr al-Wasīla, viewed the Islamic government as possessing authorities enabling it—within the framework of the system's higher interests—to regulate even primary rulings. Thus, “expediency,” as a rule that identifies and regulates judicial and executive arrangements, played a central role in the emergence of new procedural structures after the Islamic Revolution.

After the Revolution, Iran's legal system entered a path of substantive and procedural reform. Jurists and legal scholars, relying on “dynamic fiqh” and attending to the requirements of a modern society, recognized that procedural uniformity could not meet the growing complexity of judicial affairs. In particular, a society moving toward specialization requires different forms of adjudication proportionate to distinct social structures. In this context, the maxim of expediency made it possible, in principle, to justify: the establishment of specialized courts such as military courts, the Special Court for the Clergy, courts for economic crimes, and juvenile courts; the regulation of differentiated procedural regimes tailored to the characteristics of each social group; and the enactment of specific substantive and procedural laws to guarantee order, security, and justice—because the public interest and the necessities of preserving the system and social security are among the most significant bases (manāṭāt) of governmental rulings. In Islamic law, whenever improved realization of justice, preservation of the system, and prevention of social فساد require specific mechanisms, employing such mechanisms is regarded not only as permissible but as a religious obligation.

For example, the armed forces—due to the special nature of their duties, including maintaining security, ensuring command cohesion, protecting borders, and executing sensitive missions—possess a distinct organizational and legal structure. In this sphere, the interest of the system and national security constitutes one of the most important bases for the formation of an independent adjudicative mechanism. Jurists consider the Islamic government obligated to establish special judicial mechanisms to preserve order and authority within the armed forces. On the basis of the maxim of expediency, assigning special jurisdiction to military courts, developing special procedural rules for the armed forces, prescribing sanctions proportionate to military discipline, and establishing specialized military prosecution offices and courts are not only justifiable but, within governmental fiqh, constitute a religious necessity, because the interests related to the security and order of the armed forces are among the higher interests of the Islamic state. For this reason, adjudication concerning the armed forces, juveniles, the clergy, and similar domains cannot be fully identical to ordinary adjudication, because difference in subject matter entails difference in ruling. This difference is precisely the foundation of “differentiated proceedings,” which is rooted in the maxim of expediency.

### *The Rule of Hardship and Intolerable Difficulty (‘Usr wa Ḥaraj)*

The jurisprudential rule of hardship and intolerable difficulty (‘usr wa ḥaraj) is among the most important and widely applied maxims in Imamī (Twelver Shi‘i) jurisprudence and plays a decisive role in ensuring flexibility in legal rulings and procedural mechanisms. Rooted in Qur’anic verses and authoritative Sunnah, this rule—by negating obligations that entail severe hardship—enables the legislator, in particular circumstances, to depart from general rules and to provide differentiated mechanisms such as differential procedure. This rule, which is supported by evidences such as verse 78 of Sūrat al-Ḥajj (“He has not placed upon you in the religion any hardship”), functions as an instrument to prevent the implementation of rulings that cause atypical and excessive difficulty.

In contemporary judicial systems, the function of this rule extends beyond purely duty-imposing norms and has influenced procedural architecture as well, to the point of becoming a basis for differentiated adjudication in areas such as family law, the execution of punishments, and criminal procedure.

Within Iran’s legal system, which is grounded in Imamī jurisprudence, the theoretical foundations of such differentiations must be sought in jurisprudential maxims. Alongside principles and rules such as the presumption of innocence, the maxim of justice and equity, and expediency, the rule negating hardship and intolerable difficulty occupies a central position—a rule that emphasizes the non-enactment of hardship-producing norms and the lifting of obligations in situations of atypical hardship, thereby enabling the adjustment and specification of many rulings.

Criminal proceedings are inherently processes that may entail anxiety, social stigma, financial and temporal costs, and various constraints for the accused, the victim, and even society. This level of “ordinary hardship,” in itself, does not trigger the rule of lā ḥaraj. However, where the criminal process—without regard to personal characteristics—imposes strict formalities and arrangements upon children, vulnerable persons, or particular categories of victims, it may result in “customary hardship” (ḥaraj ‘urfi). In other words, in a system that provides a single uniform procedure for a twelve-year-old child and a professional adult offender, the probability of severe hardship for the child—psychologically and emotionally, and also in terms of social consequences—is very high. Jurists, especially in later works on the rule of lā ḥaraj, emphasize that this rule is not limited to the level of fatwā and individual rulings, but is also applicable at the level of macro religious policy-making; meaning that the Islamic ruler and the legislator may not establish structures and systems that, by their nature, produce hardship and

intolerable difficulty for the legally obliged. From this perspective, if it is established that the continuation of a fully uniform criminal procedural system, generally or with respect to specific groups, produces severe hardship—e.g., children become exposed to serious psychological harm, antisocial motivation, or permanent stigmatization—then the rule of *lā ḥaraj*, as a governing maxim, not only permits but obliges the legislator to make the procedural structure “differentiated” in that domain.

A fiqh-based analysis of this rule indicates that the negation of hardship and intolerable difficulty can constitute an important and valid foundation for these developments and for differentiation, because: (1) uniform criminal proceedings are, as a general matter, hardship-producing for certain groups—such as children; (2) the rule of *lā ḥaraj*, as a governing maxim, does not tolerate the enactment or continuation of such a hardship-producing system; and (3) institutions such as specialized courts, special police units, personality files, and supportive measures have been designed to remove such hardship, even if the legislator has not expressly referenced the rule of *lā ḥaraj*. Accordingly, it may be concluded that the rule negating hardship and intolerable difficulty, alongside other jurisprudential maxims, can provide a robust theoretical framework for the legitimacy and deepening of differentiated criminal procedure in the legal system of the Islamic Republic of Iran, and can open new horizons for the development of supportive and restorative institutions within the criminal process.

### *The “No Harm” Rule (Lā Ḍarar)*

Imamī jurists regard the rule of *lā ḍarar* among the general fiqhī maxims that apply across numerous chapters of jurisprudence—from acts of worship to transactions—as well as in public-law domains. On the basis of these analyses, *lā ḍarar* functions as a “control rule”: where there is a conflict between maintaining the continued application of a norm and averting severe harm from the legally obliged, priority is given to preventing harm, and the relevant norm is limited in that particular case. For this reason, this rule—alongside the rule of *lā ḥaraj* and the demands of justice—has been treated as a major instrument for the reform and completion of the legal system in Imamī jurisprudence. One of the most significant functions of *lā ḍarar* in the domain of criminal procedure is to justify protective differentiations in favor of the accused and even the victim. From the standpoint of this rule, whenever the unconditional application of general procedural rules imposes undue and disproportionate harm upon the accused or the victim, it becomes possible, through the enactment of special rules, to reduce or remove that harm.

The jurisprudential rule of *lā ḍarar* is among the foundational maxims with broad influence in Islamic jurisprudence, with implications extending across legal, economic, social, and political domains. Its importance lies in the fact that where there is a competition between preserving norms and averting harm from the legally obliged, the Shari‘a prioritizes the prevention of harm and explicitly affirms that no harm-producing ruling exists in Islam. The Prophetic tradition “*lā ḍarar wa lā ḍirār fī al-Islām*,” as the core of this rule, is transmitted in both Shi‘i and Sunni sources and has been accepted by the overwhelming majority of jurists.

On the other hand, differential procedure is a contemporary approach adopted by judicial systems in response to the challenges of functional justice and the need to respect individual differences. The philosophy of this approach is that uniform application of procedural formalities is not always just and may, for groups such as children, victimized women, persons with disabilities, older persons, or particular categories of victims, cause irreparable harm. The connection between these two domains lies in the point that applying a single procedural regime to all persons may sometimes produce harm, which cannot be accepted under the rule of *lā ḍarar*. If *lā ḍarar* negates every harm-producing norm, then in procedure one must likewise say: “Any procedural rule whose implementation

harms certain persons must be reformed or made subject to exception.” This simple but foundational principle turns differential procedure from a mere “option” into a “fiqh-based necessity.”

### The Rule of Recourse to Experts (Rujū' ilā al-Khabīr)

The rule of “recourse to experts” is one of the fundamental maxims of Islamic jurisprudence that plays a decisive role in proof, fact-finding, and truth-discovery in disputes. It is grounded in rational judgment, established rational practice, and the endorsement of the Lawgiver; accordingly, it has acquired a firm position in Imamī jurisprudence and has also been reflected in Iran’s positive law.

In contemporary adjudication, the complexity of subject matters, the specialization of disputes, and the expansion of new bodies of knowledge have transformed recourse to experts from a possibility into a necessity. In this context, differential procedure—understood as a mode of adjudication that, depending on the type of dispute, the characteristics of the parties, or the subject matter in issue, employs specialized and distinctive processes—requires theoretical and fiqh-based foundations. One of the most important Sharī'a-based foundations for this type of adjudication is the rule of recourse to experts.

Stated differently, one of the principal aims of procedural systems is to achieve justice, discover the truth, and issue a correct judgment. Realizing these aims in many disputes is possible only through evaluating evidentiary materials and determining the relevant subject matter. Where the subject of the dispute is specialized—technical, medical, financial, engineering-related, or otherwise complex—its determination exceeds the ordinary capacity of the judge, and assistance from specialists becomes unavoidable. In modern law this is discussed under the heading of “expert evidence,” yet its roots trace back to Islamic jurisprudence, where it is analyzed and relied upon as “recourse to experts.” This rule rests on the premise that, where expertise is required, the judge must consult knowledgeable specialists. The rule is not merely an ethical or rational recommendation; due to the Lawgiver’s endorsement, it carries binding force. Imamī jurists, relying on the Qur’an, Sunnah, rational practice, and reason, have established the necessity of consulting experts in cases where determining the subject matter requires specialized knowledge.

Analysis of this rule makes clear that Islamic jurisprudence fundamentally emphasizes the differentiation of subject matters and the variation of methods of determination and adjudication. This logic is precisely the foundational logic of differential procedure in contemporary law. Modern differential procedure is likewise built on the idea that different subject matters require different tools for truth-discovery and that one cannot examine all disputes through a single uniform adjudicative method. A review of the rules of civil procedure, criminal procedure, and the Administrative Justice Court’s procedures shows that Iranian law, in practice and on a broad scale, has drawn upon the rule of recourse to experts. The use of official experts, the formation of specialized panels, referrals to medical commissions, and expert assessments in engineering, accounting, economics, and technology all indicate the prominent presence of this rule in today’s legal system. Moreover, examining the role of expertise in specialized adjudication—such as medical, family, economic, engineering, and technology disputes—demonstrates that differential procedure in practice is not feasible without relying on the rule of recourse to experts. Therefore, this rule is not only the fiqh-based foundation of the legitimacy of differential procedure but also its cognitive and technical mechanism of realization.

## Practical Foundations of the Differentiation of Criminal Proceedings

Among the other strategic foundations for differentiating criminal adjudication are practical foundations. This basis, through a realist perspective, demonstrates the effects of differentiation on the criminal justice system. Accordingly, this section addresses the most important practical foundations of differentiating criminal adjudication.

### *Reducing the Costs of the Criminal Justice System*

Criminality and combating it impose costs on society. These costs have various dimensions, the most prominent of which are social and economic costs. The economic costs arising from criminality include those expenditures that society and the criminal justice system incur for preventing its occurrence, repairing the harms inflicted upon victims, and determining the manner of penal and non-penal responses to offenders (11). Among these, the costs related to compensating victims' losses and the mode of responding to offenders fall upon the criminal justice system and typically manifest in various forms. Once an offense is committed, a number of institutions within the criminal justice system intervene to respond to criminality, including the police, the prosecution office, and the courts. Police measures relating to identifying criminality, discovering relevant evidence, and similar activities; prosecutorial measures concerning the prosecution of suspects, investigations related to the committed offense, and pretrial processes; and judicial measures for trying offenders all require substantial financial resources (18).

In this context, a key concept that—despite its economic underpinnings—has found extensive application in managerialist criminal discourse is “efficiency.” Definitions and conceptualizations of efficiency in management and economics are so diverse and expansive that it is not possible to select a precise and fixed indicator for determining efficiency in the penal system and to use such indicators to measure the degree of efficiency of a justice system.

Among notions of efficiency in economics and management, the indicator of production efficiency appears closer to the adjudicative environment of criminal cases, because in this meaning, efficiency describes the ratio between the resources required for “production” (in the case of courts, the filed cases) and the output of that system (in the case of courts, the issued decisions). In such a system, efficiency is derived from comparing the resources expended and the different outcomes achieved within the same time period. Thus, a criminal court that hears five cases in one day is considered more efficient than a court that hears three cases in the same period. Of course, in such calculations, two underlying factors may also be taken into account. First, in a given criminal justice system, the indicator for efficiency might be a reduction in the resources required to process the same number of cases compared to the past—for example, fewer human and financial resources are used for the same number of cases previously adjudicated. A second indicator is an increase in the number of cases processed with the same prior resources and capacities. In this sense, efficiency and productivity may be used interchangeably; that is, the penal system is deemed to have reached productivity when it closes more cases. Today, the second indicator has become a principal concern of criminal justice systems in the field of case management. Achieving this is highly complex, because it depends on controlling multiple variables that increase efficiency. On the other hand, identifying and controlling all variables affecting efficiency—depending on the type and nature of the system and its performance—is difficult and, in some cases, impossible. Even if policymakers' preference in designing efficiency policy—for example, using fewer resources rather than increasing outputs, or vice versa—is explicit, attaining that objective in many organizational and systemic contexts is not easily feasible. Under such conditions, increasing efficiency—often regarded as the goal of organizations—loses much of its appeal. With the proposed framework, the

complexities facing efforts to increase efficiency in the criminal justice system can, to some extent, be anticipated (19).

What can be stated with certainty is that the indicator of increasing efficiency in the criminal justice system has consistently emphasized speeding up adjudication and processing a greater number of criminal cases within a defined time period while incurring lower costs. For example, if in a given criminal branch 100 cases were concluded with a final decision during one month, then with increased efficiency, that number rises by a certain amount without any change in the allocated resources and time. Therefore, in this account of efficiency, the principal metric is the number of closed cases per branch. In other words, the drive for increased efficiency—under slogans such as combating undue delay, duplication of work, waste of resources, and rising costs—entered criminal justice with the aim of accelerating the penal process so that more cases are adjudicated within fixed time windows, ultimately enabling the system to exit systemic crises. Accordingly, analyzing the penal system's position in terms of efficiency depends on assessing the duration and resources allocated to each case. Emphasis on reducing costs and the length of adjudication transformed the criminal procedure models of many countries, to the point that out of concepts such as efficiency, cost-saving, and effectiveness, a distinctive procedural model emerged—one that differs to a significant extent from inquisitorial–accusatorial patterns and pursues other objectives.

Consequently, by differentiating criminal adjudication in certain cases—given that such offenses are less complex and their gravity is not high—the criminal justice system can employ simpler and more informal mechanisms for prosecution, thereby reducing the costs borne by the justice apparatus; at the same time, the system's capacity can be reserved for more complex crimes. This is particularly necessary in Iran, where the criminal justice system does not enjoy sufficient financial independence and, at times, this lack of independence and dependence on the executive branch affects certain functions of the justice apparatus. Therefore, differentiating the handling of offenses—while maintaining necessary guarantees in cases involving less severe and less complex crimes—can be effective in reducing the economic costs of the criminal justice system (20).

#### *Increasing Accuracy in Criminal Adjudication*

Today, alongside the growth of human populations, criminality has also increased, such that some criminal statistics indicate rising crime rates in human societies. Employing traditional methods of response and adjudication contributes to an increased volume of judicial–criminal case files and, consequently, a decrease in adjudicative accuracy. The need to enhance efficiency and accuracy in the penal process arises from increasing public demands external to the organization and with the aim of enforcing the law. On this basis, external pressure compels judges and prosecutors to create conditions for increasing efficiency (19).

Accordingly, the objective of judges and prosecutors is to find methods for managing cases and handling a given volume of files in less time and with fewer allocated resources. Nevertheless, prosecution and criminal adjudication are variables that may, to some extent, depend on the adjudicative capacity of the judiciary and the overall performance of the penal system. In the theory of managerial adjudication, there is an asserted linkage between efficiency and quality and accuracy in the penal process. In this model, emphasis is placed more than anything on improving managerial methods for screening and managing cases at the preliminary investigation stage rather than at the trial stage. From this perspective, prosecution and preliminary investigations in the prosecution office constitute the most important phase for controlling the variables of efficiency, quality, and accuracy simultaneously.

Therefore, instead of confronting an overwhelming volume of cases and truth-finding tasks at the trial stage, a court system can, by adopting a differentiated approach at the preliminary investigation stage and using mechanisms such as archiving and separating files with a civil-law character from criminal files, issuing archiving orders, suspending prosecutions in minor cases, and referring other cases to trial branches, contribute to increasing efficiency while simultaneously enhancing precision and correctness in adjudication. The effectiveness of this model depends on a significant increase in specialized human resources, the provision of appropriate legal infrastructure, and continuous and rigorous monitoring and evaluation of the prosecution office's performance in implementing such measures. A central emphasis in managerial models is that the majority of facts should be established prior to trial, because many criminal prosecutions are terminated at the prosecution stage. In this manner, while the volume of cases is reduced, the quality and accuracy of judicial decisions issued by courts increases (19).

This is especially so because certain categories of files—such as those involving organized crime, economic crimes, and homicide—require special precision in criminal adjudication. For this reason, criminal policy decision-makers have focused on differentiating criminal adjudication to reduce the number of judicial–criminal case files, because deploying this approach enables the swift removal of some minor cases from the judicial arena and allows judicial authorities to address important criminal disputes with greater care and precision (21). Among prominent examples of differentiated criminal proceedings aimed at increased accuracy are revolutionary courts, military courts, and juvenile courts.

## Conclusion

The differentiation of criminal proceedings represents a structural and paradigm-oriented response to the profound transformations that have occurred in contemporary criminal justice systems. The traditional model of uniform adjudication—rooted in classical penal rationality and premised on identical procedural treatment of all offenders and offenses—has increasingly revealed its limitations in the face of social complexity, diversified forms of criminality, and heightened expectations regarding justice, efficiency, and rights protection. The present analysis has demonstrated that differentiated criminal procedure is neither an ad hoc innovation nor a merely technical adjustment, but rather a multidimensional construct grounded in coherent theoretical, jurisprudential, and practical foundations within the Iranian legal system.

From a theoretical and criminological perspective, differentiated proceedings reflect a shift away from monolithic conceptions of crime and criminal responsibility toward more nuanced understandings of offenders, victims, and social risk. Modern criminological theories underscore that criminal behavior cannot be adequately addressed through a single procedural logic. Instead, factors such as individual dangerousness, vulnerability, social context, and the likelihood of recidivism necessitate tailored responses. Differentiation, in this sense, becomes a rational mechanism for aligning procedural form with criminological substance, enabling the criminal justice system to deploy its coercive and corrective tools in a targeted and proportionate manner.

At the jurisprudential level, the study has shown that differentiated criminal procedure is deeply compatible with, and indeed supported by, foundational principles of *Imamī* jurisprudence. Core *fiqhī* maxims—such as justice and equity, expediency, the negation of hardship, the prohibition of harm, and recourse to expert knowledge—collectively provide a robust normative framework for legitimizing procedural differentiation. These principles reveal that Islamic jurisprudence does not endorse rigid formalism in adjudication, but rather emphasizes flexibility, rationality, and responsiveness to human conditions. When uniform procedures generate disproportionate hardship,

cause unjust harm, or obstruct the realization of substantive justice, fiqh not only permits but requires adaptive procedural arrangements. In this respect, differentiated proceedings are not a departure from Islamic legal thought, but an authentic manifestation of its dynamic and purposive character.

Practically, differentiation responds to concrete challenges confronting the criminal justice system, particularly those related to cost, efficiency, and accuracy. The escalation of criminal caseloads, limited institutional resources, and the growing complexity of certain categories of crime make it impracticable to rely exclusively on conventional adjudicative models. Differentiated mechanisms—such as simplified procedures for minor offenses, specialized courts for complex or sensitive cases, and early filtering at the prosecutorial stage—enable more effective allocation of judicial resources. By diverting low-risk or low-complexity cases from the full weight of formal proceedings, the system can concentrate its expertise and attention on serious, organized, or high-impact crimes, thereby enhancing both efficiency and decisional quality.

Moreover, differentiated proceedings play a critical role in protecting vulnerable groups within the criminal process. Children, victims with special needs, and individuals exposed to heightened social or psychological harm are particularly susceptible to the negative effects of uniform criminal procedures. Procedural differentiation allows the justice system to mitigate stigmatization, prevent secondary victimization, and reduce long-term social damage, while still preserving accountability and legal certainty. In this way, differentiation functions not merely as an administrative strategy, but as a rights-sensitive approach aligned with contemporary standards of human dignity and proportional justice.

Taken together, the findings of this study indicate that the differentiation of criminal proceedings in Iran should be understood as an integrated policy choice rather than a fragmented collection of exceptions. Its legitimacy derives from the convergence of criminological insight, jurisprudential authority, and practical necessity. However, the effectiveness of differentiated procedures ultimately depends on careful design, clear normative boundaries, and strong procedural guarantees. Differentiation must not devolve into arbitrariness or unequal justice; rather, it should be governed by transparent criteria, subject to judicial oversight, and continuously evaluated in light of its outcomes.

In conclusion, differentiated criminal procedure constitutes a rational, legitimate, and indispensable component of a modern and responsive criminal justice system. When properly grounded and systematically implemented, it enhances the system's capacity to deliver justice that is not only efficient, but also fair, humane, and contextually appropriate.

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### **Authors' Contributions**

All authors equally contributed to this study.

### **Declaration of Interest**

The authors of this article declared no conflict of interest.

## Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

## Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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