

The Legal Regulation of Legitimate Self-Defense in Emirati Legislation and Islamic Criminal Jurisprudence

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Abstract

This research aims to study the concept of legitimate defense and its legal framework in both Islamic criminal jurisprudence and Emirati legislation. Through a comparative analysis, it highlights the points of agreement and difference between the two systems and reveals the legal and religious foundations upon which this right rests as a justification for action. The study employs a descriptive-analytical approach, examining religious texts from the Holy Quran and the Sunnah (Prophetic traditions), analyzing the opinions of scholars from the four major schools of Islamic jurisprudence, and studying relevant legal texts in the UAE Federal Penal Code and Emirati judicial rulings. The research addresses the conditions for legitimate defense, its limits, and its impact on criminal and civil liability, while distinguishing it from similar legal systems such as the state of necessity. The study concluded that self-defense is an inherent right established in Islamic law, and in some cases, it even rises to the level of an obligation, particularly in cases of attacks on life and honor. The UAE legislator, however, has regulated it as a justification for self-defense, precisely defining its conditions and regulations. The findings also revealed a significant convergence between Islamic jurisprudence and UAE law regarding the essence of self-defense, especially concerning the conditions of necessity and proportionality, although some differences remain in the scope of its application and legal characterization. The study concluded with a set of recommendations emphasizing the importance of strengthening legal and jurisprudential awareness of the limits of self-defense and the necessity of developing legislative texts to achieve greater clarity and consistency with Islamic principles.

Keywords: Self-Defense, Criminal Jurisprudence, Justification For Self-Defense, Criminal Responsibility

Introduction

Legitimate self-defense represents one of the most significant doctrines in criminal law, as it reflects the balance between individual rights and the collective interest in maintaining social

order. Modern societies continue to grapple with the legal and moral boundaries of permissible force, particularly in light of increasing concerns related to personal security, rising crime rates, and the evolving role of the state in protecting individuals. Within this context, legitimate self-defense emerges not merely as a legal exception, but as a fundamental mechanism through which the law acknowledges the practical limits of state intervention and affirms the individual's right to immediate protection against unlawful aggression.

From a theoretical perspective, the doctrine of self-defense occupies a central position in criminal law theory, particularly within debates concerning justification, culpability, and the moral foundations of punishment. Contemporary criminal law scholarship emphasizes that criminal law is not designed to serve as an instrument of retribution, but rather as a system aimed at safeguarding fundamental social values while preserving peaceful coexistence (Horder, 2022). Accordingly, legitimate self-defense is recognized as a ground of justification that removes the criminal character of an act when it is committed out of necessity to repel an unlawful and imminent danger. This doctrinal understanding is echoed in modern legislation, which permits individuals to defend themselves without imposing upon them the unreasonable obligation to endure harm while awaiting intervention by public authorities (Mahdi, 2024).

Despite the extensive treatment of legitimate self-defense in positive law, a noticeable gap remains in comparative and analytical studies that examine its conceptual foundations and regulatory framework through the lens of Islamic law alongside contemporary legal systems. Recent literature has largely focused either on doctrinal criminal law analysis or on isolated jurisprudential discussions within Islamic fiqh, without sufficiently integrating both perspectives in a systematic manner (Al-Dabbasi, 2024; Al-Aghbari, 2024). This gap is particularly significant given the growing relevance of Islamic legal principles in shaping legislation and judicial reasoning in several modern legal systems.

The research problem addressed in this study lies in the lack of a clear and comprehensive understanding of the nature of legitimate self-defense as a justificatory ground in both Islamic law and positive legislation, as well as the implications of this understanding for determining criminal liability. Ambiguities persist regarding the classification of self-defense as a right or a duty, the scope of permissible force, and the differentiation between defense of life, honor, and property. These issues are not merely theoretical; they bear direct relevance to contemporary legal practice and ongoing social science debates concerning individual autonomy, state authority, and the legitimacy of private use of force.

The significance of this study stems from its attempt to bridge this gap by providing an analytical examination of legitimate self-defense that situates the concept within its broader social, legal, and ethical context. By adopting a descriptive analytical approach, the study seeks to clarify the legal foundations and objectives of legitimate self-defense in Islamic jurisprudence and positive law, thereby contributing to current academic discussions on criminal justification, legal pluralism, and the role of normative values in shaping legal responses to violence.

The Concept of Legitimate Self-Defense from a Jurisprudential Perspective

Dr Mahmoud Naguib Hosni defines legitimate self-defense as “resorting to the use of force in order to prevent an unlawful danger, where such danger may result in harm to persons or property protected by law” (Rabee, 2024).

The term legitimate self-defense is the most commonly used expression in legal jurisprudence, and its counterpart in Islamic jurisprudence is the concept of “repelling the aggressor” (daf’ al-sa’il) (Al-Zein, 2022).

Legitimate self-defense has also been defined as the individual’s duty to protect himself or the life of others in situations of danger, in addition to the duty to protect his property or the property of others from any present and unlawful aggression by using the necessary force required to eliminate the threat (Kardaman, 2024).

Some jurists define legitimate self-defense as the use of necessary force to confront an unlawful and unjustified attack that threatens to harm a legally protected right (Boumaaza, 2021). The right of legitimate defense has also been described as a public right established for individuals with the purpose of repelling or preventing an existing or imminent attack (Abu Aqeel, 2020).

Furthermore, the right of lawful defense may be defined as the right to resort to the use of necessary force in order to repel an immediate and unlawful danger that threatens the legal order. In a similar sense, it may be defined as the use of force whenever necessary to avert an unlawful situation that threatens life or property (Bin Saduq, 2021).

Distinguishing Legitimate Self-Defense from Similar Legal Doctrines

A number of jurists classify legitimate self-defense within the scope of applications of the juristic rule that necessity permits prohibited acts. Some classical juristic works state that “necessities permit prohibitions, provided that they do not exceed what is required by necessity. Thus, eating carrion in cases of starvation, swallowing food with wine, uttering words of disbelief under coercion, destroying property, taking the property of one who refuses to pay a debt without his consent, and repelling an aggressor even if it leads to his death are all permissible” (Al-Aghbari, 2024).

In legal jurisprudence, the state of necessity refers to a situation in which a person faces a danger threatening himself or another person and is compelled to commit a criminal act that harms an innocent third party in his life or property, where no other means exist to avert that danger. In such cases, the danger is typically the result of natural forces rather than human conduct (Al-Labban, 2023).

The state of necessity is considered broader than the case of legitimate self-defense. Several jurists regard legitimate self-defense as one of the forms of necessity (Al-Qahtani, 2023).

The conceptual proximity between the two doctrines arises from the fact that in both cases the criminal conduct is committed in order to confront an unlawful danger, and both operate as grounds of justification. Nevertheless, important distinctions exist between them, including the following:

First, in legitimate self-defense, the source of the danger is the aggressor, whose unlawful conduct gives rise to the victim's right to repel the attack with proportional force. In contrast, in cases of necessity, the danger usually originates from natural circumstances.

Second, with regard to the object of the danger, many legal systems have drawn a distinction between the danger in cases of necessity and the danger in cases of self-defense. Both aim at protecting life or property, whether of the victim himself or of others. However, some jurists maintain that the state of necessity arises only where a specific danger threatens the person committing the act of necessity or another person (Al-Labban, 2023).

In terms of freedom of choice, there is a degree of similarity between necessity and legitimate self-defense, as in both cases the individual has an opportunity to assess the situation and take action to avert the danger (Al-Dulaimi, 2020). However, in necessity the harm is inflicted upon an innocent person, whereas in legitimate self-defense it is inflicted upon the aggressor. In summary, the most significant distinction between necessity and legitimate self-defense lies in the source of the danger. In self-defense, the danger arises from unlawful human conduct, whereas in necessity it arises from natural forces. Consequently, the harm in necessity falls upon an innocent person, while in self-defense it falls upon the perpetrator of the unlawful attack (Abdul-Samad, 2019).

Legitimate Self-Defense in Emirati Law

There exists a general rule governing excess in legitimate self-defense. If the defender exceeds the limits of his right, his act becomes unlawful. If the excess is intentional, the defender is liable for an intentional crime. If the defender misjudges the situation and believes that the method used was appropriate to repel the attack, he bears criminal responsibility without intent. Where the infringement concerns the property of others and amounts to a felony, criminal liability is likewise established (Al-Suwaidi, 2008).

The Emirati legislator has affirmed that legitimate self-defense constitutes a ground of justification and has expressly stipulated the conditions required for its application, recognizing it as a clear right for individuals to defend both life and property (Abu Aqeel, 2020).

Under the Federal Penal Code, the existence of legitimate self-defense is subject to several conditions, including the following:

First, the existence of a danger, whether actual or reasonably believed to exist by the defender, provided that such belief is supported by reasonable grounds and that the danger constitutes a crime against life or property.

Second, the inability of the defender to resort to public authorities in time to avert the danger. Third, the absence of any other lawful means to repel the danger. If the defender is able to avert the danger through a lawful act, he may not resort to self-defense. In such a case, the defender must not be able to avoid the danger without committing the act in question, and his defensive conduct must not itself become a source of danger (Al-Darmaki, 2023).

Fourth, proportionality between the defensive act and the gravity of the danger. Although the commission of a criminal act may be necessary for purposes of defense, it must not exceed

what is required to protect the threatened right. The use of force is considered appropriate where it does not exceed the level that an ordinary person would employ in the same circumstances. This standard is based on the conduct of a reasonable person, and the judge may assess whether he himself would have acted in the same manner or whether less serious means could have been employed, given the surrounding circumstances.

The criminal judge enjoys broad discretionary power in assessing the requirements of necessity and proportionality in acts of defense. This necessitates legislative intervention through explicit provisions defining these concepts and establishing an objective standard to determine their fulfillment (Al-Darmaki, 2023).

The Federal Penal Code provides that the right of legitimate self-defense does not justify intentional killing unless it is committed in order to repel one of the following acts:

- a. An act from which death or serious injury is feared, provided that such fear is based on reasonable grounds.
- b. Rape or indecent assault by force.
- c. Kidnapping.
- d. Arson, destruction, or theft constituting a felony.
- e. Night-time trespass into an inhabited dwelling or its annexes.

Article 57 of the Federal Penal Code.

Article 58 of the Federal Penal Code further restricts the right of legitimate self-defense by providing that it does not justify resistance against a public official in the performance of his official duties and within the limits thereof, unless there is a reasonable fear that such conduct would result in death or serious injury (Abu Aqeel, 2020).

Judicial officers are defined as public officials who, within the scope of their authority, exercise powers of coercion and enforcement in execution of the law or pursuant to superior orders. This category includes police officers and specialized members of the Public Prosecution.

Article 33 of the Criminal Procedure Law identifies the categories of public officials who possess the status of judicial officers. The same law authorizes the Minister of Justice, in coordination with the competent minister or authority, to grant this status to certain officials in respect of crimes falling within their jurisdiction, pursuant to Articles 33 and 34 of the Criminal Procedure Law (2017).

The prohibition of invoking legitimate self-defense against law enforcement officers may be justified by the nature of the duties entrusted to them, which are often rapid and urgent in character. Permitting resistance against such officers would obstruct the performance of their assigned functions. Moreover, allowing resistance against law enforcement officials undermines the authority of the State and the requirements of maintaining public order and security. At the same time, in order to avoid sacrificing individual rights and freedoms, the legislator has established a set of restrictions and conditions that must be satisfied in the execution of arrest warrants. Failing this, individuals may be entitled to resist unlawful arrest (Abu Aqeel, 2020).

In this regard, Emirati judicial practice has adopted the same position as the majority of jurists. The UAE courts rely primarily on the Maliki school of jurisprudence. For example, the Abu Dhabi courts have held that:

“Where the appealed judgment adhered to this view in rejecting the appellant’s defense based on the claim that he was acting in legitimate defense of honor, it is consistent with the law, and the criticism raised against it in this respect is unfounded. It is well established in Islamic law, according to the Maliki school, that homicide is of two kinds only: intentional and unintentional, with no third category. Intentional homicide giving rise to retaliation (qisas) is established where the offender deliberately commits an act leading to death by way of aggression, even if he did not specifically intend to kill. It is irrelevant whether the instrument used is ordinarily lethal or not. As stated in al-Zarqani’s commentary on Mukhtasar Khalil: ‘If the killer deliberately strikes, even with a stick or the like which is not ordinarily lethal, and does so out of anger or enmity, retaliation is due.’ The Abu Dhabi courts have also stated: ‘As for intentional killing, it consists in deliberately striking with a sharp or heavy instrument, by burning, strangling, or otherwise, in which case retaliation is obligatory.’ From this it follows that deliberate assault with any instrument whatsoever that results in death entails retaliation.”

(Appeals Nos. 750, 858, and 888 of 2010).

Under Emirati law, the effect of legitimate self-defense is not limited to rendering the defensive act lawful. It also constitutes a ground for exemption from civil liability for any harm caused to others as a result of the defensive act, as affirmed by Article 288 of the UAE Civil Transactions Law. On this basis, the Dubai Court of Cassation ruled that:

“Any act required by necessity for the preservation of bodies and lives, the establishment of justice, and the implementation of the law of God constitutes lawful activity involving no aggression and giving rise to no liability, even if it results in harm to others.”

(Dubai Court of Cassation, Appeal No. 254 of 2003).

In this context, the researcher maintains that legitimate self-defense constitutes a natural right of the human being that cannot be disregarded. It may be said that, in recognizing this right within criminal legislation, the legislator did not create it *ab initio*, but rather acknowledged a pre-existing right inherent in human nature. The law therefore merely affirms and recognizes this right. Consequently, criminal legislation is declaratory rather than constitutive of the right of legitimate self-defense, and its role is to affirm, protect, and regulate this right through appropriate legal provisions.

Conclusion

Legitimate self-defense is established only in cases where an unlawful assault occurs, such as when the aggressor’s conduct constitutes a criminal act punishable by law. These acts are criminalized because of the dangers they pose, which in turn entitle an individual to defend his or her person or property.

Every individual has the right to defend himself and repel aggression, provided that such defense is proportionate to the attack. The best way to assess the proportionality of self-defense in relation to the crime is to examine the methods used in the defensive act, the physical strength and weakness of the defender, his or her state of health or illness, and

whether the defender is male or female. These factors must also be compared with the corresponding characteristics of the offender.

Islamic Sharia and the UAE Penal Code both affirm the right of individuals to exercise legitimate self-defense in order to protect themselves, their honor, and their property from the aggression of others. Islamic jurisprudence and positive law agree on the obligation to defend life, property, and honor, although they differ in their legal characterization of this duty in terms of whether it is obligatory or merely permissible.

The four Islamic schools of jurisprudence are unanimous in recognizing the permissibility of defending honor, and scholars also agree on the permissibility of defending property. A person is exempt from criminal and civil liability when the conditions of legitimate self-defense are established. Exceeding the limits of self-defense occurs only when it is done intentionally and in bad faith, while actions committed without such intent are not considered Exceeding the limits of legitimate self-defense.

Legitimate self-defense is subject to specific conditions, whether in relation to proportionality and necessity in Islamic Sharia or in the UAE legal system. The UAE legislator has relied on a fundamental principle in regulating self-defense, namely the protection of public interest, which is based on the theory of conflict of rights. Self-defense is established only when all its conditions are fulfilled, and if any of these conditions are absent, the claim of self-defense cannot be sustained. Among the most important of these conditions is the requirement of proportionality.

Recommendations

It is recommended that all Muslims repel any aggression against themselves, their property, and their honor, or against the lives, property, and honor of others, by using the necessary means if access to the police is not available.

There is a need to disseminate the general rules of legitimate self-defense and disciplinary measures among all members of the community in accordance with Islamic Sharia, while also clarifying the penalties imposed on any aggressor.

It is necessary that the criminal judge assess the circumstances of legitimate self-defense in a manner that does not contradict the law. Individuals must also be aware of the limits of legitimate self-defense and refrain from exceeding them.

The subject of legitimate self-defense still requires further specialized studies, particularly within the framework of the UAE Penal Code, since self-defense is a recurring situation in daily life and frequently arises before the courts.

Finally, legal scholars are encouraged to rely more extensively on the evidences and principles of Islamic jurisprudence in order to derive new legal rules regulating legitimate self-defense, as these principles contribute significantly to resolving many disputes.

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