Anonymous Online Offenders - Presumption of Innocence or Presumption of Guilt? A Comparative Analysis between the Evidence Act 1950 and the Islamic Criminal Law

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Abstract

Anonymity is perhaps the most valued feature of the Internet as its users are able to conceal their true identities or assume pseudonyms in the cyber world. Anonymity may be good for freedom of speech as any speakers could freely express their thoughts without the fear of being identified (though not impossible). Unfortunately, anonymity poses great challenges to law enforcement agencies as they would face difficulty in tracing cyber offenders. For that reason, the Malaysian Parliament has passed a new section 114A of the Evidence Act 1950 that has the effect of shifting the burden of proof on the alleged offenders to prove his innocence. This provision seems to be in contrast with the legal maxim of ‘semper necessitas probandi incumbit ei qui agit’ which means ‘he who asserts must prove’. This same principle has also been adopted in Islamic criminal law as the Islamic legal maxim has explicitly stated that ‘the onus of proof is upon the claimant, and the taking of an oath is upon him who denies’. As such, this paper attempts to scrutinise the approach that has been adopted by judges in interpreting and applying this new law. Further, a comparative analysis with Islamic criminal law will be made in order to ascertain whether such principle could be applied in certain cases since cyber criminals are hardly traceable or identifiable. The study is largely based on doctrinal research as it is primarily concerned with the review of relevant decided cases and statutory provisions as well as text books, journal articles and seminar papers. To sum up, it is submitted that the new law does not amount to an automatic presumption of guilt as the prosecutors are still required to prove the existence of relevant basic facts before the accused is mandated to prove his innocence.

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large part from the presumption of innocence. This Essay will argue that these ancillary doctrines, too, are morally questionable. The moral position that American lawyers take in determining criminal responsibility—and in a similar manner, civil tort responsibility—is taught in law schools and becomes part of virtually every American lawyer's moral outlook. 3 The distinction made here is the familiar one in evidence law between the burden of persuasion and the burden of production, both of which are confusingly included under the same rubric: burden of proof. See infra note 35. (4) In general, the presumption of innocence applies only to criminal cases and not to civil cases, 9 and. In reality, the presumption of innocence has become problematic in its wider usage outside the courtroom. Whether we like it or not, this has an unavoidable influence on criminal proceedings. So instead of going down Valenti's line of thinking, we need to effect cultural changes rather than legal ones. The problem is not the presumption of innocence itself, but how it has been misinterpreted by the public. Under the presumption of innocence, we tend not to draw conclusions about the accused, but we’re often not willing to grant this same understanding to the person who says they’ve been abused. The presumption of innocence is one of the most important and ancient rights embodied in criminal justice systems around the world. The right to be presumed innocent until proved guilty is one of those principle that influences the treatment to which an accused person is subjected from the criminal investigations through the trial proceedings, up to and including the end of the final appeal. Presumption of innocence applies only in criminal cases. Defamation is a civil action and therefore presumption of innocence does not apply. 125 views.Related Questions. After serving the sentence the evidence is put to new officials who say it's a prima facie case of perjury by the witness. Can perjury also be defamation? Is it at all common for witnesses to be charged with or found guilty of perjury because they have honestly said “yes” or “no” in response to a question when either answer on its own could reasonably be argued not to have been “the WHOLE truth”? The Presumption of Innocence and the Pakistani Laws: A Critical Analysis in the Light of the Norms of International Human Rights Law. THESIS STATEMENT The Presumption of Innocence, which is recognized by the civilized nation as one of the most fundamental principle of criminal justice system, is still in its rudimentary stage in Pakistan where it is expressly denied in many important criminal laws such as the Control of Narcotics Substance Act 1997, the National Accountability Ordinance 1999 and the most recently enacted Protection of Section 14 of the Act is entirely against the internationally established principle that one is innocent unless otherwise proven by to be guilty whereas the said law means that everyone is guilty unless proved to be innocent.