

Legal and Fiqhi Foundations for Criminalizing Genetic Discrimination

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Article Info

Article type:
Research Article

Article history:
Received
12 May 2025
Received in revised form
18 July 2025
Accepted
05 August 2025
Available online
22 December 2025

Keywords:
genetic discrimination,
criminalization,
principle of dominion,
principle of dignity

ABSTRACT

Advances in the life sciences have expanded the uses of human genomic data, while misuse of such information and genetic discrimination in fields such as employment and health have created serious concerns. The absence of a clear legal framework makes it necessary to examine the legal and fiqhi bases for criminalization. The central question is whether the principles of criminalization justify legislative intervention against genetic discrimination or whether the benefits associated with genetic data prevent such intervention. Using a descriptive-analytical approach and the filtering theory of criminalization, this study argues that genetic discrimination falls within liberty-limiting principles because it violates the interests of others and undermines moral and social values. Criminal sanctions, because of their deterrent force and expressive social censure, are the most effective response. From a fiqhi perspective, access to a person's genetic information without consent and its use for discriminatory purposes are not permissible. Since no fixed punishment has been specified in revealed law, punishment may be grounded in the fiqhi rule that discretionary punishment applies to every prohibited act.

Cite this article: Akhtari, N. A., Gerayeli, M. B., & Mortazavi, S. M. (1404). Legal and Fiqhi Foundations for Criminalizing Genetic Discrimination. *Studies of Islamic Jurisprudence and Basis of Law*, 20(2), 29-52. <https://doi.org/10.22034/fvh.2025.21136.2154>



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DOI: <https://doi.org/10.22034/fvh.2025.21136.2154>

Introduction

Human genomic data now has wide applications in science, medicine, employment, insurance, and public policy. Yet the same data can be used to deny equal rights, benefits, or opportunities on genetic grounds. International instruments issued by bodies such as UNESCO and the World Health Organization emphasize protection of genetic information and prevention of discrimination. Countries such as the United States and France have enacted rules restricting genetic discrimination and protecting genetic privacy. In Iran, although ethical guidance issued by the Ministry of Health prohibits discriminatory use of genetic data, a clear statutory framework remains absent. The study asks whether concerns in employment, health, migration, insurance, and access to welfare justify criminalization, or whether scientific and economic benefits of genetic data should limit penal intervention. Since genetic discrimination is a novel issue with no explicit ruling in the primary fiqhi sources, its analysis also requires recourse to general fiqhi principles.

Methodology and Literature Review

The research is descriptive-analytical and library-based. It examines legal and fiqhi foundations for criminalizing genetic discrimination in national law. Previous works have focused mainly on international measures and the role of states in preventing genetic discrimination; they have not addressed the national legal and fiqhi bases of criminalization in the same focused manner. This gap establishes the novelty of the study.

Findings

Legally, the justification for criminalizing genetic discrimination can be examined through the theory of filtering, which requires passage through the filters of principles, assumptions, and consequences. At the level of principles, genetic discrimination causes deprivation of benefits, job loss, social exclusion, higher insurance costs, and injury to human dignity and feelings. It therefore falls under the harm principle, legal paternalism, and legal moralism as bases for limiting liberty. At the level of assumptions, non-criminal measures are insufficient to secure rights effectively, while criminal sanctions embody social blame and have a stronger deterrent function. At the level of consequences, although positive scientific and therapeutic uses of genomic data limit the scope of criminalization, they do not justify conduct that violates bodily integrity or erodes fundamental social values.

Fiqhi Analysis

From the fiqhi perspective, access by natural or legal persons to an individual's genomic information without prior consent is impermissible under the principle of dominion over the body and its attributes. If such access involves investigation or surveillance, it also falls within the general prohibition of

tajassus, except where genetic information is needed for accurate diagnosis, treatment, and management of illness. Misuse of genomic information for genetic discrimination is prohibited by the principle of no harm and by human dignity, because it injures both individuals and the human community. Consent by employees or insured persons cannot validate discriminatory conduct, since the prohibition of harm and the principle of human dignity prevail over individual dominion in this context.

Conclusion

Genetic discrimination is a new form of social discrimination that deprives persons with particular genetic traits of rights, advantages, and equal opportunities. Although Iranian criminal law does not expressly criminalize it, criminalization is justified to prevent social harm, protect human dignity, and preserve moral values. In fiqh, third-party access to genomic information without consent and its discriminatory use are impermissible. Because revealed law has not fixed a specific penalty, discretionary punishment may be based on the rule that ta'zir is available for every prohibited act.

Declarations

Author Contributions: First author: research design, data collection, analysis, interpretation, and initial drafting. Second author: dissertation supervision, monitoring the research process, reviewing results, revision, and finalization. Third author: advisory supervision, contribution to research design, research monitoring, and article review.

Data Availability Statement: Not specified in the source file.

Acknowledgements: No acknowledgement was declared.

Ethical Considerations: The authors observed the ethical principles governing the conduct and publication of scientific research.

Funding: This research received no specific grant from public, commercial, or not-for-profit funding bodies.

Conflict of Interest: The authors declared no conflict of interest.

Declaration on Generative AI and AI-assisted Technologies: The authors reported using artificial intelligence only for editing and summarization.