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The authority of the judge in the jurisprudential sources and opinions of Islamic thinkers

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Abstract

One of the most important and challenging issues in the evidence system is the subject of the judge's knowledge and the principles and ways to achieve this type of evidence. In the Islamic Penal Code of 1392, the knowledge of the judge is included in the list of other evidences to prove the case. These arguments, even if they are subject matter, are valid in the form of the judge's knowledge, so it has a fluid role in proving the case and has overshadowed the whole field of proof. However, no restrictions have been placed on this and the framework is unclear. In Islamic jurisprudence, which is the source of the provisions of the "Islamic" penal code, the authority of all evidence to prove the claim is widely given, which is natural to analyze all of them is a very large task. The scientific authority of the knowledge of the judge in Islamic jurisprudence and among Islamic thinkers has been studied in this brief. This issue is very important due to the basis of jurisprudence in the legal system of our country. Therefore, in this article, by analytical-explanatory review, we will try to collect, critique and review the existing opinions. In this regard, we will use books, articles, jurisprudential and judicial ideas.

Keywords:authority, judge knowledge, evidence of litigation, UAE, knowledge

Introduction

Understanding what really happened in the case, and in other words, resolving the subject matter of the case, is one of the most important steps for a judge to issue a verdict. Usually, one of the parties to the lawsuit considers the other party as obligated, indebted, guilty, wasting property and accused of committing a crime, etc., and accordingly, takes his lawsuit to court or in unforgivable crimes that have an aspect It is public that the prosecutor, on behalf of the community, initiates proceedings based on the rule that prosecution is mandatory. Certainly, the judge does not have God-like access to phenomena and subjects, nor is it the case that a transcendental light shines from the unseen treasury on the judge's heart and reveals the truth to him. The judge is a human being, and for this reason, in order to know the unknown in front of him, he must use rules and principles that are appropriate to the human perceptual system.

With a little care in the nature and mechanism of proving lawsuits in the courts, we can finally confirm the conclusion that the trial is in fact an attempt to gain knowledge and knowledge on the subject of litigation and therefore, in general, the basics of litigation , Are the same methods and

strategies that human beings use to identify facts and discover their unknowns, because regardless of the fact that both human beings are judged and judged, the judicial unknown is not fundamentally and inherently different from other unknowns in existence. Therefore, the litigation process has a direct and close relationship with the category of understanding. The issue of cognition and knowledge has always been one of the most important intellectual and philosophical issues for human beings, which has been considered as one of the most effective and controversial concerns of philosophers and thinkers from ancient times to the present day. O though transient to them; is it possible to identify the facts in principle or not? And if possible, in what ways and resources and by what methods, principles and conditions can the right beliefs be reached? What are the main components of cognition and science? What does truth mean? What should be the characteristics of justified belief, knowledge and science? Are matters such as belief and justification involved in the nature of knowledge and science? And. ...

One of the examples used by philosophers to explain the epistemological problem and the theory of cognition is to pay attention to the issue of proving claims and how judges discover the truth, and sometimes even books to clarify the point of discussion for the reader. And the writings of epistemologists basically begin with a legal example and example. And do not consider the evidence to prove the claim in the final analysis other than the same issues and problems that exist in epistemology (Pardo, 2010, 37 & Pardo, 2005, 325; also: Tavassoli Jahromi, 1381, 9)

Michael S. "The trial is essentially an epistemological event," said Pardo, an American jurist who conducts relatively extensive interdisciplinary studies in the field of epistemology and litigation. Pardo, 2005, 321.) Thus, to state that there is a profound and fundamental connection between the proofs of litigation and epistemology is not a new discovery and an unspoken point. As we have seen, philosophers and jurists have long been aware of it. . Epistemology is a philosophical field whose main subject is the study of the conditions and theoretical foundations of acquiring knowledge and cognition. Explain the question of which conditions and components can be used to properly claim the knowledge and knowledge of a subject. The process of proving a lawsuit is also an epistemological endeavor, in the sense that the judge, in cooperation with the litigants, seeks to know and gain knowledge about the subject matter of the lawsuit in order to prepare the ground for sentencing.

Therefore, according to the above explanations, since the discussion about knowledge and science in Islamic jurisprudence and among Islamic thinkers has a long history of jurisprudence, we decided, based on jurisprudential ideas and Islamic sources, to analyze the opinion. The jurists and in other words, examine the Islamic opinions and rules as a direct and main source of the Shari'a and, consequently, summarize the opinions of Islamic thinkers in this field. In this regard, with the method of library and research in the form of taking notes and then analyzing and explaining related issues in accordance with the principles of inference of Islamic rules, we will present the issues.

Discussion plan

In general, jurists have provided opinions on the validity or invalidity of a judge's knowledge in criminal and non-criminal matters. We will categorize and present them based on the same ideas that have been raised. Some jurists believe that the knowledge of the judge has authority only in the rights of God, while others believe that the knowledge of the judge has authority in the rights of the people. Some also believe that the knowledge of the judge is absolutely authoritative. In addition to these theories, of course, there are other theories about the authenticity of the evidence, which we will discuss.

The authority of the knowledge of the judge in the rights of God

According to some of the following jurists, Abu Ali Muhammad Ahmad Ahmad ibn al-Junaid al-Katib al-Askafi, one of the Imami jurists, considers the validity of the knowledge of the judge in the rights of God.

Shahid Thani has written in the book Masalak, quoting the book Al-Mukhtasar Al-Ahmadi Fi Al-Fiqh Al-Muhammadi attributed to Scafi: From jurisprudence and martyrdom, the

martyrdom of a single man, and other than that, we know that this is all in the state of his province before.

And the ruler, in the limits of God Almighty, rules according to his knowledge, and in the rights of the people, he rules over what is related to the rights of the people, except for confession and evidence. His knowledge should be at the time of his or her judgment. (Shahid Thani, 1400, vol. 13, p. 383)

Therefore, the judge can only rely on his own knowledge to prove a crime in purely criminal matters or in those parts of matters that have a criminal aspect. For example, in theft, which is a mixture of the right of God and the right of the people, the judge can rely on his knowledge only in the case of the right of God, and in an accusation such as qazf, because it is the right of the people with his knowledge, he cannot issue the hadd of qazf.

It seems that in terms of available jurisprudential sources, this theory does not have a clear support among later jurists.

The authority of the judge in the rights of the people

This theory is completely contrary to the previous view and considers the validity of the judge's knowledge only in human rights:

Some have said: Al-Mahaki on the authority of Ibn Idris and Ibn Hamza is the opposite of this and that is the permission in the rights of the people without the rights of God Almighty. (Fadhil Lankarani, 1406, p. 206) In Al-Sara'ir, he used to say with the first words: When we judge him, he will judge with knowledge in all things (Makarem Shirazi, 1373, p. 67)

Shahid Thani quotes Ibn Adabis in Masalak as saying that he believes in this theory (Shahid Thani, the former, p. 359), but the appearance of his words in Sarayer is the opposite, and he specifies the permission of the judge to know in all cases, although examples He is only concerned with the rights of the people. (Ibn Idris, 1998, vol. 2, p. 179) Maybe he has another book in which he has such an opinion or a mistake has been made in quoting the second martyr Rahmatullah

Another wrote that they are famous for judging science. The science of absolute influence the knowledge of the judge has been quoted from Scafi and it has been narrated briefly that he elaborated and did not accept it in the rights of God and accepted it in the rights of the people and the opposite is transmitted from Ibn Hamza.

Perhaps Marashi's justification, which was useful at the end of the discussion of the judge's knowledge on the subject of demanding the right to resolve disputes and gatherings between the views of Imami jurists, apparently means that those who say that the ruler cannot act on his knowledge is It has been lost and the right holder is present and can defend the right. Ask him to take his right and the ruler is aware of his right. It is necessary to take his right from the debtor and return it to him, although the right holder has not been able to prove his right with evidence or confession of the defendant and if he asks the plaintiff for a reason, the plaintiff's right will be lost. (Marashi, 2006, p. 29)

In jurisprudential principles, there is no reference to the fact that the authority of the knowledge of the judge is exclusively related to the rights of the people, and in general, the two ijtihad statements of Ibn Junaid are not considered according to the mentioned aspects has been.

Some have also written in the explanation of the alleged consensus on the knowledge of the judge, in contrast to the Imamiyya in this matter and the precedence of their consensus Ibn al-Junaid and the latter and only Ibn al-Junaid on the multiplication of opinion, ijtihad and apparent error. In other words, there is no difference between the Imami jurists in this matter.

Absolute lack of authority of the judge

Some have commented on the absolute invalidity of the judge's knowledge, accusing the judge of favoring one of the parties. The author of Riyadh Al-Masa'il, quoting a group including Sayyid Morteza, Ibn Hamza and Ibn Idris Hali, said: Ibn Junaid al-Skafi is on this promise. (Tabatabai, 1405, p. 259)

The second martyr also quotes from Seyyed Morteza as follows: It appears from Al-Murtada that Ibn Junaid does not see the ruler of the ruler with knowledge, absolutely except for that,

etc. The one who prays for the Prophet (PBUH) and the price of the narrator, other than this, seeks martyrdom. (Shahid Thani, the former, p. 284)

Among the Imami scholars, there is no author who is based on this theory, but in general, it can be seen that most of the Sunni scholars have been on this theory. It is worth mentioning that Ibn Junaid already had a Sunni religion, and perhaps for this reason, in some of his theories, the sediments of that religion and praiseworthy inferences can be seen.

Opponents of the authority of the knowledge of the judge have for some reasons considered the validity of the knowledge of the judge as a document of protection in the rights of God and the rights of the people:

The first and most important reason that everyone has put forward is that such an act motivates the people to slander and suspect the judge and the judiciary. Keep away from labels and slanders, and it is obvious that in practice the judge knowingly questions the judge and judgment.

The second reason can be deduced from the concept of confinement in the words of the Prophet of Islam, who said, "I will judge between you with my eyes and my faith. I will judge between you only on the basis of evidences and oaths." In this order, due to the existence of the word "enma", the evidence of a judicial matter has been limited to the testimony of Vimin and there is no mention of the knowledge of the judge.

The third reason is the Alawite hadith in which the knowledge of the judge as a method of proving a claim is not mentioned. In this hadith, it is narrated from Amir al-mu'minin Ali that he said: The rulings of Muslims are based on three things: just martyrdom, decisive oath, and the method set by the Imams. (Ibid. Chapter 1, Hadith 6)

The Sunnis narrated from Umm Salma, the wife of the Messenger of God, that the Messenger of God said, "I am a human being.

The phrase inconsistent with our syntax is used as I hear it. The validity of knowledge is the judge. (Bukhari Al-Jaafi, 1403, p. 86)

The narration of Sheikh Tusi's message is in detail that the height on which he does not rule is based on his knowledge. (Tusi, 1407, p. 68)

Some Sunnis have argued: Later jurists believe that the judge cannot judge with his knowledge in any case, because in these times there is a lot of corruption and the practical practice is still on it today (Alieh, 1997, p. 130)(.

"A judge cannot judge with his knowledge," says Dr. Al-Sanhouri, an Egyptian jurist. Because the judge is the reason for the verdict here, and since the other party has the right to dispute in this reason, it is said that the judge himself has become a party to the dispute and the adversary, and consequently the judge is both the adversary and the ruler, and this is not true. Previous, p. 33(

Mohammadsani, another Egyptian lawyer, also says that the judge's non-judgment according to his knowledge is in accordance with the plaintiff's rule of thumb, which considers it the duty of the plaintiff to prove the case, neither the judge nor anyone else.

Shahid Thani quotes Ibn Junaid as saying that in rejecting the authority of the judge's knowledge in the rights of God, which the ruler can establish hadd with his knowledge requires that he cultivate his soul and inner purity, while the judge's action with his knowledge is accompanied by expressing these meanings. This act is ugly and by committing this ugliness, his justice will be overthrown and it is natural that he will be deprived of justice by expressing grace and will also fall from the position of judge. (Shahid Thani, 1401, p. 258).

Absolute authority of the conventional science of the judge

Well-known Imami jurists believe that a judge can act on his knowledge, whether his knowledge is after holding the position of judge or before that, whether his knowledge has been obtained within the jurisdiction of the judiciary or outside it, or in the rights of the people. Or the rights of God, they have only stated the conventionality of science and in the rights of the people, they considered the right of the rightful owner necessary.

Therefore, if the judge acquires knowledge through unconventional means such as inspiration, Raml, Jafar and Sahar, he has no authority and unconventional knowledge is invalid due to the onslaught of slanders in contradiction with the honorable position of the judge.

Some jurists have written about Sunni theories: Sunni scholars do not agree on the knowledge of the judge. The followers of the Hanafi religion consider the knowledge of the judge in the crimes of the right of the people as a crime after the judge has taken over the position of judge in his jurisdiction. The right of the people to judge.

The jurists have accepted its authority in various types of law due to the application of the evidence of the validity of the knowledge of the judge:

1 -Pure Haqq Allah is like hudud, and with the general meaning of the punishment of ta'ziz, due to the statement of the Shari'ah that ta'zir is also a kind of punishment, it joins hudud except in cases of human rights such as qazf.

2 .The rights of the pure people, such as insulting and slandering

3 .Public rights or the right of the government, such as: driving without a license or cases of government penalties.

4 -Mixed affairs of the right of the people and the right of God such as theft and the right of the government and the right of the people such as driving without a license leads to death.

It is worth mentioning that the Imami jurists have given the right to use the knowledge of the judge to the infallible Imam or the ruler or judge.

According to Mohaqeq Hali, "for the Imam, this is the absolute knowledge of the law, and other things in the rights of the people and in the rights of God." (Mohaghegh Hali, p. 280)

According to Imam Khomeini, the ruler rules with knowledge in the rights of God and the rights of the people. (P. 422).

Mirza Javad Tabrizi, accepting the authority of the knowledge of a non-infallible judge like the infallible one, writes in conclusion: Consensus and permissibility in the rights of God in anticipation, disobedience, richness and secrets.

Sahib Jawahir, relying on three narrations, while emphasizing the absolute validity of the knowledge of the judge in the rights of God and the rights of the people (Muslim rights), wrote: And when Fijib Ali al-Hakim established the limits of God Almighty in the knowledge of adultery, he committed adultery with him, and he was rewarded for it. The view of a man who drank and drank alcohol is the one who stays against the limit, and he does not need to see it with the view of the trustworthy God in creation, and if the opinion of a man is to steal, it is obligatory against Yazbar, Inha, Yamad and Yadah. Scarcity: What bag? They said, *"If it is God, then it is obligatory upon the Imam to stay, and if it is for the people, then it is for the people".*

According to the researcher: The law of Germany, Switzerland, England and the United States has largely followed this theory. (Mahmoudi Dashti, 1373, p. 25)

It seems that science resulting from a set of conjectural and estimation AL principles is considered as unconventional science and science resulting from conjectural and estimation AL principles is considered as normal and conventional science.

Authority of knowledge of the judge obtained during the litigation

Some contemporary Shiite jurists have not accepted the knowledge of the judge absolutely and consider only the decisive knowledge obtained during the litigation to be valid. The ruler and the extent of its effects on judgment have been stated:

There are countless tools for science. The cause that comes to us in time is the cause that is attached to the lawsuits that are brought in the courts and the judge becomes aware of their course or in one of their aspects, and the ruling in the case is valid. The dish and the time in which it occurred are of two kinds:

The first is that the ruling knowledge arises outside the court and before the lawsuit is brought to court.

The second type is that knowledge is obtained when dealing with litigation and from the inherent currents and contradictions of litigation.

The second type, in this chapter, can be divided into the following according to its cause:

1-The judge's own observations and examinations in relation to the material litigation

2-External and non-medical thematic evidence

3-General and obvious matters and preliminaries in which all men share

4- Forensic medicine

5-General Sharia Principles (Mughniyeh, 1964, p. 157).

This Lebanese scholar writes about the permissibility and validity of the judge's knowledge at the end of a specific conclusion from what the famous Imami jurists believe: The ruler can trust and issue a verdict during the consideration of any issue related to the dispute. Of course, if he has conclusive knowledge, whether it is a forensic analogy or a rational necessity or otherwise, because there is no difference between the causes of knowledge, but in the absence of knowledge, it is left to the ruler to either reject the lawsuit altogether. Or, according to the contentment of conscience and trust between him and the Creator, he prefers and strengthens one of the arguments (Ibid., P. 158).

In terms of adapting and explaining Mughniyeh's theory with other theories, especially the famous theory of Imami jurists, it seems that Mughniyeh's theory does not have a specific criterion like the well-known theory, and it does not mean that he is only a decisive science when considering. He considers the argument to be valid and considers the reassuring ordinary knowledge as invalid and considers only the knowledge obtained at the time of the trial to have a proving value, or because he is in the position of expressing the knowledge obtained during the litigation due to inherent currents and contradictions Has been, has considered it as an argument, and in the position of expression, science has not been before the time of trial, and in general, the second interpretation seems to be more correct, because in the writings of proof, personal science has considered a non-judge as valid. The judge can issue a verdict only on the basis of conscience and personal confidence.

The authority of the judge's knowledge in non-perceptual principles

Ordinary science is a science in which there is a possibility of contradiction and it is referred to as certainty, and conjectural sciences are of the type of ordinary sciences. (Bagheri Asl, 2006, p. 17) The elaboration between its principles to sensory, close to sense and conjecture, finally the third type (science derived from conjectural principles) has been considered invalid. In this regard, they have written: It is sensory or close to the senses, and Rad is one of these sensory evidences that indicate the purpose. The meaning that everyone sees is accepted. Because it is based on sensory preparations. (Makarem Shirazi, the former, p. 54)

Some jurists have quoted and critiqued about twenty narrations and finally only some of them have been considered relied on. Some have been damaged due to the document, some due to being assigned to the chapter of fatwa, some due to being assigned to the infallible, some due to the difficulty of implementation (ambiguity) and some due to being assigned to previous nations such as the action of David (AS). This description has been avoided. However, some of these narrations can be relied on, which we will refer to.

1 -Aban Ibn Uthman says that Abi Abdullah found a man and a woman under a quilt and whipped them 99 times.

2 -Hisham Ibn Salem narrated from Abi Abdullah: Amir al-mu'minin (AS) saw a storyteller in the mosque and immediately beat him and rejected him. A storyteller is someone who prevents people from worshiping God with entertaining stories

3 -Muhammad ibn Qays narrates from Muhammad Baqir (AS) that in the time of Imam Ali, a man had two maids. One night they both gave birth. One of the maids gave birth to a son and the other a daughter. To resolve the dispute, they came to Ali (AS) and ordered him to weigh their milk. He said that each one was heavier, the boy is his!

4 -The narration of Sheikh Mofid in Irshad is one of the narrations narrated by Shiites and Sunnis: During the rule of the second caliph, two women had a dispute over a child.

Each claimed that the child was mine and had no evidence, and that no one else had participated in their dispute. How to judge Omar bin Khattab became difficult and dubious. He came to Ali (AS). He also invited the two women, preached and scared them. When they started arguing, he said, "Give me a saw.*" **The women said, "What do you want to do with it?" He said, "I will halve it, half of it for each of you."*** While one of them was silent, the other said Allah Allah, or Abul Hassan! If you want to do this, then I let the child belong to that woman. At this time, Allah Akbar said. This is your child, not that, if he was his child, his heart would burn for him and he would be kind. The other confessed that the truth belongs to the other.

The author of this comment explains the following narration: This narration is also related to the principles close to the senses, but the strong point of the narration is that it is in the rights of the people, and it goes without saying that the woman's confession was after the judge's verdict. (Makarem Shirazi, Previous, p. 95)

The theory of non-authenticity of the judge's knowledge in conjectural matters concludes after the initial mention of authenticity and narration: It is difficult to rule according to such a science because we have no proof of the authority of such a science in the matter of jurisprudence. You already knew that the principle of invalidity of judging someone over another is what is proven by reason, and one of the things that confirms the invalidity of the recent oath (conjectural science) is that if the argument is a quote for the judges to deviate and slip The path of justice and religious judgment is because they are not infallible and we know that some jurists first issued a fatwa on the authority of the knowledge of the judge, but after seeing its corrupt effects, they returned from that fatwa and gave the fatwa on its non-authority. In addition to the judge's conjecture, he slanders the judges even though they have followed the path of truth and moderation. Accordingly, opening up to such sciences in the Shari'a courts causes the people to lose their trust in the courts and sometimes causes the judges to slip. We did not hear the Imams of the Infallibles after him that their ruling was based on the preliminaries and principles of conjecture and science derived from it. (Ibid., P. 54)

Some have also elaborated in response to the authority of the judge's knowledge resulting from conjectural principles, so that conjectural science is of two types, one is conventional and the other is unconventional. Explain that sometimes the knowledge of the judge is learned from the principles of conjecture in such a way that everyone learns from such principles of knowledge, and in other words, all rationals reach the same knowledge that the judge has reached by achieving such conjectural principles, and sometimes science The judge is educated exclusively on the person of the judge from conjectural principles, and this is in a way that rarely happens to another. The first type is called conventional conjectural science or conjectural science close to sense and the second type is called mere and unconventional conjectural science. Therefore, if the judge's knowledge is based on conventional and close to the sense of conjecture, he will have authority, but if his knowledge is obtained from mere conjecture or unconventional conjecture, he will not have authority. (Bagheri Asl, same source, p. 18)

They consider the unconventional conjectural sciences obtained for a judge to be invalid. Unconventional conjectural sciences include sciences that are obtained for certain people and in certain ways, and ordinary people either cannot achieve such sciences at all and the way to achieve them that is specific to them, or rarely ordinary people achieve for such sciences Scientific discoveries, innovations and inventions are based on such sciences. Also achieve some strange, bizarre and unseen sciences from These are the types of sciences and even some philosophers such as Bu Ali Sina and mystics analyze and interpret inspiration and revelation based on these conjectural sciences. (Ashtiani, 1375, p. 588) Judge such scholars and proceed to vote:

However, in this case and regarding the lack of authority of this type of science, the judge cites the following reasons:

1- Practicing unconventional conjecture science causes the judge to be accused. Explain that if a judge bases his judgment and judgment on an unconventional conjecture and is charged, at least one of the accomplices or other people is presented and accused of non-observance

of impartiality or disregard for the evidence, and this causes it weakens the foundations of trust in the judge and ultimately undermines the judicial system.

One may object that the nature of the judgment exposes the judge to the accusation and often accuses one of the judge's accomplices of such accusations; because the answer is that these are two independent issues. That is, it is different for a judge to judge with unconventional and rational documents, so that even he cannot express the citations of his opinion to others and accuse himself with his own hand, or he can use the known religious citations. Legally, customarily and rationally document his vote, but someone accuses him. The first charge is in the hands of the judge and he must prevent it, but the second charge is not in his hands and, unlike the first case, attention to such issues closes the system of judgment and judgment. (Bagheri Asl, the former, p. 20)

2. The principle is that no one has the right to judge anyone; Because judging is a kind of personal guardianship over others and it requires the permission of the Shari'a, and the holy shari'ah has delegated this guardianship to some special people and with special conditions, and one of these conditions is the observance of the evidence of the dispute by the judges. The generalities of the proof of litigation have limited the authority to the evidence and faith (oath). (Ibid.)

The authority of the judge's knowledge other than the extent of adultery

Regarding the validity of the judge's knowledge, it should be noted that the validity of the judge's knowledge can be documented in all cases, but in the case of adultery, it seems that invoking the judge's knowledge is like confession and testimony, and the only way to prove adultery is the same. The evidence is prescribed by Sharia.

Verse 15 of Surah Nisa ': and Allaty Yatyn Alfahshh I Fastshhdva Nsaykm Lyhn repairing Mnkm Frames per Shhdva Famskvhn cottages cardboard or even death Ytvfahn Yjl God Lhn Sbyla

And ask of your wives those who commit an indecency (adultery or fornication) (O rulers of Islam by one who slanders) four men of yourselves (of the believers) to bear witness against them, so if they bear witness. Keep them (in the punishment of this act as life imprisonment) in their homes so that death may take their lives or God may give them (another) way. (This ruling was in the beginning of Islam, and after that, another way was to impose the hadd punishment of adultery on them instead of life imprisonment.).

Verses 2 to 9 of Surah Noor, the only translations of which are given.

Give a hundred lashes to every adulterous woman and adulterous man, and if you believe in God and the Last Day, do not pity them in the religion of God, and a group of believers should be present in their punishment (verse 2). The adulteress or the polytheist should not marry, and the adulteress should not marry except the adulterer or the polytheist, and this is forbidden to the believers (verse 3), Bring them eighty lashes, and do not bear witness against them, and they are the transgressors. And those who commit adultery with their wives and have no witnesses other than themselves, each of them should swear by God four times that he is certainly truthful (verse 6), and [the witness at once]. The fifth is that [the husband] may be cursed by God if he is a liar (verse 7), and he will be punished if he swears by God four times that [her husband] is separate from her. He is a liar (verse 8), and the fifth is anger God bless her if she [the husband] is truthful (verse 9).

It is clear from all the verses of the Qur'an that the way to prove the predicted sharia adultery is confession and sharia martyrdom with more quantitative and qualitative restrictions than other limits, and the basic plan of Islam to reconstruct the adulterer is repentance and return to the sanctity of servitude.

Traditions such as the judgment of Ali (AS) about a man who confessed to adultery but turned away from it, after confessing four times in four sessions, imposed the hadd punishment for adultery. It is well known that, although confession or confession naturally leads to the knowledge of a judge, such knowledge has no precedent regarding the extent of adultery. For this reason, Seyyed Ali Tabatabai has written special cases such as honor issues such as the hadd of adultery in narrations such as our hadith Az Ibn Malik, the poems have been neglected before the hadd was established in them and not after it. (Tabatabai, 1392, vol. 9, p. 259)

Therefore, with the joy of many narrations and customary suspicions about adultery, according to verses 15 of Nisa and 2 to 9 of Surah Noor, it can be said: Sadr al-Islam Masoom (AS) did not use this while he himself used it, just as the holy shari'a of Sadr al-Islam and Masoom did not use it, and this is while considering the field and natural reality of sexual relations, the conventional perception and the obvious knowledge of the judge for the type People are difficult, and assuming the judge cites his knowledge to convict the accused of adultery and enforce the severe limit of adultery, before reprimanding or punishing adultery, the judge himself is exposed to slander. However, there is a possibility of ta'zir of such accused, as it is narrated from Abi Abdullah in the hadith of Aban Ibn Uthman that he said: Ali found a man and a woman under a quilt and whipped them 99 times (Har Ameli, 1403, vol. 27, p. 368) Perhaps it can be said that since confession and martyrdom are not relevant in adultery and sodomy, fornication and adultery, by abolishing the specificity of this sentence, it can be extended to other crimes contrary to the aforementioned chastity and their limit can be proved unproven by the judge. In confirmation of this interpretation, the meaning of two articles 199 and 200 of the Islamic Penal Code of 1392 can be mentioned.

Conclusion:

What was considered in the present study was the philosophical and epistemological studies on the science of the judge in the views of Islamic jurists and thinkers. In order to achieve such a reflection, it can help to clarify the theoretical foundations of the evidence of criminal litigation in general and the judge in particular, and through this, the interpretation and implementation, as well as the reform of the rules and rules of evidence, systematic and directional. To be hanged. On the other hand, the existence of scientific challenges and problems in the field of proof of litigation and paying attention to the fact that these problems are caused by ambiguity in theoretical foundations, epistemological studies on judge science and its foundations have become a necessity. It is because of such considerations and necessities that, especially in recent years, the epistemology of litigation has been seriously studied and pursued in the West and other countries. But in our country, epistemology, in the sense of what is going on in the contemporary world, is itself a young field that is still in its infancy, and with this description, it goes without saying that proof epistemology needs to be examined and analyzed. In his homeland, it means the same jurisprudence and opinions of jurists. With the investigations carried out, it was tried to identify, categorize and critique all the available opinions. By examining the collected opinions, what was certain was that the knowledge of the judge as one of the proofs of litigation accepted by all jurists. And he is a thinker, but in terms of the scope and radius of covering this type of science in crimes on the one hand, and how to achieve it on the other hand has been disputed. Therefore, as the text points out the strengths and weaknesses of each opinion, it is necessary to explain the judge's knowledge within the requirements of time and place; With this explanation, in the current time when the humanities have crossed the boundaries of knowledge and clarified many unknowns to human beings, it is necessary to look at the discussion of proofs from a scientific point of view. Unlike in the past, when the point of view and perspective had a thematic aspect to the evidence, it is necessary to find the attitude and point of view, in this passage, what can be a pendant and help is the knowledge of the judge. Of course, it goes without saying that this view is based on a framework and constraints that require a strong, scientific and capable judicial system. Therefore, in order to achieve justice, which is the goal and purpose of law-making, we must accept this passage and in this regard, use the existing opinions and ideas as a beacon to illuminate the path.

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