

## **Legal Changes in Personal Knowledge of the Judge with Emphasis on Islamic Punishment Law**

By

*<sup>1</sup>Akram Asghari and <sup>2</sup>Syed Ali Asghar Mosavi Rokni*

<sup>1</sup>Department of Criminal Law and Criminology, Qom branch Islamic Azad University, Qom, Iran

<sup>2</sup>Feqh and Islamic law, Qom University, Qom, Iran

### **Abstract**

*Evidence in substantiation of claim is one of the very important legal issues of all legal systems of the world such as legal system of Islam. Some evidences in substantiation of claim are agreed by all Muslim jurists and layers for example, evidence but some other evidences in substantiation of claim are disagreed as well. Personal knowledge of the judge as a pivotal subject of this research is one of the instances of this difference of attitude. Of course, most jurists from the beginning to the present despite difference of opinion emphasize that judge can act based on his knowledge which is acquired conventionally. The most important evidence is that Islamic trial and litigation are stopped in case the knowledge of judge is not proved as evidence in substantiation of claim. In Iran criminal law, the objector of judge's knowledge had not been expressed before establishment of Islamic Republic system but personal knowledge of the judge became synonymous with spiritual evidence system from the viewpoint of lawyers and judicial precedent, therefore, concept and system of the said system prevailed over it. After establishment of Islamic Republic of Iran system, personal knowledge of the judge was regarded valid generally and particularly for proving all crimes by enacting prescribed punishment law and its regulations and also law amending some articles of Criminal Procedure Code and Islamic Punishment Law but articles of these laws which have dealt with the judge's knowledge are heterogeneous and sometimes inconsistent with the juristic decisions. For this reason, considering complexity of the crimes, personal knowledge of the judge was recognized reliable in new judge's knowledge law in order for the penal judge to punish the criminals with appropriate means in all crimes and preferred over other evidences and was regarded as a criterion for evaluation of other evidences in substantiation of claim.*

**Keywords:** *Legal changes, personal knowledge of the judge, Islamic Punishment Law.*

### **1. Introduction**

Litigation and proceeding of the humans' litigation had great role and sensitive position in all human societies because happiness of society depends on justice, the judicial power and quality of its enforcement, therefore, one of the ways of creating a just proceeding is crime detection through the principal ways and by the judicial authorities. Before issuance of the court's verdict, the evidence in substantiation of claim relating to crime or acquittal of the accused is one of the most important stages of criminal proceeding and here, importance of recognition and consideration of the evidence in substantiation of claim becomes evident well. Among the evidences in substantiation of claim in contemporary legal system particularly in judicial system of Islam, personal knowledge of the judge has special place which is disagreed by the jurists but the known view is authenticity of the judge's knowledge, therefore, Islamic republic of Iran legislator had tried to make fundamental changes in system of crimes and punishments based on Islamic rules according to principle 4 of Constitutional Law. For this reason, unlike laws before Islamic Revolution in which personal knowledge of judge was not considered, legislator of Iran makes fundamental changes in system of crimes and punishments and deals with criminal affairs based on Islamic rules after Islamic Revolution. Based on these changes, personal knowledge of judge was predicted in laws of Iran but validity scope of the judge's knowledge and meaning of the judge's knowledge were not explained and remained ambiguous and law 2013 has clarified the ambiguities about its limits.

### **Literal and idiomatic definition of the knowledge and its types**

In vocabulary dictionary, different meanings have been mentioned for knowledge such as knowing, making sure, certainty, insight, knowledge (Amid, 1993: P. 258). Generally, it can be said that knowledge idiomatically means awareness of human with nature of events and phenomenon of the surrounding environment (Mojtabavi, 1987: P. 79). To specify intention of the judge's knowledge, we mention all types of the judge's knowledge to determine where the judge's knowledge is placed.

- 1- Ordinary knowledge: knowledge in Islamic jurisdiction means the certainty which is called ordinary knowledge (Haeri, 1999:46).
- 2- Certain knowledge: certainty means what is mentioned in philosophy. It means that there is no probability of violation in it (the same, 2624).
- 3- General and detailed knowledge: When human studied the surrounding phenomena and the desired subjects, the resulting knowledge and recognition are sometimes perfect and sometimes imperfect and if there is perfect recognition, the resulting knowledge will be detailed and if it is imperfect and incomplete, it will be general knowledge (Ghadimi, 1999:25).
- 4- Personal knowledge: it means knowledge about the case which is called insight in some cases (Jafari Langaroodi, 2007:2631).
- 5- Thematic knowledge: in thematic knowledge, the signified object is the target not a fact (Gheblei, 2008:137).
- 6- Typical knowledge: if human recognition and awareness of the subject matter nature result from conventional ways and presumptions, it will be called typical knowledge.
- 7- tarighi knowledge : tarigh means way and means of reaching objective which is not objective by itself and is not valid (the same :669).

### **Literal and idiomatic meaning of judge**

Judge (ghazi) is the subject of ghazi-yaghzi and means dadras and whose judgment resolves the hostility between the claiming parties (Dekhoda, 1982:15294/10). Judge idiomatically means a person who rules among people and resolves disputes and hostility (Rapni, 1998:63).

### **Meaning of personal knowledge of judge in Islamic jurisprudence and law**

The jurists have presented different views about intention of the judge's knowledge, for example, judge's knowledge is the knowledge which includes personal knowledge (acquired from observation) and typical knowledge (acquired from conventional means of the case) and Islamic jurists didn't make difference between these two cases (Ashtiani, 1404:52). Although knowledge means ordinary knowledge acquired from ordinary means such as sense, succession and the like, not occult knowledge (Ansari, 1415 A.H., 93). Allameh Heli defines judge's knowledge as the knowledge and description of knowledge and awareness and a degree of knowledge which is necessary for judgment (Bahrami, 1999:314). The views of jurists show that judge's knowledge means certainty state, the previous assurance and moral sense which is obtained for the criminal judge by conventional ways on criminality of the accused.

Before dealing with intention of the judge's knowledge in law, we mention views of lawyers about judge's knowledge. It should be mentioned that different and sometimes contradictory theories have been declared for personal knowledge regarding definition of judge's knowledge and what kind of knowledge is regarded as criterion for issuance of judgment in proving the claims.

Some have regarded ordinary knowledge and judge's knowledge as synonymous and have acknowledged that judge's knowledge includes ordinary knowledge which is not probably violated habitually (Khorsandian, 2009:12) or it has been mentioned that personal knowledge doesn't mean the judge's knowledge which lacks valid evidence and only based on personal knowledge. It has been mentioned that judge's knowledge means personal and certain knowledge which is complete certainty (Moosavi, 2002: 20). Generally, the declarations of lawyers and jurists show that personal knowledge of judge should be acquired by conventional and ordinary means. Therefore, personal knowledge of judge legally means assurance and moral sense which are acquired by conventional means and the available evidence validity of which is not doubtful. Of course, it should be mentioned that Islamic Punishment Law 2013

completed all doubts in definition of personal knowledge of the judge and it has been mentioned in Article 211 in definition of the judge's knowledge that judge's knowledge means certainty obtained from documents of the evidence about the case which is mentioned before him and in fact, this article expressed what the jurists have mentioned before and judge's knowledge is the certain knowledge which is the complete certainty. Of course, not philosophical but customary certainty is acceptable to all people though it may be violated philosophically.

### **Historical change of evidence in substantiation of criminal affairs**

In this Section, we try to study what place knowledge of judge has had in each of the different periods of evidence in substantiation of claim. The absolute power period of the tribe's heads: in tribal and feudal societies, the tribe head or king has dealt with the crimes and type and manner of the evidence in substantiation of criminal affairs absolutely depended on his view (Hojjati Kermani, 1984:112).

Trial by ordeal period: this period can be said to be a type of accusatory proceeding system for the ruler and there was no trace of acquittance principle (Ashuri, 2007: 42). Evidence of the witnesses and confession are of the most important evidences in substantiation of crimes.

3. Legal evidence period: in this period, the judges aware of regulations relating to evidence have relied on judgment and have been obliged to discover fact only based on legal formulas.

4. Spiritual evidence or moral sense period: although some criminal evidences may be felt by legislator in this period, the judge is not limited to discovery of fact in the said evidences and should use the mentioned evidence based on moral sense.

5. Scientific evidence period: based on scientific advances and particularly humanities, the judicial system also tried to utilize the scientific evidence for discovery of fact instead of using traditional ways of proving sin.

Common systems are of two types by ways of proving criminal claim: legal evidence system and moral sense (Ashuri, 2006:223). Regarding the governing system of evidence in Islam system, it should be mentioned that holy legislator has mentioned evidence in verses and narrations on the one hand and regarded judge's knowledge highly important as one of the evidences. Therefore, a combined system governed in Islam but regarding the governing evidence system in Iran, it should be mentioned that moral sense system had been accepted in law of Iran (Zaheri, 2004:310). After victory of Islamic revolution and enactment of new laws, it can be said that legal evidence system had been accepted in crimes deserving to punishment and blood money and moral sense system had been accepted in other crimes (Ashuri, 2006:241). According to the writer, it should be mentioned in law 2013 by accepting the judge's knowledge that jurisdiction of the moral sense system of the judge is fully clear but the necessity of mentioning document and evidence of moral sense in judgment has caused limitation in the judge's knowledge and it should be mentioned that legal evidence system also governs, therefore, the combined system governs in punishment law 2013.

### **Studying proof of the judge's knowledge in Islamic jurisprudence**

Considering what was mentioned in Islamic jurisprudence, it can be said that most Sunnite jurists have believed in no proof of the judge's knowledge due to fear of abuse of the judges. Most Shiite jurists believe that judge can act based on his knowledge among the laws and limits including right of God and right of people even if the evident is contrary to his knowledge or oaths are believed by him to be untrue, he should not accept them because he will be regarded as sinful due to fair judgment of Allah and the judge's knowledge will be valid when it has been provided by conventional and ordinary means not unordinary ways such as spiritual exploration and revelation.

### **Trend of changes in proof of judge's knowledge in different laws**

Judge's knowledge in criminal laws before and after Islamic revolution

In laws before Islamic revolution, any of the criminal proof systems had not been accepted but lawyers believed in sovereignty of the spiritual proof system but regarding the criminal laws after Islamic revolution, it should be mentioned that in punishment law 1982 and its regulations which were based on Tahrirolvasileh written by Hazran Imam, ways of proving crimes had been mentioned and legislator has

referred to judge's knowledge only in four crimes including murder, robbery, buggery, lesbianism and in discretionary punishment law enacted in 1983, there is no limitation of evidence, therefore, the evidence for proving crimes under the mentioned law are spiritual and since view of the religious judge is the criterion for judgment in discretionary punishment and correction in Islamic law. Therefore, considering determination of punishment, it can be said that the judge's knowledge is the criterion in discretionary crimes but in law 2013 in which the fifth section has expressed discretionary punishment and prohibitory punishments 1996 and since the fifth section of the first book of Islamic Punishment law 2013 has dealt with substantiation of claim, therefore, it should be mentioned that the judge's knowledge proves all crimes and also includes discretionary punishment and prohibitory punishments. Regarding the judge's knowledge in law for determining revision of the courts' judgments and their proceeding enacted in 1988, it can be mentioned that legislator of law for determining revision of the courts' judgments has regarded the judge's knowledge as highly important. According to him, confession and witness, oath and other evidences had similar way and the established fact and its knowledge are important (Falah, 2004:59). Legislator has accepted in the above law that confession, witness and oath can be violated based on their way and they may disagree with the fact, therefore, it will be effective when it agrees with the fact at discretion of judge (Ahani, 2002:49). Regarding judge's knowledge in law of establishing criminal courts 1 and 2 and branches of Supreme Court of Iran enacted on 10 July 1985, it should be mentioned that knowledge resulting from personal observation of judge has been recognized formally and hearing crimes and issuance of judgment based on the above reasons have been regarded as legal duties of judges (Ahani, 2002:50). We study judge's knowledge in Islamic Punishment Law 1991 and discuss judge's knowledge in Islamic Punishment Law 2013 independently but regarding law 1991, we mention that legislator has considered special evidence in relation to crimes deserving punishment or blood money, for example, he has considered proof of fornication based on witness of four just men or four times of confession by the accused and particularly a chapter as "ways of proving fornication in court, chapter of article 68 later on " or "ways of proving buggery in court, chapter of article 114 later on " or "ways of proving moharebeh and corrupters of the world, article 186 later on "(Ashuri, 2007: 276). For this reason, judge's knowledge has been placed beside other evidences in substantiation of some crimes such as murder, buggery, lesbianism, and robbery in case laws after Islamic revolution (the same, 326). In some crimes such as murder and robbery, the judge's knowledge is one of the evidences for substantiation but article 189 has only referred to confession of the witnesses and has not mentioned judge's knowledge in other crimes such as ways of proving crime of the belligerent and corrupters (Shambayati, 2007:81). In some crimes, no special proofs have been mentioned and this behavior of legislator toward judge's knowledge is different from the famous attitude of jurists. By looking at legal articles such as article 120 of Islamic Punishment Law and particularly article 105 of this law, the apparently accepted theory should be studied deeply beside some proofs for some crimes (Asmiei and Javadi, 2010:99) and this act of legislator has been problematic in Islamic Punishment Law 1991 and there are widespread discussions that if judge's knowledge includes all crimes or it should be only included in the cases mentioned in law. Different views have been mentioned by lawyers in this field. According to the writer, among these views, this view is more acceptable that considering place of judge's knowledge in Islamic jurisprudence and that jurists believe in judges knowledge as source of proof and that Islamic Punishment Law particularly in article 105 of it, views of Imam Khomeini have been followed so that he has empowered the judge to act based on his knowledge absolutely whether in right of God or right of people, therefore, judge absolutely can act based on his knowledge in all cases but shortcoming of legislator is that he has followed تحرير الوسيله in writing method leading to different understandings of law.

### **Judge's knowledge in Islamic Punishment Law 2013**

Islamic Punishment Law 2013 has changed in judge's knowledge and evidence in substantiation of claim. The first change considered in this law relates to a separate part for evidence in substantiation of claim and the fifth part of Islamic Punishment Law 2013 has related to this case.

Although the case laws have paid special attention to judge's knowledge after Islamic Revolution and regarded judge's knowledge as the proofs of some crimes in some cases, we find that this act of legislator is very different from the famous attitude of jurists in Imamate's jurisprudence though some believed that they should pay absolute attention to judge's knowledge in case laws.

But such arguments couldn't hide this reality that judge's knowledge has been far from being theoretical in case laws. Therefore, legislator has mentioned judge's knowledge in chapter 5 of fourth part of Islamic Punishment Law 2013 and the first innovation of this law is that it defined judge's knowledge which had not been defined in the former laws and meant suspicion instead of judge's knowledge in most cases (Goldoozian, 2013:255) and put an end to ambiguities in this field.

### **Concept of judge's knowledge in Punishment Law 2013**

Judge's knowledge has been defined in article 211: judge's knowledge means certainty obtained from documents of the evidence for the case which he has mentioned. In cases the document is judge's knowledge, he shall mention evidences of his knowledge in the judgment. Therefore, judge's knowledge means set of considerations, knowledge and information which judge has acquired to discover the civil or criminal phenomenon and has reached stage of certainty so that it can be used and evidence of the claim because the evidences and proofs cannot prove the contrary case (Elahi Manesh and Moradi Ojghar, 2013: 266-267). By looking at this legal article carefully, we find that the first action of legislator is to mention intention of the judge's knowledge, who has expressly mentioned intention of knowledge in legal article as certainty knowledge. We said that there is certainty knowledge contrary to ordinary knowledge which is more certain and decisive than it. Certainty knowledge or philosophical certainty is the absolute fact which is very difficult to achieve in theoretical sciences and legal and judicial issues, therefore, it should be mentioned that in law, certainty knowledge doesn't mean its philosophical concept which doesn't tolerate the contrary probability but it means a knowledge which causes tranquility and comfort. If the judge achieved such certainty, there would be no need for revision of the judgments. Therefore, certainty in article 211 means customary certainty (Diani, 2010:360).

### **Ways of achieving judge's knowledge in Islamic Punishment Law 2013**

Ways of achieving judge's knowledge have been mentioned in note of article 211 in which some cases such as expert's view, place examination, local investigation, comments of the informed person, report of the executives and other extrinsic evidences which are based on knowledge can be supported by the judge's knowledge. Anyway, only inferential knowledge which doesn't cause judge's certainty cannot be a criterion for issuance of judgment. What should be considered based on this note is that the mentioned ways are not conclusive because there is no limitation in this field by mentioning other extrinsic evidence which is based on knowledge and judge can use any sign and effects which indicate reality or help achieve the case as the document of the judgment, of course, value of evidence depends on view of judge based on special circumstances in any case as a true confession may be regarded as untrue in a case and vice versa. In another case, he may recognize certificate of a minor child sufficient for proof of an accusation (Akhundi, 2006:80).

Characteristics of judge's knowledge in Islamic Punishment Law 2013

### **Necessity of judge's knowledge documentation**

Therefore, the important condition in judge's knowledge is its documentation and judge should mention documentation of his knowledge and documentation of his knowledge is certain knowledge evidence and the judge should mention documentation of his knowledge and documentation of his knowledge is the certain knowledge evidence (Esmaeili and Javadi, 2013:97) which may be obtained as theory of expert, neglect and seeking benefit of knowledge (istefazeh) which is acquired by the local investigation or location examination.

Single fair news and many other evidences which are reasonable, the judge is obliged to mention type of documentary evidence. Then, he rejects or proves it logically and in case it is repetitive or weak, he

should refer to repetition and weakness expressly with evidence (Diani, 2010, Vol. 27). Therefore, if judge finds him needless of mentioning his knowledge documents and acts based on his knowledge, he may be accused of bribery and injustice particularly when the proceeding is not public (Esmaeili and Javadi, 2013:97) and considering Article 163 of Islamic Punishment Law 2013 which stipulated that if evidence of proving the crime is void, those who are accused of damage will be condemned to punishment or payment of blood money or discretionary punishment stipulated in law and pecuniary compensation. According to the writer, this case includes judges as well and if it is evident in the next stages that the evidence based on which judge has issued judgment is not reasonable, the judge will be also punished.

#### **Necessity of reasonableness of the judge's knowledge**

It should be mentioned that judge's knowledge should be reasonable meaning that such knowledge should be accepted and cannot be violated. In Islamic Punishment Law 1991, since it was mentioned in Article 20 that the religious judge can give judgment according to his knowledge which is acquired conventionally and reasonably, most lawyers regarded reasonability as one of the characteristics of judge's knowledge and mentioned that judge can give judgment based on knowledge which is acquired conventionally and reasonably. In case judge acquires knowledge about the subject based on prediction, soothsaying, dream, hypnotism, magic and telepathy, it will not be valid and provable (Diani, 2009: 230-243). In Islamic Punishment Law 2013, legislator has not included reasonability condition in the fifth section; however, one can receive necessity of reasonability of judge's knowledge from note of Article 211 which has specified ways of acquiring knowledge for judge and some cases such as expert's view, location examination and other evidences. Necessity of reasonability is justifiable so that the issued judgment can be reevaluated by the next judges in higher authorities.

#### **Judge's knowledge on top of the evidence**

It is necessary to note that evidence for proving claim is in length of each other according to the believers in provability of judge's knowledge and judge's knowledge has been on top of all evidences. In other words, judge's knowledge is the stronger evidence (Kani: 204). However, considering article 212 of Islamic Punishment Law 2013 which mentions that in case the judge's knowledge is contradictory to other legal evidences, if knowledge remains as evidence, that evidence will not be valid for the judge and the judge will issue judgment by mentioning documentation of his knowledge and reasons for rejecting other evidence. In case knowledge is not acquired for judge, legal evidence will be valid and judgment will be issued based on them. It can be said that judge's knowledge is preferred over other evidence for substantiation of crime and will be valid per se because knowledge is preferred over other evidence for substantiation of crime in terms of complete discovery and also moral sense which is created in judge (Khorsandi, 2004:31). This is the point which legislator has included in the new law. Of course, it should be mentioned that the priority of judge's knowledge in Islamic Punishment Law 2013 depends on the following conditions: firstly, knowledge of evidence should remain against other legal evidences and judge should have certain knowledge about the related issue because it has been mentioned in note of Article 211 that the inferential knowledge which doesn't cause certainty of judge is not a criterion for issuance of judgment by judge. On the other hand and more importantly, judge should be able to mention documentation of his knowledge and according to article 212, it is not only enough to mention document of knowledge by judge and he should be able to mention other evidences due to rejection. For this reason, the legislator in Islamic Punishment Law 2013 has mentioned judge's knowledge in article 160 after three other evidences like the previous laws while he it has given priority to judge's knowledge in Article 212. Therefore, there is no doubt that judge's knowledge is on top of all evidences. Comparing judge's knowledge with other religious evidences in Islamic Punishment Law 2013

#### **Judge's knowledge and its relation with confession**

In Islamic Punishment Law 2013, confession has been defined as news of the person about committing crime by himself. Confession has been regarded as the best and the most certain evidence for moral sense of judge about conviction of the person from the ancient times though there are doubts in truth of this

speech. Islamic Punishment Law 2013 enacted in 2013 also expressed that other evidences are not used in case of confession unless the evidences are contrary to the confession. In this case, the court should investigate the case (Mir Mohammad Sadeghi, 2013:444). Of course, it should be mentioned that basis of confession is typical ordinary knowledge (Langroodi, Vol.1, 1997:178). Ordinary knowledge proof depends on failure to acquire knowledge contrary to it. Therefore, when the contrary knowledge is acquired, this ordinary knowledge can be hardly followed (Broojerdi, 2008: 10). As we mentioned based on Article 161 of Islamic Punishment Law 2013, if judge has knowledge contrary to the religious evidence such as confession, he will not issue judgment based on it. Therefore, confession may be based on realization of knowledge and certainty of judge about committing or not committing crime by the accused though the beneficiary has denied his previous words after it, therefore, confession doesn't rely on discovery and expression of truth and for this reason, confession is transferred to judges for free evaluation like other evidences (Goldoozian, 2013:2008).

#### **Judge's knowledge and its relationship with witness**

It should be mentioned that before Islamic Punishment Law 2013, there was no definition of witness. Perhaps, there was no need for giving a definition for it due to clarity of this word and the truth of the conventional meaning was regarded as sufficient (Diani, 2010:196). By virtue of Article 174 of Islamic Punishment Law 2013, witness means personal news other than the parties about occurrence or non-occurrence of crime by the accused or any other person before judicial authority. Article 176 of Islamic Punishment Law 2013 stipulates that in case the witness is not qualified, his comments will be hearable and effect and value of these comments in judge's knowledge are recognized by judicial circumstantial evidence (Shabiani, 2013:241). As a result, witness is one of the most important means of proving criminal claim. To clarify the discussion and recognize the events, this type of evidence has been highly emphasized and the judges will believe in it (the same, 214).

#### **Judge's knowledge and its relationship with oath**

Legislator defines oath in Article 201 of Islamic Punishment Law 2013: oath means calling God to witness for truth of word of the swearing person (Shambiani, 2013:249). In criminal cases, refusing to take an oath doesn't cause punishment and only true confession leads to punishment. Implicit confession causes continuity of doubt which is in favor of the accused and legal punishments are cancelled in such cases by virtue rule. In this regard, avoiding taking oath doesn't prevent acquittal. In legal system of Islamic Republic of Iran, oath causes proof of right in some cases and waiver of right. At the end, it should be mentioned that judge has determining role in oath considering Article 161 and 162 of Islamic Punishment Law 2013 and if judge has the knowledge against oath, he will not issue judgment based on such oath. Compurgation is also a type of oath which is used based on the accepted principle in some Islamic countries only in specified cases (Goldoozian, 2013:227). Articles 312 to 366 of Islamic Punishment Law 2013 entitled "ways of proving crime" have dealt with subject of compurgation. Based on Islamic jurisprudence, compurgation is a method with which the claimant, defendant and their familial males can cause convention of acquittal of a person accused of committing crime in case of suspicion by taking an oath (Shahid Aval, 2010:270). This meaning has been reflected in Article 314 of Islamic Punishment Law 2013. Considering articles 212 and 213 of Islamic Punishment Law 2013, compurgation is in the last order of evidence for substantiation of crime in terms of hierarchy. Therefore, it is justifiable to rely on it only in case of lack of confession, evidence or judge's knowledge (Mir Mohammad Sadeghi, 2013:460).

#### **Conclusion and suggestions:**

Considering what was mentioned, the following results can be achieved:

1- In our Criminal law, evidence in substantiation of crime is of special importance. Today, legal relations of people have special difficulties and complexities on the one hand and progress of science and technology allow criminals and offenders to be immune against prosecution and punishment by different means. Therefore, it will be difficult for the legal authorities to prosecute the criminals. For this reason,

more success of judicial bodies depends on the fact that the judges should have more freedom of action for discovery of fact in proceeding. For this reason, we see that Islam law has recognized judge's knowledge as one of the evidences for substantiation of crime some centuries ago.

2- if we mean Judge's knowledge by personal knowledge of the judge which is acquired suddenly and this knowledge is not result of proceeding and the evidence in the case but only judge has access to it, it will not be provable though it may be subject to undesirable results, for example, judge will have to give judgment unlike his knowledge and certainty but what we considered from the judge's knowledge means certainty which is acquired by conventional ways.

3- In laws before Islamic Revolution, judge's knowledge was not mentioned but after victory of Islamic Revolution in Iran judicial system, widespread changes were made, for example, prediction of judge's knowledge among the evidences for substantiation of claim. As a result, legislator of Iran didn't use a single policy regarding judge's knowledge in criminal affairs and this caused contradictory interpretations of law. one of the important evidences which believers of the unlimited proof of judge's knowledge mentioned was that since they believed proof of judge's knowledge in jurisprudence sources and legislator tried to legitimize laws and their single source was the book "Tahrirolvasileh", they have translated its term and provided it in the form of law as mentioned there. This action of legislator caused difference of opinions and different interpretations of limitation or non-limitation of proof of the judge's knowledge. on the other hand, all lawyers believe that acceptance of judge's knowledge is necessary as one of the ways of proof because it cannot be expected that many crimes be proved through confession or evidence (witness), therefore, legislator defined judge's knowledge in this law by including jurisprudence source and also problems of laws before him and need of society and mentioned that judge's knowledge was certainty obtained from documentation of evidence and certainty also means customary not philosophical certainty.

## Suggestions

1. Since judge's knowledge is provable in all crimes in Islamic Punishment Law 2013 and legislator finds judge's knowledge acceptable when judge mentions documentation of his judge and documentation of judge's knowledge includes different types of circumstantial evidence and since new knowledge in different fields can help judges in this field. Therefore, judges who are familiar with these knowledge to some extent help judges recognize the case and judges better can recognize the truth or untruth of the expert's view in different cases based on presentation of experts' view and judges can be trained to have specialty in special field such as robbery, murder, marriage portion and alimony etc.
2. Specialized laboratories and faculties of crime should be established for fingerprinting, blood test, genetics and identification of crime effects etc. in any province (or some provinces) so that the judge achieves the truth with help of experts and other theorists.
3. Some working groups should be formed in each province from specialists of different fields to be given to the judges by studying the cases for which it is difficult to issue judgment and the scientific results obtained by them so that other cases can act more skillfully by studying these results and obtaining sufficient experiences.

## References

- Esmaeili, Mokhtar and Javadi, Mohammad Hassan, Analytical and Educational Research Journal, Tehran: Majd, fourth year. No. 15, 2010.
- Ansari, Morteza. القضاء و الشهادة. Ghom: Alhadi Institute. 1315 A.H.
- Akhundi, Mahmoud, Criminal Procedure. Tehran: Publication Organization, First Vol. 14<sup>th</sup> edition. 2007.
- Ashtiani, Mirza Mohammad Hossein, كتاب القضاء, Ghom: Zahir Publication, first edition. 2004.



- Ashuri, Mohammad, Criminal Procedure, Tehran: Samt Publication, second Vol.:2004.
- Bakhshi Zadeh, Amin. Islamic Punishment Law (prescribed punishment and retaliation of blood money), Tehran: Andisheh Asr, first edition, 2013.
- Bahrami, Bahram, Evidence in substantiation of claim, Tehran: Negah Bineh Cultural Institute, first edition, 2008.
- Jafari Langaroodi, Mohammad Jafar. Encyclopedia of Judicial Islamic Sciences. Ganj Danesh Publication. Third edition, 2008.
- Haeri, Ali. Judge's knowledge in criminal and legal proceedings. Tehran: Khaghani Publication, first edition. 2002.
- Hojati Kermani, Ali. Trend of judgment in different periods of history, Tehran: Mashal Publication Institute. Ahl Beit Edition. 1990.
- Amoli, H. Valaeloshieh, Alghaza book (Abvab, Judges's features, Part 2, Vol 18).
- Khorsandian, Dr. Ali Mohammad Ali, Studying proof of judge's knowledge in Islamic Jurisprudence of Iran. Dadgostari legal journal. No. 43. 2003.
- Khomeini, Rohollah, تحرير الوسيله, 2 Volumes, Vol. 2, Tehran: Imam Khomeini's works Publication Institute, 2000.
- Dehkhoda, Ai Akbar, Dictionary. University of Tehran, 1961.
- Diani, Abdolrasool, Evidence in substantiation of claim in civil and criminal affairs, Tehran: Mizan, first edition, 2010.
- Raini, Tahereh. Judgment of woman in Islam. 1998.
- Shambiani, Hushang, Private Criminal Law. Tehran: Majd. First volume, second edition, 2014.
- Sani, z. 10 vol (Alghaz book). Qom: Elmieh publication.
- Taheri, Mohammad Ali. Determining regime for criminal evidence in judicial system of Iran. Collection of papers in honoring Dr. Ashuri, Tehran, Samt, 2004.
- Amid, Hassan. Persian Dictionary, Tehran: Amir Kabir, sixth edition, 1985.
- Fallah, Mehdi. Judge's knowledge in juristic and legal approach. Religious human research. No. 1, 2004.
- Gheblei, Khooei, principles in Islamic jurisprudence and case laws: Tehran, Samt, edition 2008, 5.
- Ghadimi, Norollah. Provability of judge's knowledge. M.A. Thesis. Tarbiat Moallem University.
- Kani Tehrani, Ali (1399). Bita. Alghaza book.
- Goldoozian, Iraj, Evidence in substantiation of claim, Tehran: Mizan, 2004.
- Goldoozian, Iraj, Islamic Punishment Law, Tehran: Majd, second edition, 2014.

Langroodi, Jafar, Legal Encyclopedia, Amir Kabir Publication Institute. Vol. 4. Third edition, 2001.

Morad Khani, Ahmad. Provability of judge's knowledge. M.A. Thesis. Theology and Islamic Knowledge. Trabiati Modarres center of Ghom Theological School. 2004

Mir Mohammad Sadeghi, Hossein, Private Criminal Law. Crimes against property and ownership. Tehran: Mizan. First edition, 2006.

Mir Mohammad Sadeghi, Hossein, Private Criminal Law. Crimes against person. Tehran: Mizan. First edition, volume 13. 2013.

Elahi Manesh, Mohammad Reza and Moradi Ojghar, Mohsen, Private Criminal Law. Tehran. Majd. First edition, 2013.

laws

Trials Principles Law 1950

Criminal Procedure Code 1999

Discretionary Punishment Law 1983 and 1996

Prescribed Punishment and Retaliation Law 1982

Islamic Punishment Law, 1991

Islamic Punishment Law 2013

Criminal Procedure 1911

Islamic Punishment Law 2013