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The Knowledge of the Judge and Other Proofs in the Afghan Jurisprudence and Law Assessment Center

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Abstract

The knowledge of the judge as one of the methods of proving a criminal case, especially in cases where the issue cannot be proven by other proofs of the case, is a path-breaker for the judge, according to the approach of the conscientious persuasion system in the legal and judicial system, where the knowledge and persuasion of the judge is the basis and the criterion of the validity of the evidence of the lawsuit. That is, the evidence of proof is included in the document of the verdict if it convinces the judge's conscience. The purpose of this research is to analyze jurisprudential data based on Imamiyyah and Sunni jurisprudence and the procedures of Afghanistan's legal system in the field of validity and superiority of the judge's knowledge compared to other proofs, by adopting the descriptive and analytical research method. The findings of the research show that among the Islamic jurists, the Imamiyyah jurists often consider the judge's knowledge as absolute proof, but on the other hand, the Sunni jurists mostly consider the judge's reference to his knowledge to be against the Prophet's way of life and to slander him. Jurists also believe that the judge can only use his knowledge to evaluate the reasons and draw conclusions from what is presented to the court, but he cannot rely on his knowledge to prove the claim or deny it. In the subject law of Afghanistan, the knowledge of the judge, which is obtained through Emirates and conclusive evidence, is accepted in criminal matters both as the support and validity of other evidence and as one of the evidence to prove the criminal case. After examining the validity of the proofs and determining the scope of the judge's knowledge, the relationship between the judge's knowledge and other proofs of the lawsuit is determined. Comparing the judge's knowledge with confession in criminal and civil matters is different. Since the confession is detrimental to the individual and the validity of knowledge is inherent in the assumption of conflict, the judge's knowledge precedes the confession, but in civil matters, there is no conflict and the judge is obliged to rule according to the confession. In the case of a conflict between the knowledge of a judge and evidence, since knowledge is definite and certain, but evidence and testimony are amara, and the validity of the knowledge of a great person is from amara, knowledge should be preferred over amara. The investigation and examination of the crime scene, the opinion of experts, as well as evidence and emirates, are all the introduction to the knowledge of the judge, and the possibility of conflict in them is unimaginable because all their validity and value is to convince the judge's conscience.

Keywords: *The Knowledge of the Judge; The Proofs of the Case; The Conscientious Persuasion System; The Emirates and the Evidence; The Afghan Jurisprudence and Law Assessment Center*

Introduction

The First Word

The knowledge of the judge as one of the methods of proving a criminal case, especially in cases where the issue cannot be proven by other proofs of the case, is a path-breaker for the judge, according to the approach of the conscientious persuasion system in the legal and judicial system, where the knowledge and persuasion of the judge is the basis and the criterion of the validity of the evidence of the lawsuit. That is, the evidence of proof is included in the document of the verdict if it convinces the judge's conscience.

The purpose of this research is to analyze jurisprudential data based on Imamiyyah and Sunni jurisprudence and the procedures of Afghanistan's legal system in the field of validity and superiority of the judge's knowledge compared to other proofs, by adopting the descriptive and analytical research method.

The findings of the research show that among the Islamic jurists, the Imamiyyah jurists often consider the judge's knowledge as absolute proof, but on the other hand, the Sunni jurists mostly consider the judge's reference to his knowledge to be against the Prophet's way of life and to slander him. Jurists also believe that the judge can only use his knowledge to evaluate the reasons and draw conclusions from what is presented to the court, but he cannot rely on his knowledge to prove the claim or deny it.

In the subject law of Afghanistan, the knowledge of the judge, which is obtained through Emirates and conclusive evidence, is accepted in criminal matters both as the support and validity of other evidence and as one of the evidence to prove the criminal case. After examining the validity of the proofs and determining the scope of the judge's knowledge, the relationship between the judge's knowledge and other proofs of the lawsuit is determined. Comparing the judge's knowledge with confession in criminal and civil matters is different. Since the confession is detrimental to the individual and the validity of knowledge is inherent in the assumption of conflict, the judge's knowledge precedes the confession, but in civil matters, there is no conflict and the judge is obliged to rule according to the confession. In the case of a conflict between the knowledge of a judge and evidence, since knowledge is definite and certain, but evidence and testimony are amara, and the validity of the knowledge of a great person is from amara, knowledge should be preferred over amara. The investigation and examination of the crime scene, the opinion of experts, as well as evidence and emirates, are all the introduction to the knowledge of the judge, and the possibility of conflict in them is unimaginable because all their validity and value is to convince the judge's conscience.

1. Concepts and Generalities

1-1- Concepts

The concept and meaning of judge science is personal and normal science. That is, whenever the judge's knowledge is mentioned in the topic of justice and crime proof, the knowledge means the personal and normal knowledge of the judge regarding the disputed subject and disputed reality. This knowledge may be obtained as a result of experiences and studies of sciences, etc., with a series of references or through the study of research and explanations and arguments of the parties for the judge. Therefore, the meaning of science in scientific discussions is the normal and personal science of the judge. Not legal science, which is opposed to rational and narrative evidence. Mastering it is necessary and certain to hold the job of judgment. Basically, evidence to prove a claim is one of the manifestations and examples of normal science. The meaning of science in the principles of jurisprudence is to cut off suspicion, and its truth is nothing other than the development of reality and truth in its entirety. (Bayhaqi, 1077-1449, 106)

But in jurisprudence and law, it is not meant to reach this knowledge that leaves no unknowns in it; Rather, it is normal and conventional knowledge that is included in law as a means of settling and resolving claims.

Normal science means science that most people and ordinary members of society do not pay attention to the possibility of the opposite when they achieve it, even though the possibility of the opposite is rationally possible. If the judge knows the truth during the trial, which common sense can say that he does not act on his knowledge and only pay attention to the evidence presented? When the action is based on traditional evidence (confession and evidence) which is an incomplete and suspect discovery, normal knowledge or certainty can be documented first, and for the judge, normal knowledge is not simply achieved, and if the judge's level of knowledge is higher than normal knowledge, there is no room for discussion in practice. (Jalaluddin Madani, 1937, p.379)

Therefore, in criminal law, which is often compiled based on the standards of Islamic law, the knowledge of the judge can generally be used to prove all crimes, the right of God, and the crimes related to the right of the servant, and in particular, as one of the proofs in some crimes, but the Afghan legislator in none of the law on the principles of criminal proceedings and the principles of civil trials, and other laws have not defined the judge's knowledge. Only one of the jurists, following the concepts and sources of Islamic law, has provided a definition of the knowledge of the judge, which can be considered the accepted definition of the current criminal law. According to him, what is meant by the knowledge of the judge is the knowledge that is based on his certainty or confidence in assigning or not assigning the crime to the accused. (Dictionary of criminal terms and titles, vol. 1, pp. 315-314)

2-1- Generalities

1-2-1- The importance of the judge's knowledge: The importance of the judge's knowledge is such that in the case of conflict and conflict between the testimony of witnesses and the judicial emirate, the side of the emirate should be preferred. Because; The judge ensures the judicial authority directly; While listening to the testimony for him (instead of creating knowledge) only creates suspicion and that is knowledge indirectly. (Evidence to prove the lawsuit, 1937, p.388)

2-2-1- Basics of judge's knowledge: Basics of the judge's normal and personal knowledge are: legal evidence, especially the Emirates, and judicial evidence, and things that have not been proven by the legislator as evidence, but are certain for the judge. (Evidence to prove the lawsuit, 1939, p. 2). Of course, after the end of the trial, the judge cannot acquit the accused simply on the basis that he knows about his innocence, without specifying the basis of the knowledge, or in the position of sentencing, say that he will not consider any of the reasons based on the knowledge obtained, and sentence the accused to imprisonment and a fine. According to his knowledge, he can issue a ruling when he can record the reasons for which he knows the file and show that his opinion is justified. (Criminal procedure, 1937, p.37)

1-2-3- Characteristics of the knowledge of a judge: The knowledge of a judge is acceptable and reliable when it has the following characteristics:

A) The conventionality of the method of studying science: it is a valid science that has been provided through conventional and usual ways, not through unusual ways such as revelation and inspiration or strange sciences such as Jafar, Ramel, artificial sleep, hypnosis, magic, etc.; That is, the knowledge of the judge must be obtained in a way that people usually study science and produce results in that way. In any case, if knowledge is conventionally obtained by the judge, there is no reason to violate the judgment issued at higher stages, and if the knowledge is not obtained conventionally, the judgment issued will be overturned in subsequent courts.

b) The need to mention reasons for the emergence of knowledge in the judgment: The second feature and very important condition for the possibility of a judge adhering to his knowledge is that he must mention the documentation of his knowledge. Article 249 paragraph 7 of the principles of criminal proceedings in Afghanistan also obliges the court to mention the reasons for issuing the final verdict. Now, these reasons may be in the form of expert theory or any other certainty. (New methods of crime proof,1969 , p. 100)

c) Existence of documented source of knowledge in the file: The source of the judge's knowledge must be present in the file, and the said knowledge must be documented with reasons, proofs, and evidence, and it should be studied after hearing the statements and defenses of the parties to the lawsuit and defense in the investigation and trial sessions. Thus, in criminal law, the knowledge resulting from seeing or listening to the criminal event or the personal knowledge of the judge outside the court lacks validity and legal validity; Therefore, the judge's knowledge should be obtained by studying the file and the circumstances and evidence in the file. If the judge considers it unnecessary to state the documents of the source of his knowledge and acts on his own knowledge, especially in cases where the trial is not public, he will place himself under suspicion of accusation and injustice. (Examining the validity of the judge's knowledge in jurisprudence and law, volume 2, pp. 59-76)

From this point of view, Shafi'i jurists have stated the following three conditions for a judge who issues a ruling based on his own knowledge: 1. The judge must be a mujtahid, and if the judge is essential (non-mujtahid), he must mention that the document of his ruling is a dossier) and if he does not mention his reference, then he will not act as a judge; 2. The judge's ruling should be other than the punishment of Allah Almighty. Evidence (intuition) should not be contrary to the judge's knowledge. (Lectures on the science of al-Qadhi and al-Qara'in and others, Beta: 29; Nahayah al-Muthaghat al-Sharh al-Manhaj, 1983, vol. 8: 259 and 260; Marjih al-Sharqawi Ali al-Tahrir, 1818, vol. 2: 495).

2. Evaluating the Position of the Judge's Knowledge with Other Proofs, in the Jurisprudence Point of View

The position of the judge's knowledge, compared to other proofs, will be different according to the documentation and sources of knowledge acquisition.

2-1- The knowledge of the judge, independent of other Shariah reasons for proof: because the knowledge of the judge is sometimes based on personal observations and with the help of evidence and emirates other than Shariah proofs (confession, evidence, oath, and oath), the well-known Imami jurists and a group of Sunni jurists have accepted the validity and authenticity of this science. Therefore, the knowledge obtained from non-Sharia proofs will itself be an independent proof and separate from other Sharia proofs. And the judge can judge according to his knowledge and fulfill his duty.

2-2- The knowledge of the judge is derived from the Shariah evidence of proof: it can be said that the knowledge of the judge is sometimes not separate from the Shariah evidence of proof, but is derived from them; In some cases, it is possible that the knowledge of the judge and other conventional methods do not lead to the knowledge of the judge. But after establishing the Shariah reasons and the necessary evaluation, and sometimes with the addition of evidence and other circumstances, for the judge, knowledge is obtained and he finds out the truth. In this case, the knowledge of the judge will certainly be the proof, because everyone has accepted that the suspicion obtained through the Shariah methods is proof and valid, and even the said suspicion will be accepte d by the holy Shariah.

Therefore, if the above-mentioned reasons create knowledge, this knowledge is valid and valid in the first way. (Al-Qada and Al-Shehadat, 1886 p. 255). A judge can acquire knowledge through religious

evidence, because; If the Qur'an and judicial emirates and other conventional methods can create knowledge for the judge, Shari'a reasons according to the specification of their evidence, if not in the first way, but in some cases, it will lead to knowledge. As this matter is mentioned in some jurisprudence books. (Kitab al-Qada, 1903, p. 126)

2-3- The position and rank of the knowledge of the judge about other proofs: After the preliminary discussions, we will reach the answer to the question of the position of the proof value of the knowledge of the judge about other proofs, so that by understanding this debate, we will know the solution to its conflict with other proofs. Considering that famous Imamiyyah jurists, a promise of Sunni jurists, believed in the validity and reliability of the judge's knowledge, and in case of obtaining knowledge, they consider the judge as not needing other proofs. It turns out that Mashoor has long considered the proofs of the lawsuit and at the same time considered it to be the strongest proof. ; First of all, they are convinced of the validity of the judge's knowledge, and for that, they have accepted the dignity of discovering the truth, according to the late Mulla Ali Keni, when we consider confession and testimony as evidence in terms of discovering the truth and showing the truth, the strongest evidence is knowledge and certainty, and the most obvious example is the knowledge and knowledge that the judge has of the event. It is not very unlikely that the judge finds knowledge through Shari'i reasons because the evidence and judicial emirates in cases will lead to knowledge, as is also mentioned in some jurisprudence books. (Tahrir al-Wasila, 1864, vol. 2, p. 407) Secondly, in the position of the conflict between the knowledge of the judge and the Shariah proofs of proof, they have prioritized the knowledge over other Shariah proofs, as Imam Khomeini said about the conflict between the knowledge of the judge and the evidence: ((It is not permissible for him to rule based on evidence if it contradicts his knowledge... Yes, it is permissible...)) Yes, it is permissible for a judge to leave the judgment to another judge if he is not assigned to do so. (Tahrir al-Wasila, 1864, vol. 2 p. 407) And the same word has been quoted from other jurists such as the late Sabzevari. (Mahdhab al-Ahkam, 1992, vol. 27, p. 47).

2-4- The evidential value of judge knowledge in jurisprudence: The jurists are clear on this matter that the infallible Imam can act according to his knowledge in all cases. But about other judges, apart from Imam Masoom, as mentioned before, this issue is a matter of disagreement among jurists. The popular opinion is that a qualified judge can also act according to his knowledge. Others believe that it is allowed in human rights, but not in Allah's rights. On the contrary, in any case, the famous opinion of Imamiyyah jurists is that they say that the judge's knowledge is valid in all cases. (Al-Entisar, 1042 ,1094; Al-Khilaf Fi Al-Ahkam, 1067, 242) The judge can not only act according to his knowledge, but the knowledge of the judge is at the top of all evidence, and the opinions of contemporary jurists indicate that if in a case for the judge, as a result of researching the circumstances of the case, the case is determined by the principles and rules of jurisprudence, it is not permissible to rely on other reasons. To confirm this claim, we mention some theories that have been issued in this regard: Imam Khomeini writes about the permissibility of a judge's action based on his knowledge: "It is permissible for a judge to act according to the rights of Allah and the rights of people, even if there is no evidence or oath, even if the evidence was contrary to the knowledge of the judge, or the judge believed in the false oath, it is not permissible to give effect to the claimant's words." (Tahrir al-Wasila, 1864, vol. 2, p. 408) Also, in response to this question, he has forged special methods to prove the crime within the limits of the divine law, is the judge's knowledge valid within them, or is it not valid? He said: "The knowledge of the judge is valid and sometimes it prevents the decision in other ways."

2-5- The probative value of judge knowledge in law: due to the increasing approach of the laws of countries and the system of spiritual evidence, legal scholars also place a special place on judge knowledge in proving lawsuits and judicial issues, to the extent that some have placed it at the top of all reasons and mentioned it as an observer of the contents of other reasons; As one of the lawyers wrote about this: The knowledge of a judge is like an inspector and a supervisor who always inspects and

supervises his work, so this knowledge causes the evidence calculated by the legislator to come out from the purely material aspect.

Therefore, the judge's knowledge is not mere material and isolated evidence, and with its flexibility, it examines and integrates other evidence as well, and it should be looked at as a special observer and prioritized over other evidence to prove the dispute. (Evidence to prove the lawsuit, 1952p. 277)

The judge issues a verdict by mentioning the documentation of his knowledge and the reasons for rejecting other evidence. If the judge does not obtain knowledge, the legal evidence is valid and the verdict is issued based on them.

In Afghan law, the personal knowledge of the judge is not valid. However, the knowledge of the judge is valid in the evaluation stage for other reasons, therefore, Article 1008 of the Civil Code of Afghanistan, it is stipulated about the confession that the judge is bound to confess unless the court orders a false confession. According to this legal article, it is clear that until the court knows the false confession, it cannot give an order to deny it, Since confession in civil matters is one of the reasons that is imposed on the judge, also according to Article 43 of the Criminal Procedure Law (1973), if a witness is proven to be false, the court can refer him to the Attorney General for prosecution. In any case, the law of Afghanistan does not consider the judge's knowledge as valid and does not attach importance to it, therefore the Afghan legislator has not mentioned the judge's knowledge as an independent reason among other reasons, but the judge's knowledge is valid in the stage of evaluating the scientific evidence that is obtained from the examination of the evidence in the hearing. This is even though the previous Hanafi jurists have accepted the knowledge of the judge in proving claims in a limited way, that is if the subject of the claim is pure rights of Allah, Like the right of adultery and drinking wine, the judge is not allowed to use her knowledge, and if she observes the rights of the people, such as the limit of Qadzf, etc., the judge can rule according to her knowledge in cases of the right of the people, such as property and contracts, such as sale and purchase. (The margin of Rad al-Mukhtar, Ali al-Dur al-Mukhtar, vol. 5, p. 428; Al-Raqq al-Hakmiyyah, 1350, p. 165) Hanafi jurists also differ on this matter that if a person has an accident before assuming the office of judge, or after assuming the position of judge, acquires knowledge about a matter in a place other than the jurisdiction, or acquires knowledge in the place of judgment, and then is dismissed, and is appointed as a judge there again, they said that in all these cases, according to Abi Hanifah, the judge is not allowed to judge with his own knowledge, whether the matter is about the rights of God or the rights of people. However, Abu Yusuf and Muhammad, one of Abu Hanifa's students, said that a judge can act on his own knowledge in all situations, except in the case of God, in which he is not allowed to judge based on his own knowledge. (Al-Maqaran Islamic Fiqh Encyclopedia, 1986, vol.1 and 2, 163)

Until now, it has been said that the judge's knowledge (personal knowledge and the knowledge obtained from the case file) is valid and has evidentiary value in Imami jurisprudence, but in Afghan law, the personal knowledge of the judge is not valid, and only the knowledge that can be considered valid through the evidence and arguments presented in the case file.

Now, after the general and preliminary discussions, it is necessary to investigate and compare the knowledge of the judge with other proofs;

A. Comparing the Judge's Knowledge with Confession

been said so far, the judge's knowledge which is valid in law is the certainty obtained from the documents in the lawsuit filed before the judge, and the confession is also one of the reasons that is presented to the judge to prove the right of the court. The confession, whether it gives the judge knowledge or suspicion, or whether the judge remains in a state of doubt, is valid in any case, and the judge must issue a verdict accordingly, for this reason, according to jurists, it is not necessary for the

authenticity and validity of the confession to have the knowledge of the judge and the persuasion of the judge's conscience. (Collection of jurisprudential opinions in criminal affairs, vol. 2, p. 156). Of course, where the confession creates knowledge for the judge, some have said that in this case, the judgment should be based on the knowledge of the judge, because the confession is valid in cases of ignorance and lack of knowledge, and where knowledge is obtained for the judge, the knowledge itself is the criterion. The judge's knowledge and confession are both reasons for proving a lawsuit. They have similarities, such as the fact that both are discoverers of reality, both of them are news because the knowledge of a judge does not create a right like confession, but it informs the existence of a previously created right. The difference between confession and the judge's knowledge is that in confession, if the news is not to the detriment of the authority and the benefit of another, it is not considered to be a confession, but the knowledge of the judge is not harmful to the judge, in principle, it will be for the benefit of the other and to the detriment of the other. Also, in the case of confession, it is not necessary to state the source of the documents of his confession, but the judge is obliged to state the documents of his knowledge that are derived from conventional methods. (Confession in Iranian Law, 2013, p. 151). Confession and the judge's knowledge are also different in terms of their evidentiary value, in the sense that the judge's knowledge, whether it is personal knowledge or knowledge derived from evidence, has 100% truth, but confession does not always give certainty, and it has been said about them that suspicion is often more useful than certainty. (The weight of legal evidence, Legal Perspectives Quarterly, 2013, No. 2322, pp. 20-24) Sometimes they may be opposite and conflict with each other, if the knowledge of the judge and the confession are consistent, the confession will play the role of causality for the knowledge of the judge and will strengthen the knowledge of the judge, but where they conflict with each other, the judge must act according to the rules.

> 1-1-The conflict between the judge's knowledge and the confession in criminal matters: Regarding the conflict between the judge's knowledge and the confession in criminal matters, legal scholars have said that the judge's knowledge is superior, and the confession has no power to conflict with it. (BA in Iranian Law, 2012 p.152)

In Iranian law, in Article 211 (Islamic Penal Code), (2012), in the position of conflicting evidence, confession is preferred over evidence other than the judge's knowledge, but the confession cannot conflict with the judge's knowledge.

Regarding the reason for the superiority of the judge's knowledge over confession, they have said that in criminal matters, the system of spiritual evidence prevails. According to this, the judge should try to find the truth, if the judge does not reach the truth through confession, but finds out the truth through other evidences and emirates, or if the judge himself has seen the case, and the fact is clear to them, in this case, he issues a decision based on his knowledge and does not pay attention to the confession. Accordingly, the judge is obliged to investigate the case and discover the truth of the case even in the presence of the confession. As a result of this investigation, the conformity of the confession with the reality or its non-conformity will be determined. (BA in Iranian Law, 2012 p. 152)

In Afghan law, confessions in criminal matters are evaluated according to Article 23 of the Criminal Procedures Law, and it is clear that where the judge knows, the confession cannot be contradicted. Rather, the judge does not act on the confession despite his own knowledge. Of course, we must note that the judge's knowledge is not valid in Hanafi jurisprudence regarding the rights of God, as Sheikh Nizam and a group of Indian scholars have said: ((The knowledge of the judge is not an argument in the punishments according to the consensus of the Companions)). (The Indian fatwa in the religion of Imam al-Azam Abi Hanifa, Dar al-Fikr, vol. 2, p. 145)

B. Comparing the Knowledge of a Judge with Evidence

Each of the testimony and knowledge of the judge are two independent reasons to prove the claim, but their evidential value is different. Because; If the judge finds knowledge, the fact becomes 100% stable for him, and the judge does not give even one degree of possibility of the opposite, however, the degree of discovery of the testimony depends on the judge's opinion, and in most cases, it gives rise to suspicion. (The weight of legal evidence, Legal Perspectives Quarterly, 2013 No. 32, 33, p. 18)

According to the famous Imami jurists, testimony is one of the emirates of Sharia and does not have intrinsic validity. Here, two important questions are raised: Is there a need for evidence if the judge knows the correctness of the claimant's claim? And should the judge demand evidence from the plaintiff? This issue has been raised in jurisprudential sources while discussing the knowledge of the judge, and the Imami jurists believe that the knowledge of the judge takes precedence over the testimony of the witnesses, and if the judge is aware of the facts, he does not need evidence and cannot issue a ruling against his knowledge based on evidence. (Tahrir Al Wasila, 1864, vol. 2, p. 408). Meanwhile, only some scholars, including Ibn Hamzah, have accepted this theory exclusively in Haq al-Nas. (Al-Wasila to Neil Al-Fadilah, Qom, 1987, p. 218). But most Imami jurists, including Seyyed Morteza in Al-Intisar (Al-Intisar, p. 488) and Sheikh Tusi in Kitab Khilaf; Al-Khilaf Fi Fiqh, Vol. 6, p. 244), (Ibn Zahra in Ghaniyeh (Al-Ghaniyeh, p. 436, Ibn Idris in Saraer (Al-Saraer, p. 179)) have claimed consensus about the introduction of the judge's knowledge over evidence.

Therefore, where the judge has knowledge of the fact, he does not need any evidence to issue a verdict, but regarding whether it is permissible for the judge in this case to demand evidence from the claimant or whether it is only his duty to act on his knowledge, the jurists have not explicitly stated that it is not permissible, but the possibility of it is seriously raised, especially where the claimant's right has been stopped by the judge knowingly and the judge is certain that the claimant cannot provide evidence, in this case asking the claimant to provide evidence despite the knowledge of his inability to provide evidence will violate the claimant's right, which is not permissible for the judge. If the judge's knowledge conflicts with the testimony, which one is more important? In this case, the Imami jurists have said that the testimony of witnesses in the context of ignorance is valid and valid, and if the judge has knowledge, there is no room for knowledge, as the author of Mahdiz al-Ahkam clarified this issue: "If the testimony of witnesses or the oath is against the knowledge of the judge and conflicts with it, it is not permissible for the judge to issue a verdict according to the testimony and oath, Because testimony and oath are not valid in such a presumption, and the proofs of its validity do not include this presumption (Muhdhab al-Ahkam, 1992, vol. 27, p. 47). One of the other jurists also does not consider the conflict between the knowledge and the knowledge of the judge to be reasonable and says that it has no effect despite the knowledge and the disconnection of the knowledge, and he wrote about this: ((After the various rulings for real and external issues were confirmed by the ruler and the ruler was addressed in detail by the Shariah regarding these rulings, such as two verses: ("and the male and female thief, cut off their hands")(Maeda/389) and (The adulteress and the adulterer, flog each one of them a hundred lashes.)(noor/2))) which proves the verdict of cutting off and covering for thieves and adulterers. In this case, if the ruler has knowledge of the fulfillment of these issues, it is obligatory for him to give effect to the effects and rulings of those issues, and establish evidence of the non-fulfillment of these issues, even though the judge has knowledge of the fulfillment of those issues, does not cause these issues to be removed from the description of the title that has specific effects and rulings. (Book of Judiciary, 1901, Volume 1/167). Therefore, according to the Imami jurists, there is basically no conflict between the knowledge of the judge and evidence, and since evidence is a presumption, it does not have the power to resist science, because the appearance of knowledge is stronger than evidence. (Jawahar al Kalam in the description of Sharia al-Islam, 1849 J40/88).

In law, it is also mentioned that if the judge's knowledge conflicts with the testimony, here if the judge's knowledge is the result of his personal observations, he himself is considered a witness and it is

like a case where there is contrary testimony in front of an eyewitness However, if the knowledge of the judge is obtained through the content of the case file, in this case, considering that the knowledge of the judge was the reason for the witnesses to testify, it is useful for complete discovery, so the judge issues a decision based on his knowledge. (The conflict between the judge's knowledge and other proofs of the criminal case, pp. 77-88)

C. Comparing the Knowledge of the Judge with Emirates and Evidence

One of the methods of proving crime is Emirates and evidence. UAE lawyers in two categories; Legal and judicial emirates have been divided, and to know the position of emirates and its positive role, especially judicial emirates like; Fingerprints, genetic and biological signs, compared to other evidences, it is necessary to examine the nature of legal and judicial emirates. And then we will examine their position and order.

In Islamic jurisprudence, the permissibility and impermissibility of judging based on evidence have been considered, and in total, there are two views: some think that it is not permissible to rely on evidence that does not provide knowledge for the judge. (Judgment based on evidence, 2002, Journal of New Exploration in Islamic Jurisprudence, Vol. 24/33, p. 178). On the other hand, some others claim that judgment is based on correct evidence. (Al-Torogh al-Hukamiyyah fi al-Siyasa al-Shari’ah, Al-Madani Press, 312)

Therefore, from the point of view of jurisprudence, it should be said that the basis of the validity of the judicial emirate is the acquisition of knowledge and determination for the judge, and for this reason, it can be said that the nature of the judicial emirate comes back to the knowledge of the judge. As one of the authors said: "The validity of the judicial edict is due to the knowledge of the judge, and therefore the judicial edict should not be considered as a separate reason in front of the knowledge of the judge" (Jurisprudential-Legal Research Series / 2017, 87).

In jurisprudence, the position and order of Emirates and evidence or modern methods of proving crimes have not been clearly explained. But in general, Islamic jurisprudents generally consider the evidence of proof of crime to be limited and exclusive to Shari'a evidence or traditional methods of proof of crime, in fact, due to the importance of the crime, they have followed the system of legal evidence or objective evidence. Therefore, whenever there is a conflict between one of the traditional reasons and an emirate in proving a limited crime, the traditional reason takes precedence over the emirate and the circumstantial evidence, unless, according to the validity of the judge's knowledge (the famous opinion of Imami jurisprudence and the collective opinion of Sunni jurists), the existence of the evidence and the emirate gives knowledge to the judge. In this case, regarding the validity of the judge's knowledge, the ruling is based on a traditional evidence such as evidence or confession.

D. Comparing the knowledge of the judge with other proofs

In case of a conflict between the knowledge of the judge and the rest of the evidence, the knowledge of the judge is prior. This claim can be confirmed by the evidence that the Hanafi jurists have mentioned for the validity of the knowledge of the judge in Haq al-Nanas, because; The most important reason that they stated for the validity of the judge's knowledge is analogy, in the sense that if judging based on the evidence is permissible, then the first method is also permissible based on the judge's knowledge, because; The purpose of presenting evidence to the judge is to obtain knowledge for the judge, obviously the knowledge obtained from seeing the incident for the judge is stronger than the knowledge obtained for the judge through the testimony of two witnesses. (Bada'i al-Sana'i, 1991, vol. 7, p. 6).

3. Evaluating the Judge's Knowledge with Other Proofs from the Point of View of Afghan Law

After comparing and evaluating the knowledge of the judge with other proofs from the point of view of jurisprudence, now we discuss this issue from the point of view of the legal system of Afghanistan:

3-1- Comparing the Knowledge of the Judge with Evidence and Testimony

Although the judge's knowledge is not recognized as an independent evidence in the laws of Afghanistan, if the judge has knowledge contrary to the testimony of the witnesses, it cannot be said that the judge's knowledge is not given effect and the testimony takes precedence, because we have already stated that the laws of Afghanistan do not reject the judge's knowledge at the stage of evaluating the evidence, on the other hand, assuming that the judge's knowledge is not independent evidence However, the judge can discredit the witness by his knowledge, and the discrediting of the witness does not require a special reason such as two witnesses, and the knowledge of the judge alone is sufficient. In addition, according to Article 31-42 of the Law of Criminal Procedures, in the laws of Afghanistan, false testimony is not only not accepted, but also criminalized, and in this case, the witness is prosecuted by the judicial institution; The judge's knowledge does not remain as knowledge, or the judge recognizes the testimony that is contrary to his knowledge as false, while according to the view of the advanced Hanafi jurists, the judge's knowledge has a probative value in human rights as an independent proof along with other proofs. (Al-Maqaran Islamic Fiqh Encyclopedia, Volume 1, 2/162).

Therefore, from the point of view of Afghan law, it can be said that the testimony of a witness is not valid despite the judge's knowledge to the contrary, and although this issue was not explicitly stated by the Afghan legislator, it is confirmed by its jurisprudential and legal foundations.

3-2- Comparing the Knowledge of the Judge with Qassama

To understand the relationship between the judge's knowledge and Qassama, first, it must be determined what the nature of Qassama is, and whether Qassama is a rule or a practical principle. If Qassama is a practical principle, the conflict cannot be discussed. This argument is raised when we consider Qassama as proof against the knowledge of the judge. By the way, the reasons for the validity of Qassama are traditions that show that Qassama is not a practical principle because; The proofs of the validity of the oath have placed it in the category of confession and testimony.

About the conflict between the oath and the knowledge of the judge, if the judge has knowledge of the fact and knows that the claimant's claim is true, but the claimant has no other reason, then what is the ruling on the execution of the oath? In response, they said that after acquiring knowledge, there is no need for the judge to execute the oath anymore, because; The basis of the verdict is provided by justice and instalment, and the judge must issue a verdict. (Qassama in Islamic judicial system, p. 340). But sometimes, due to the use of the judge's knowledge, the judge may be suspected and exposed to accusations. In such cases, the judge must execute the oath to clear the accusation, especially if the avengers of blood are willing to take an oath, but if the avengers of blood are unable to execute the oath, or if the execution of the oath faces problems that cause a delay in the execution of the sentence, and in this delay, things may be done that will lose the rights of the avengers of blood, in this case, caution In abandoning the execution of the oath, Because this delay requires the loss of the clear and certain right of the avengers of the blood, and this is against justice. (Qassamah in the Islamic judicial system, p. 340)

In short, if there is knowledge for the judge, whether the judge's knowledge is the result of reasons such as confession and testimony or any other conventional way, it is preemptive. However, the application of the judge's knowledge to the oath does not necessarily mean the non-execution of the oath, for this reason, the jurists have said that if the judge's knowledge is the result of confession and evidence, and the judge deviates from his confession, or the witness deviates from his testimony, then the oath

should be executed. (Qassama in Islamic judicial system, p. 352). One of the sources of the judge's knowledge of the oath is that if the oath is executed somewhere, but the evidence is such that the judge finds knowledge contrary to the oath, in this case, the oath is considered null and void, and the court verdict must be issued according to the judge's knowledge.

Considering that in Afghan law, most of the criminal issues are according to the Hanafi religion, and according to the research, the advanced and late Hanafi jurists differ about the knowledge of the judge, this is the explanation that the advanced Hanafi scholars, including what they have quoted from Imam Abu Hanifa himself; Imam Abu Hanifah considers the judge's knowledge to be valid only in the case of human rights such as guarantee, usurpation, divorce, retribution, the limit of qazf and ta'zir due to a cause or its symptoms, which is accompanied by limitations and conditions, one of the conditions being that the judge's knowledge is valid if it was obtained during the time of holding the position of judgment, second, only knowledge from a judge can be valid if it was obtained in the city where the judgment was made, in today's terms, it was obtained for him in the judicial field. (Darr al-Ahkam, description of the magazine Al-Ahkam, p. 243).

3-3- Comparing the Knowledge of the Judge with Emirates and Evidence

If it has been discussed in its place that Emirates has a general concept and includes different types of evidence and the common feature of all Emirates is that they cannot resist evidence in a special sense, that is why Article 1031 of the Civil Code of Afghanistan provides for the possibility of violating legal evidence due to its opposite.

Law scholars usually believe that all legal and judicial emirates are ineffective if there is a reason to the contrary. (The order of reasons between the documents of the judge's ruling, Judicial Monthly No. 31, 2002, 16).

The difference is that in the legal emirate, it is not necessary to convince the conscience of the judge and the judge, but the judicial emirate must convince the judge and create confidence for him. Therefore, the judicial emirate may be considered as the introduction and secret of the knowledge of the judge, but in the legal emirate, the goal is not to create personal knowledge and confidence for the judge, and the judge can issue a decision accordingly if he does not have the knowledge to the contrary. (Evidence to prove the lawsuit, 1939, p. 336).

It is also clear from the comparison between the knowledge of the judge and the emirate that there is no conflict between the knowledge of the judge and the judicial emirate because the emirate and Qur'an are one of the reasons for the knowledge of the judge. However, although the legal emirate is not one of the sources of the knowledge of the judge and the law recognizes it as an independent reason, it does not have the power to conflict with the knowledge of the judge. (The weight of legal evidence, Legal Perspectives Quarterly, 2013, No. 32 and 33/20). Of course, it was repeatedly pointed out that in Afghan laws, the judge's knowledge is not recognized as independent evidence, and doubt may arise that legal evidence is valid despite knowledge to the contrary, but it is very difficult to accept this claim because; Emirate is valid in a place where there is no real knowledge, but if the judge has knowledge, the Emirate cannot write a law to resist it.

Conclusion

From the sum of the above materials and discussions regarding the comparison of the knowledge of the judge with other proofs of crime and the proof of superiority and the right to advance the knowledge of the judge over other proofs from the point of view of Afghan jurisprudence and law, the following results can be pointed out:

1. All the Jafari and Hanafi jurists believe that the knowledge of the judge in the discussion of evidence is personal and ordinary knowledge that is obtained through a series of references or through the study of research and explanations and arguments of the parties for the judge.

2. The importance of the knowledge of the judge is such that in the position of conflict and consistency with other evidences, the side of the knowledge of the judge should be preferred. Because; The knowledge and confidence of the judge are more important than other evidences that only create suspicion for him.

3. By comparing the knowledge of the judge with the confession, it was found that what is obtained from the confession is a matter of suspicion and almost certain, while the knowledge of the judge is useful for complete certainty and discovery, and therefore, in the position of conflict, it has the right of precedence over the knowledge of the judge.

4. In the event of a conflict with the testimony of witnesses, it will be the right to proceed with the knowledge of the judge because; Basically, with knowledge and certainty about the reality, there will be no need to produce witnesses because the judge's knowledge is obtained from his personal observations, which is far stronger and higher than the testimony of witnesses.

5. From the point of view of Hanafi jurists, in the conflict between the knowledge of the judge and the rest of the proofs, the knowledge of the judge is also prior because; The most important reason that they have stated for the validity of the judge's knowledge is analogy in the way that if judging based on evidence is permissible, therefore, the first method is also permissible based on the knowledge of the judge, because the purpose of presenting evidence to the judge is to gain knowledge for the judge, obviously, the knowledge that is obtained for the judge from seeing the incident is stronger than the knowledge that is obtained for the judge through the testimony of two witnesses and the like.

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