The philosophy of scientific proofs in criminal matters, and studying Islamic criminal law approach about them

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ABSTRACT: Law as other branches of human knowledge, has been transforming and completing all the time, and there is no exception for legal procedure problems and case proof evidences. For this reason the experts in this field, have classified it in 6 distinct periods. The recent period is called scientific proof, and means using from scientific applications and technology achievement, such as, DNA test, in finding, proving and crime investigation, nowadays, it is widely used in different legal systems around the world, as well as, Islamic countries and Iran for settlement disputes. There for, it is necessary to clarify the reason and importance of using scientific proofs, and discuss Islamic jurisprudence criminal law in order to get permission for using it and to prove its credibility or not credibility. First, it is important to extract and explain the role of proofs in Islamic jurisprudence. According to Islam, divine law proof is a part of act. This means that, in this group of crimes, God orders to punish one, whose committed criminal act has been proved in a pre-specific way. In other words, in such crimes evidence has relevance, so it is not possible to prove them through scientific evidences. Anyhow, it is feasible to acquit ones who were incriminated for such crimes via using scientific procedures and initiating doubt within the frame work of lapsed (dar’e) principle, paying attention to what was learnt to us about covering guilty (not revealing it publically) and tenor of exemption rule. Mean while for administering justice and returning individual’s to own self it’s better to apply scientific methods, because these evidences for this kind of crimes require tarighat (religious law) and the judge are allowed to use from various solutions, such as scientific methods in order to administer justice.

Keywords: scientific evidence, Islamic criminal jurisprudence, philosophy, law of punishment, judge.

Introduction

Human beings either necessarily or naturally are gregarious creatures and have to live whit other people, there for having various kinds of conflicts in this kind of living style is inevitable, specially, most people are not convinced of their rights, and always misuse from other people’s, rights. Subsequently, investigations commence in justice courts, and a man, called judge, arbitrates for them, in reality, this man-judge-is not aware of the fact, therefore, one who can provide enough lawful evidences would be the winner, as a results, these lawful evidences determine the investigation results, for this reason, evidences play an essential vole in legal process, and has got lofty place, as the holy prophet (PBUH) said, if the claims are accepted without clear evidences, people would kill each other or rob ones assets. Consequently, the clime is not accepted by itself.
4- The claimant has to collect enough clear evidences and submit it to the court, and one who denies the claim has right to swear (yamin). The ways Islam suggests for collecting acceptable proofs to the court are consist of: oath clear proof, knowledge of the judge and confession after all. It is impossible to close our eyes to the evident.

Realities and changes because of various developments and just consider merely those traditional evidences, and confined us to them, since crimes not only technical techniques but also organized and are committed by expert criminals, using different kinds of knowledge and technology. Therefore, these evidences are not sufficient to combat and control crimes or they are not acceptable at all, because, moral values as a main source of traditional evidence have lost their credibility.

So, it is necessary for judge courts to take advantages from other tools and evidences and make a true and fair decision based on law. Therefore, using from various way.

Beside evidences, are known as the basis and elements of legal procedure and judgment, however, not observing them may result lasting of trial process, wasting people’s rights, eliminating social security, and provoking offenders and law breakers (Akhondi, mahmoud, 129, 1993) consequently, being satisfied with the traditional style of collecting evidences does not seem safe. As, it is said that once Imam Ali (as) criticized judge shoreih’s feeble mindedness ideas about the well known and usual ways for proof such as faith and confession in about Amer’s murder case, and himself found the truth and the murderer through resemble methods. (tousi, mohammad, ben al Hassan, 275, 1992)

1. **Subject plan**

Under the shadow of science and technology development as well as industrial progress and communities’ advancement various kinds of resources and capabilities in different aspects of life are available for individuals. Therefore everybody either reasonably or logically, should use them to have a peaceful and comfortable life. One of these capabilities in criminal science and criminology is scientific evidence or scientific way to prove the crim.

In the last two centuries along whit development in science and technology including medical science, some facilities such as test in laboratory ware initiated and can be used in criminology and proving a crime. Such facilities were not available before. Particularly during the first decades of Islam, so that, there is no decree from the holy prophet (PBUH) for using or not using them. In addition, because of their vast application in domestic courts, somebody may, wontedly or unwontedly, ask about their compatibility with Islamic rules. Mean while, if it is authorized and permissible is there any contradiction between these modern tools with punishment principles like, repelling punishment for doubt, presumption of innocence, not reveling the crime, and …? It this is made about the above mentioned subject according to Islamic jurisprudence criminal law.

2. **The questions:**

Article iv of the constitution says that, all laws and rules must be. Compatible with Islamic criteria, so what is Islamic criminal jurisprudence’s law approach about using these achievements in criminal investigation process, suppose that, Islamic criminal jurisprudence is not agree with using scientific way for proving crime, so is it possible to use them in ordinary (not religious) crimes? According to Islamic criminal jurisprudence all of these ways are completely valid, so is this validity covers all types of crimes such as, retaliation, ransoms, mulct (blood money) physical punishments, and deterrent punishments? Or just small number of crimes can be proved by referring to these methods?

3. **Hypothesis and objectives**

If the scientific methods used by judges for clarifying vague and difficult cases would not contradict with traditional ways such as, testimony of the witnesses, judges information and awareness about the case, and other experts theories, they are valid and reliable according to Islamic crime jurisprudence at least in those cases related to people’s rights, which are very important in Islamic law.

Especially, in cases, Due to lack of traditional evidences related to infringing, people’s rights this procedure is not applicable for Islamic law, and when a crime must be proved though a distinct channels especially those related to honor of people and any information about them should be kept secret. The main purpose of this research is studying and assessing the validity of scientific methods for crime investigation according to Islamic criminal jurisprudence, because using of those methods in domestic courts, as well as, Islamic countries courts don’t need to observe their validity in terms of Islamic norms. Therefore, it is necessary to
consider this issue with the Islamic criteria, particularly, monopolizing or not monopolizing of traditional evidence to prove the crime, the philosophy of Islamic punishment, punishment principle in Islam, the importance of adjudicating, time and place conditions and challenges.

4. Research background

Although, scientific evidences or scientific way to prove an offence has been reformed and developed besides sciences technology, and industrial progress and was modernized, during the last two centuries, but just a few books have been published about its meaning and description but no book can be found neither from the point of view of Islamic crime jurisprudence nor legally about its judicial usefulness, and to what extent it is reliable and applicable for taking a convict to the court and issue a verdict against him/her. In addition, surveying those books which were published about evidences to prove the suit show that only small number of hints appears concerning this case. On the contrary, Arab legal experts have made more discussion around its judicial testimony validity in judicial procedure, which can be used as a basis for credibility of scientific methods of proving a crime.

5. Topics classification

In this study, we tried to discuss about the flexibility of the evidences used to prove a crime in order to prepare the ways for applying scientific methods to prove a crime, therefore the first section is about the evidence manipulations through the different periods of time, the second section relates to the scientific ways used for explaining it’s importance in the second part. The main topics are discussed. Here, the first chapter is about the reasons of scientific methods credibility according to Islamic jurisprudence. Later, in the next chapter the contradict between the scientific methods of proving a crime -if they are credible- and some penal principles such as acquittal rule, offence concealing rule, and essentially non-desirability of punishment in Islamic, is discussed.

As a result this research contains two parts, and each part includes two chapters (sessions), and two subjects are studied in each chapter.

Research method

Concerning the social-legal nature of the research a description-survey method, using library method is applied here. Meanwhile, it should be explained that while describing the subject and the problem, the feasibility of using the scientific evidence in Iran penal code depending on the type of crime and punishment is studied too.

Key terms definition

Philosophy: A branch of science that is about the absolute conditions of the existence, or it is a science about the general conditions of the existence. It is a set of problems about the existence and it has got some outstanding features that made it distinctive among the rest branches of the science for example proving method, in philosophy against the empirical science traditional science, is based on reason. Philosophy completes the provident principles of legalized bases in other sciences. Distinguishing criteria between real and illusionary affairs is obtained via the philosophy. Finally, philosophical concepts are understandable by knowledge and experience and this is the most specific feature of this science. (http://tebyan-zn.ir).

Scientific evidence: the term scientific evidence against the traditional proofs refers to some. Reasons upgrading along with the development of science in various fields and helps the judicial authorities toward the discovery of truth, and the judges to solve their complex and difficult cases easily.

Islamic criminal law: this means Islamic approach about the criminal issues, which mostly based on applicable rules and principles. The problems concerning offence and crime in Islamic jurisprudence are studied in his failed.

Concepts and historical route of penal proofs: Evidences and proofs play a fundamental role in judicial procedure in each legal systems, since evidences are used to prove a right or a criminal events, therefore in this process, rightfulness of a person is not enough, but he/she should be able to prove it too, meanwhile, the history of penal proofs shows that the way of it’s usage is affected and manipulated according to the time and
place requirements (Kazemi Almouti, Nour Mohammad, 11, 2001). As whole, penal proofs has passed six
distinctive stages with different characteristics so far (Mahmoudi Janaki, Firouz, 23, 1999).
In the first period, just chiefs of the tribes were allowed to evaluate the evidences. (Zarrabi, Gholamreza, 188,
273). During the second period, offences were proved via duel. (Goldouzian, Iraj, 273, 2003). Generally,
religious and religious beliefs were the basis of the judgment and religious representatives were responsible
for the judgment (Hoghoghi, Ali, 7-16, 1999). In the third period; legislators and law makers decided to
determine some proofs in advance, just in order to prevent the judges from committing a fault.
Therefore the proofs seemed as propositions. (Ashuriyan, Mohammad, 232, 2000). Meanwhile, in the fourth
period, legal proofs were replaced by spiritual proof system, and the proofs were made according to religious
ways (Goldouzian, Iraj, 279, 2003). In the fifth period, both legal and spiritual proof system were considered,
as the basis for the cases finally, during the sixth period, development of science in different branches, paved
the way for entering of modern and scientific proof in to penal law (Ashuriyan, Mohammad, 2, 2002).
The philosophy of using scientific proof (evidence) relates to some factors such as; declining of traditional
proofs; including confession, witness, oath, judges knowledge; committing offences technically; committing
crimes through advanced methods; assisting the judiciary system to do his justice-seeking duty better; to
prevent wasting citizen’s rights; making offence obstruction for not allowing the repetition of crimes by
criminal. In other words these terms has justified the importance of applying scientific proofs in courts. The
place of panel evidences in Islamic jurisprudence. According to Islam jurisdiction of conscience satisfaction,
in some offences (Ashuriyan, Mohammad, 24, 2000 and Akhoundi, Mohammad, 66, 1989). Jurisdiction of
legal proofs in some offences (Shambiyati, Houshang, 48, 1995), and coordinating method means that there is
enough conscience satisfaction system for the judge about the extents of legal evidence and other crimes
(Goldouzian, Iraj, 82, 2003).
Here, we are going to examine the position of divine right, and scientific evidence in divine right. Reviewing
the details concerning the divine right and their dominant principles slows mitigating and negligence of the
highly legislator in boundary category which are applicable in punishments, according to some jurists and
experts of Islamic law, the writer of “Ghavaede Feghiye” offers explaining the inclusion of lapsed
regulations about the punishment, narrated in “rozat-ol-mottaghin” by the late Mohammad taghi Majlessi
says: “Religious punishment rules cover all the subjects related to this chapter. The philosophy of legislating this
rule which is fulfillment of justice and helping accused ones-necessitates expansion of it to punishment”. Secondly as the holy prophet (PBUH) said:
fault of a leader in forgiveness is better than his fault in punishment) includes punishments too, therefore
according to the above mentioned concepts and possibility of forgiveness and intercession in punishments
(Abuehsan, Mohammad, 546, 1987); and generally concerning to this rule that Islam do not punish anybody
because of objection to divine right, so this procedure should be extended to the ways of collecting offence
proofs.
It seems that proofs in punishments has a propositional (relevance) aspect to prevent committing offence and
cover Muslim mistakes and crimes, and to keep reputation, respected honor safe, meanwhile concerning the
judges knowledge, and awareness we have to say that although judge’s knowledge is a decisive reason, but
according to what said above about not revealing the crimes, and naturally not desirability of punishment in
Islam, a judge has no right to condemn somebody or punish him/her. In other words a judge has a right to
investigate about offending divine right (Hashemi, Rana), and add to his/her knowledge about this subject
(Razeizade, Mahammadali, 142, 2003) the position of proofs in humans right: in this type of cases judges not
only was avoided from forgiveness, indulgence and mitigating but they were asked to be more careful and
sensitive while investigative the case. In this type of climes, except intentional murder, ladies witness is
acceptable (Mousavi Khomeini, Seyyed Rouhallah, 525, 1987 and Mousavi khoei, Seyyed aboulghasem, 116,
2001) and even oath in some cases included as a proof evidence. As a result, it is obvious that there is wide
difference between divine right and human right. Human right contains some rules and principles that could
be found in divine right category. Furthermore, if the legislator pays more attention to people’s right than
divine right, he should be more careful about the other aspect of a claim, means investigating procedure and
proof evidence. In other words, the religious legislator have to provide more facilities for the judges in order
to help them in the way of returning people’s rights to themselves and have a acceptable judgment.
We believe that Islam has provided compatible tools and necessary recommendations for the judges to
administer justice in cases related to people’s right. Finally, we can say that judges have to use all the
available tools and capacities in order to issue a true verdict and identify the right ones. Validity of scientific methods in Islamic criminal jurisprudence.

A) Explaining Quranic proofs and testimonies: according to some Quranic verses, if the testimonies relate to a case correctly, it will be acceptable (Almozafrar, Mohammadreza, 33, 1981). Quran in many verses such as verses 18, 76, 27, 26, 71 from surah yusuf (Makarem Shirazi, Naser, 374, 1998), verses 67, 74 surah Bagara (Makarem Shirazi, Naser, 361, 1993), verses 43 surah Maedeh, 58 surah Nessa and 26 surah Sad, has emphasized on the importance of using scientific evidences.

B) Traditions and rational reasons: after Quran, the holy prophet’s (PBUH) and infallible Imams (AS) traditions, and rational reason are two other, branches of Islamic four proofs. On one hand Quran does not include all Islamic jurisprudence laws and just generally speaks about some religious receipts and on the other hand, since consensus is far less effective in Islamic jurisprudence, especially in shi’a, there for tradition and rational reason play an important role in deducing the laws, as a result, it seems that in religious jurisprudence, less problems can be found that would not salvable via tradition and rational reason. Therefore it is possible to discuss about the scientific methods to prove offences while penal case investigation procedure. In addition, it is also possible to justify its validity through the abovementioned sources such as Quran. Or this reason we follow this discussion in two sections: tradition and rational reason.

Section one: tradition
The term tradition as Sunni jurisprudence believe includes words, deed, and utterances of the holy prophet (PBUH), and according to Imamiye jurisprudence, words, deed, and utterances of infallibles, as well as the holy prophet (PBUH), and infallible Imams (AS) (Almozafrar, Mohammad reza, 61). Tradition is one of the important evidences in Islamic jurisprudence. It is not the tradition by itself but it expresses it (Almozafrar, Mohammad reza, 62). In tradition, there is some recommendations for using scientific evidences to solve different problems such as: an evidence for holding down a lost property is the ability to describe its characteristics (Tajkani, Mahammad habib, 277), examining the place in order to settle property disputes (Saket, Mohammadhossein, 100, 2003), identifying semen stains from egg white and to remove a doubt of liaison (Hourameli, Moammadhossein, 206).

Section two: Rational reason
Rational reason is one, out of four roofs in Islamic jurisprudence, and it is used to solve many jurisprudence problems. Mohammad zahilly (PHD), one of Syrian legal experts has a discussion about the credibility of evidences from the rationality perspective says; "Sometimes is impossible to prove a crime through witness, confession, and inscription, therefore if is it not allowed the judge to use from other tools, he cannot administer justice. Anyhow, since the legislator always emphasizes on administering justice and protecting individual’s right, therefore using from these method coordinates with the legislator’s order (Zoheili, Mohammad, 418, 1423). Although the legislator is sensitive about individual’s right and even ordered payment of blood money from treasury, but he more recommends acquittal of innocent ones. He cannot bear punishment of any innocents, so he ordered using acquittal regulation and lapsed(Dar’e) principles in legal procedures.

Validity of testimonies and an experts judgment: reviewing the history of penal evidence shows that using from the experts judgment does not limited to current period, but it was used to discover the truth, in different ways and different methods. Therefore, it is necessary to divide it in two sections and then discuss about each one properly.

Section one: the validity of the testimony. The most well know methods to prove an offence and charge is clear proof, faith and confession, but they are used in a less degree, because there are little law fully qualified clear proof and confession. Therefore, according to the judicial necessity and the importance of judgment based on justice, right and fair judges most employ other tools and reasons. In addition, these methods beside the clear proof confession organize the basis and foundations of the judgment, since without them making a true and complete judgment is possible. To solve this problem they suggested such a discussion called rational circumstantial (Zoheilli,
Mohammad, 493, 1993), which is absolutely conveys a reason and proof (Ansari, Sheikh Morteza, 4-12, 1995). An indication initiating suspicious or scientific confidence are divided in two types; legal and judicial indications.

The first one relates to those circumstances which were pointed out as a reason for an offence by the legislator, just because it happens repeatedly. Moreover, there is such a meaning in Islam too. For example a though Farrash or Yad (prior possession) regulations have no attachment with their since, but most of great jurisprudence are agree with it. Therefore, they call them Ghaedeh Farrash or Gaedeh Yad (remarry or prior passion regulations). While they are just circumstantial and religious legislator has verified them. In other words if one cannot prove their diversity in the court, they are sufficient and useful evidences for issuing a judiciary writ. The second one, namely judicial indication, are those affairs that are not predetermined by the legislator, but depending on content of the case, the lawyer, uses his understanding and knowledge. As well as, judiciary practices, in order to come to a conclusion and make a fair judgment. Such indications are not clearly correspond with the religious legislator’s order, although they have not lost their credibility as the testimony of witnesses and confession, but all judges need them to make an issue and equitable writ. Some of that judiciary indication is so obvious that regardless them the issued writes and verdicts are null and void publicly (zohiilli, mohammad, 419, 1405).

An expert and connoisseur possess sufficient technical and specialized information. That can help the judge and unlock and clarify the absurd and illegal parts of the cases. Therefore, an expert is a man who has enough knowledge, experience, technique and information that is able to assist the judge and produce a write near to reality (madany, seyyed jallaladin, 273, 1995).

Nowadays, the case are more complicate, there, need for proficiency and experts is inevitable, this, does not mean that there was no sign of expertise during the upper period of Islam, but, even at that consulting with an expert was usual.

Scientific evidence is influenced by knowledge of the judge. One of the most controversial problems following the long occultation of Imam-e-zaman in is Islamic jurisprudence was credibility or non credibility of the knowledge of the judge in judiciary procedure. In other, is it possible for judge to make judgment according to his own knowledge or not? The great experts in Islamic jurisprudence have diametrically opposed idea about this subject. In addition, since Ijtahad (religious jurisprudence) has a dynamic nature, there for, this case is kept open. Generally, there are five common opinions between Sunni and Imamiye jurisprudence in this regard. Among them Hojjiyat allal-etlagh (absolute validity) and Adam-e-Hojjat allal-etlagh (non absolute validity) are well known. The former relates to Imamiye jurisprudence and the latter relates to Sunni jurisprudence (Mirmohammad Sadeghi, 274, 1999). However determining which out of five is more cogent and close to reality is very harsh and it is about 1000 years that Sunni and Shi’a jurisprudence have been written about it.

Therefore speaking about weak and strong aspects of opinions and analysis in just one part of this paper is not fair. Regales of the discussion concerning the value of the knowledge of the judge here, we just refer to Shi’a jurisprudences opinions about the validity the knowledge of the judge in divine right and what is due to men (Najafi, Mohammadhassan, 88).

We be live that without them sanding against the crimes and criminal is impossible. Nowadays, the offenders have become modernized and used to apply new illegal methods, so it is difficult to fight with these expert offenders and verdict ones right. In view of the fact that the allowance of using the modern methods for detecting a crime, scientific police and forensic medicine is depends on the validity of the knowledge of the judge (Mirmohammad Sadeghi, Hossein, 277).

For this reason in Islamic penalty law, articles 105 and 106, the validity of the knowledge of the judge was explained clearly. Now, it is necessary to answer the following questions: what is meant by the term science in this paper? Who can be called judge? Section one: the meaning of science generally, there are two suggestion for this topic among the experts; some of jurisprudence, particularly those are logically, and rationally have studied profoundly knowledge of the principles (Elm-Al-Osoul), be live that science means philosophy cal science and logically assurance something that is not possible to prove it’s contrary either rationally or habitually (Jaffari Langaroudi, 33, 1991). Although, this since is acceptable in natural and math science, but in judiciary cases, and civil and penal law suits, both sides of a litigation are not able to wait for finishing the procedure in a usual period of time on the other hand, there is a contradiction between strict interests, judiciary affairs, and philosophical being of Mahkamat -alghaza (judiciary court) is not compatible with waiting for many years. Ordinary science that stands against the philosophy, is a branch of science in
which the possibility of wrong-doing actions is inevitable. In other words, in ordinary science, there is no probability of wrong-doing habitually (although wrong-doing are usual there). These people think that concerning the present exclusive condition, it is permitted to use ordinary science (Jaffari :Langaroudi, Mohammadjafar, 350, 1991).

Section two: the meaning of judge according to Islamic experts and jurisprudences, a judge is a person who has Efta (definitive ruling on a controversial question of public concern) qualifications the fore, it is necessary for judge to be qualified for work in the court and be familiar with holy Quran, and tradition of the infallibles tradition. In other words he must be able to identify, abrogate and abrogated, stable and allegorical, generalities and particularities, conditional and unconditional, and be expert in whole number of traditions, successive, Morsal (a tradition with chain of transmitters or with on complete one), connected position, interrupted, generalities and particularities, abrogate and abrogated. A judge must know the terms related to Ejma consensus, difference of options. He should be away from divine prohibited things, sensuality, worldliness, and be a man of true piety, and perform good deeds. In addition, a judge must be Mojtahed (a clergyman practicing religious jurisprudence) in all parts of religious jurisprudence, and be most learned than the rest of the Ulema (learned man) in his living place, and nearby. It would be better for a judge not to be forgetful. Otherwise, they cannot be qualified to work as a judge in the court.

Now, we want to clarify that is it possible for a religious judge to issue a decree based on the information he received through other ways such as, laboratory test, report from an expert, scientific methods to prove on offence; to answer this question we can say that using from these knowledge and information to solve the ambiguity of a case is lawful (ansari, sheyk morteza, 22, 1995).

Up to here, we got familiar with the shi’a jurisprudences view point about knowledge of the judge, and what the religious experts say about the probability of using scientific methods to prove an offence currently? They, mostly believe that if the scientific tools assist the judge in the way of finding out necessary knowledge and information, he are allowed to pass a verdict based on his own knowledge and tools, but according to Shi’a religious experts, the idea and verdict of those who are fully qualified in Efta (definitive ruling on a controversial question of public concern) is acceptable and indispensable. Therefore, as the religious experts say; a judge must be a fully qualified Mojtahed (one who strive hard), and the knowledge of the judge should be credible, this mean that according to Islamic jurisprudence conditions for its validity are; purpose intention, option, and safe mind. A judge should be a just and fully qualified Mojtahed, not those authorized and employed ones who have receive a B.A. degree in law or an exact period of time, as well as, ones who were graduated from Islamic schools after passing first and second level principles and jurisprudence. Shi’a jurisprudences do not verify the knowledge of this group of judges for making judgments in courts, and they believe that employing of such men as judge, if not necessary, is Haram (illegal). As Imam Khomeini (may his grave be sanctified) believed that just because if necessity and need employing of such authorized judges is certified (Khomeini, seyyed rouhallah, 405, 1987).

Confession is one of the credible and valid proofs in court house, and includes both legal and criminal trials. It is acceptable in all legal systems, as evidence. In has a special position in Islamic jurisprudence, and is valid for all Islamic experts. Some conditions for its validity are, purpose, intention, option, and safe mind. On the other hand making use of scientific methods to prove helps the agents to make the obstinate offenders to confess, and settle a dispute earlier and close the case. Therefore, using these methods puts an in criminated one in a condition that Shi’a confined no way other than confession and saying the truth. Scientific methods to prove a crime makes everything ready for “Ghasam-e”.

One of the ways to prove body ‘s scarries and wounds in Islamic criminal jurisprudence is bringing a number of complaints and incriminated’s relatives to make oath, which called “Ghasam”. According to most Islamic jurisprudences as well as, Islamic punishment law; one of the main prerequisites for Ghasam is judge’s suspicious, and confusion about honestly and truthfulness of the litigants parties (ramazani, ahmad, 422, 2001).

For Islamic jurisprudences, one of the conditions for Ghasame is readiness of everything for “louth”. In this way having suspicious through some particular channels is not required. Therefore, mistrust a person in any way can lead the case toward Ghasame. Meanwhile if scientific methods help the judge and provoke his suspicious about the committed crime by the incriminated ones, the judge can order for holding “Ghasame” in order to issue a just verdict. Concerning this subject, the late Ayattallah Gholpaygani believes that, in the absence of sufficient conditions for witness, the order of the experts is not acceptable by the book. But, in the
case of suspicious about their words, everything would be ready for “Louth” and a religious judge has right to issue a verdict according to this own knowledge.

Conclusion

Modernization of daily life has influenced all the aspects of human life, as well as, penalty procedure that is related to the rights and freedoms of the fellow-citizens. On the other hand, since in Islamic punishment law, there is no fixed positions for proofs to prove a dispute, therefore, in divine right concerning to some principles, such as not revealing a crime and dare (lapsed) regulations, … the objective category of the proofs (prove a crime through predetermined evidence by the religious legislator and judges conscience) resulted some disagreements. On the contrary in people’s right category dispute prove evidences have credibility and judges are allowed to use plenty of methods and solutions-except forbidden ones-in order to administer justice along with development of science and technology, novel and up-to-date method have been designing for identifying the offenders and arresting them-these-methods are known as “scientific proofs”, and now days are part of crime prove evidences and consist of, medical science invention including DNA test, blood, vagina excretion, and etc; other branches of science and technology such as scientific police, including fingerprint, genuineness of the document, and etc. Using from these methods help to eliminate ambiguities of the of case and clarify justified and unjustified individuals science and industrial development have established some branches of science such as medicine, so that a judge has right to use them (based on the orders of supreme court) and consult with experienced experts in order to find out the scope of violation and scope of the offenders responsibility. We discussed about some of these scientific methods in advance. For example DNA test increases judge’s information and knowledge about a case and make him satisfied conscience. Meanwhile there are some tools such audio-visual to pes have no fixed and exact role in crime finding procedures (except in some special cases). Although the credibility of scientific methods to prove a crime have no direct and definite reason in Islamic punishment jurisprudence, but it is possible to prove its credibility by referring to some verses of Quran and Islamic traditions. On the other hand the study of judiciary process used by Imam Ali (as) shows that in some cases, a judge can go beyond the traditions and find out the ways to solve a problem. It is also possible to prove the credibility of scientific methods by referring to features of Islamic jurisprudence such as; expurgation of the expert opinion, and some proofs including explanation of the characteristics of the lost property instead of proof as a result, we can see that according to the abovementioned reason, using of scientific methods to prove a crime and to acquit a culprits and administer justice-while the traditional evidence lose their efficiency-is authorized. In addition these methods are applicable as a motive and beside the traditional styles as a mediator. Scientific methods are can help the judge to increase his information and awareness about an event and make the obstinate offenders to confess, as well as, can pare the way for “Ghasame” in sexual when there is no clear evidence to prove it. Therefore, according to Islamic jurisprudence using of scientific methods either directly or as a mediator is credible.

The credibility of the scientific methods to prove a crime not only has no contradiction with the famous legal principles, but in some cases it can reinforce and have coordination whit them. Therefore scientific ways and not-revealing the crime principle are not against each other, because the latter refers to the divine right crimes in which there is no place for these methods.

Since scientific methods are used to acquit or accuse an offender and administer justice, so it has no contradiction whit the position of punishment in Islam. On the other hand these methods are reinforcing acquittal principle which is usual in Islam and other legal system around the world. Finally, sometimes scientific methods not only are used to prove a crime but also acquit offenders and decreases judiciary faults.

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