

Pathology of Position of Knowledge of the Judge in the Judicial System of the Islamic Republic of Iran

¹Majid Vaziri and ²Amir Ali Osat

¹Faculty of Islamic Law and Jurisprudence,

²Department of Contemporary Jurisprudence and Islamic Penal Code,
Islamic Azad University Central Tehran, Tehran, Iran

Abstract: This research is to evaluation of existing and probabilistic damage to knowledge of the judge as reasons of claim proof in judicial system of the Islamic Republic of Iran. This study by using library studies examined reasons of incriminating proof and accurately examined considers evidence to the validity of the judge's ruling based on his knowledge and also has been paid to opposition views of knowledge of the judge as one of the evidence of claim proof. In this study have examined documented damage of verdict to perch of knowledge of the judge proving an offense in four components: damage related to judge, damage related to the judicial system, damage related to litigation parties, damage related to community and validity of the judgment. In view of the obtained results and solutions in order to reduce potential damage of judge cited on his own knowledge has been supplied in sentencing verdict.

Key words: Pathology, knowledge, judge, judicial, system Iran, judicial fairness, evidences, proof

INTRODUCTION

Among the most important indicators to judge about every political system is judicial system, in other words any amount that judicial system of a country gain the success of the realization of justice in the courts indicated the efficiency and strength of the political system. From various verses of Quranic such as Verse 62 of Surah (Sad) and Verse 94 of Surah Ma'idah, the necessity of discover the fact by the judge and sentencing accordingly in fact is extracted and harvested. The rules such as the necessity of following the cut, ugliness of judgment to oppression indicate the validity of our claim. One of the ways of proof of claim is knowledge of the judge. Scientific caused by study records and circumstances and existing evidence in records, moral persuasion is obtained for him (Soghra and Elham, 2015). In performing justice and judgment in Islamic society. Judge has important role in the realization of judicial righteousness. Considering the importance of role of the judge in society and the rights of individuals and the probability of extremism and exaggeration that judges may due to cite to his knowledge in sentencing verdict and these extremism and exaggeration may take in to risk the people's rights and weaken justice and the judicial branch and this leads to create doubt in the Islamic system, it is worthy that this Judiciary (IPOQ, 2002) to avoid mistakes that may arise and to avoid any kind of haste and carelessness, perform the Coherent and comprehensive research in these area. The judicial system

of the Islamic Republic of Iran which is derived from the Islamic judicial system, knowledge of the judge as the most important, evidence of claim proof along with other evidence such as confessions of the accused, swear, documents, witnesses and evidence have been placed as special interest of legislation. In the constitution of the Islamic Republic of Iran approved in 1358 and modifications and complement of constitution in 1368 has been generally paid to Judiciary (IPOQ, 2002) in the eleventh chapter which is handling and passing judgment on grievances, violations of rights, complaints.

In Article 167 of the constitution of Islamic republic of Iran, judge has been obliged apply all his diligence and finds claim sentence law in the matter and if does not find, issues the sentence case according to authoritative Islamic sources and authentic fatwa, can not refuse investigation into the claim and sentencing under the pretext of silence or defect or brevity or conflict of law in the matter. Knowledge of the judge as one of the evidence of claim proof has been accepted. In contemporary legal systems, especially in the judicial system of Islamic Republic of Iran and enjoys a special place. In the Islamic penal code approved in 21/04/2013 chapter five of Article 160 has been paid to evidence of claim proof, knowledge of the judge also has come in number of evidence. In Articles 211 and 212 and their following note has been paid to knowledge of the judge and knowledge of the judge has widened In the new penal code so that, it can be called Sayed evidence. In defining knowledge of the judge stated: "phrase of certainty obtained from true

documents something that arises to him in cases which documentary is knowledge of the judge's sentence, he is obliged, explicitly express evidence and between his documentary knowledge in sentence. "Article 212 also refers to: "if knowledge of the judge is in conflict with other legal evidence, if stay true knowledge that evidence is not valid to judge and judge issues verdict with cited his documentation knowledge and to rejected other evidence and if knowledge is not achieved for judge, legal evidence is valid and verdict is issued based on them". Legislator in 2013, the acceptance of legal reasons system to knowledge of the judge has placed more importance than the former.

Because legislator independently stipulates to the knowledge of the judge and doesn't knew valid science of evidence of proof, knowledge caused by evidence had been approved by the legislator. In this study, according to strength and extent to which the legislator has considered for knowledge of the judge first, determine the legislative purpose is one of the evidence of proof of knowledge of the judge, comment by jurists and lawyers have reviewed and position of knowledge of the judge has been paid on the statute books and will widely talk about the principles of knowledge acquisition because without understanding principles of knowledge acquisition and also regardless of the validity of each judge can not trust anything and put its in knowledge documentary and issue claim sentence based on it. What arises in relation to knowledge of the judge that is not general information or knowledge of judicial because election of judges takes place between people which have the knowledge and mentioned information.

In other words, these type of knowledge is required for judgment and such knowledge is supposed for judge and is duty on him which be scientist to judgments but discussion place in here is science which judge acquired or obtained based on legal evidence existence in records with terms of ability to prove them (confession or testimony, swear, Justice Statistics, etc). In every human being rights defender and have concern for the rights of people and leading in the criminal justice route these suspicion and presumption is caused which is this scope and extent and excellence of this reason that is ceases to judge can cause despotism in judge and cause to provide corruption in the judicial system of Islamic Republic of Iran judge and have the lack of realization of justice Judiciary (IPOQ, 2002) although the freedom and independence of judge is his duty. Knowledge of the judge must be based on reasons and evidence and circumstantial and to reach knowledge and certainty and the judge can not issue verdict under the pretext of autonomy, creativity, intuition or reasoning, contrary to the rule of law and fundamental rights (such as the presumption of innocence); knowledge outside these

limits, opens the way for tyranny and corruption of judge and is lead to his dismissal. To provide security justice, independence of judges and compliance with these obligations, judges are faced with some legal restrictions and the dynamics of the judicial system will only come if the judges have qualified.

The researcher in this study with investigate the opinions issued by the judicial branch based on knowledge of the judge and advisory opinions of the legal affairs directorate of Judiciary (IPOQ, 2002) and is examined with the issue of knowledge of the judge and existing and potential damage. This study is an attempt to express credibility, origins and documentation of knowledge of the judge in the judicial system of Islamic Republic of of Iran and the main purpose of this is to identifying damage evidence of proof of knowledge of the judge in the judicial system of Islamic Republic of of Iran. In performing justice and judgments in Islamic society, judge has important role in the realization of judicial justice and judicial system of Islamic Republic of Iran, along with confession, testimony, oath, swearing and documents, knowledge of the judge also have been accepted as one of the evidence. Given the range and further evidence of proof of knowledge of the judge in Islamic penal code Approved 21/04/2013, the following questions come to mind.

Question 1: Legislation in Islamic sharia code approved 21/04/2013, damage related to judge based on his knowledge how been resolved?

Question 2: Is legislator with wise that has thought about position of evidence rules in criminal matters could leave judges and law enforcement from the confusion that has faced before in discussions evidence of proof?

Question 3: Giving validity to knowledge of the judge in Islamic penal code Approved 21/04/2013, to create organizational autonomy, what kind of help to the justice system, litigants and the society?

LITERATURE REVIEW

In this study, some previous research which has been done in the case of knowledge of the judge in Iran are mentioned. Jamaledin (2015) has paid to review position of knowledge of the judge in Islamic penal code, research position of knowledge of the judge the Islamic penal code by library method. Judge is supreme leader and his appointed to mature, wise, Shia Ahl al-Bayt fair, legitimate, jurist and man and purpose of knowledge is certain and judge or ensure reasonable that the judge issued the claim sentence according to it that is personal conventional science and detailed, through or thematic, to

describe the manner, sensory or nearly sense, theoretical and acquisitions. In the following consider credit knowledge of the judge in the law of God rights of people, absolute knowledge normal judge Sensory or nearly sense, the outcome knowledge claim proceedings, in other about God, non punishment for adultery and absolute invalidity knowledge of the judge Validity knowledge of the judge in prophet way and the Ahlul-Bayt (PBUH) in scientific judgments in articles 160, 162, 171, 187, 211, 212, 463 and 464 in the Penal Code Approved 1392 was investigated compliance with Iran's Shiite jurisprudence and knowledge of the judge in the judicial procedure based on the results obtained judge practice to his knowledge is in line with Quranic verses that know indispensable acts to justice, truth and justice. The practice of knowledge which isn't pure manner to forging, positively and negatively, intellectuals is the obvious reason. Soghra and Elham (2015) performed a research, position of knowledge of the judge in proving crimes from the perspective of jurisprudence and Iranian law. Considering the fact that our penal laws were taken from the sacred religion of Islam, for this purpose, article from Islamic Penal Code approved of 1370 such as Article, 011 061 044 and 673 and a new Islamic Penal Code approved in 0746 in Articles 600-607 and 021 and 020 Stipulates the judgment to science. Review Islamic Penal Code suggests that the legislator adopting the system of spiritual evidence and are considered knowledge of the judge as the most important reason for proving and its has been considered the standard of proof in criminal cases. Tabrizi *et al.* (2015) to examine the place of knowledge of the judge in the Penal Code in 2013 and has paid to comparison with the previous law which reached the conclusion that the best way to resolve the animosity and the judgments is knowledge of the judge to issue and reaching science which obtain conscientious convincing for him. Daneshgar and Jamal (2015) has paid to examine the place of knowledge of the judge in evidence of claim proof in Islamic law and jurisprudence that the result of their investigation is to examine four theories of the Shiite jurists and evidence of proponents and opponents concluded that evidences of advocates from proving this claim especially in right of Allah (approx) is incapable and if the judge wants in the absence of valid evidences, judge verdict based solely on his personal knowledge, mentioned evidences is incapable and the judge with act on personal knowledge should not put libel themselves and judicial system.

Therefore, some scholars have interpreted knowledge discussed to necessity of awareness of judicial criteria and standards (binet, swear and confession) with studying statute book of Iran, find that the knowledge of

the judge have been accepted in certain cases but personal knowledge of the judge is actually known invalid to sentencing.

DISCUSSION

Certainly position of knowledge of the judge and its reliability, for sentencing has always been a controversial subject among scholars and lawyers which discussions are continuing about it at the present time. In this study first, the researchers examined evidence of claim proof and has accurately studied evidences considers based on his knowledge validity of judge. As well as has been paid to the views of opposition of knowledge of the judge as proof of claim. The researcher of this discussion has reached the conclusion which implies of public evidences ironically topic and some special traditions, license of judge cited to his science is total and inviolable and there isn't a valid reason which is in conflict with reason. So, truth is that knowledge of the judge also is one of the evidence of claim proof and is one of the ways to discover the fact and judgment and there is not any evidence or indication which allocated public and Implies assign them to rights of people or right of God so indication is generality of the ruling and are includes all rights. So, correct view is that knowledge of the judge is absolutely legitimate and authority and both rights of Allah and the rights of people. To cite science in civil rights both in criminal law have been approved in Iranian law. The next topic under study is Statistical analysis and documentation creator knowledge for judge by accepting the knowledge of the judge as a ways of proofing in crime in Islamic Law, can enter the criminal law new ways of discovering and proving the crime that by using science such legal medicine, scientific discovery, criminal shooting and practices such as DNA, blood tests, fingerprints and others like them which have been developed and in addition of them to be made value necessitate for things like opinions, local examination, local research, other circumstantial and hearsay evidence which are typically knowledge. In this context researcher examine documentation and creator of knowledge for judge (comments supporters and opponents and the validity of each one) and has studied conflict of knowledge of the judge with each one of them and has achieved to this conclusion which expert is different from intuition and has doctrine. In terms of group of lawyers and expert can not be regarded an independent reason but also is the introduction and tool, including competency and expertise has the value of Judicial competence and Magistrate is free in evaluating but where expert opinion is the only reason claim and against its is not another

reason. Judges attempted to pass a judgment according to expert. Some lawyers for local research (Shayaa and Astfahz) consider great value which could lead to science or ensure for judge. Some lawyers for local research (hearsay and superabundance) consider great value which could lead to science or ensure for judge. Local inspection or the same consideration of judge, the judge's knowledge is resulting from the observed and recorded of status of objects that is not require expert intervention (Jafari, 2002) local examination is one of the persuasive reasons that has great impact on the formation of knowledge for judge and confidence in the court compared to claim issue. In jurisprudence certain terminology has not been seen for local inspection and determine the value of the local inspection is with person judge. In law of value in local research come at around value of the testified and from value of the local inspection is considered jurisdiction that is may lead to science or ensure for judge. In event of conflict, in the same condition, know local inspection ahead of local research, merely due to the presence local inspection is type of reason meant special.

In discussing of conflict the knowledge of the judge with the other evidence know that authenticity of confession and express when is not unlike knowledge of the judge otherwise, the knowledge remains right and in case of conflict of knowledge of the judge, knowledge of the judge is prior because iodine is circumstantial evidence and suspicion and despite to knowledge, does not reach turn on suspicion. Conflict of knowledge of the judge are not possible with oath and official document and assume conflict in them. Because all credibility and their value is to create conscientious convincing for judge. Based on library study and previous research can be said: best purpose in judgment to knowledge, sentencing is in accordance with truth and justice and equity.

Contemporary jurists and scholars of Islamic law know proof scientific has been achieved from any reason for judge and don't consider difference between being sensory and guess of cause of knowledge and emphasize on lack of difference between causes of. Of course that conditions has been considered to being document the verdict knowledge of the judge in the Penal Code.

Of total evidences quote from great jurisconsults and consider to license and refer to the verses and narratives, can qualifying validity of judge knowledge.

By accepting the knowledge of the judge as a ways of proofing in crime in Islamic Law can enter the criminal law new ways of discovering and proving the crime that by using science such legal medicine, scientific discovery,

criminal shooting and practices such as DNA, blood tests, fingerprints and others like them which have been developed.

The law should as possible clear approx and boundaries of knowledge of judge and ways of achieving it through conventional methods and according to Article 166 of the constitution, according to which rules must be reasonable, the judge is obliged to mention his documented knowledge that close way of any possible misuse and must be guaranteed consistency and uniformity of judicial decisions.

Criterion is acquisition of knowledge for the judge; even in cases that judge's knowledge be contrary to ways such as evidence or confession or oath and other circumstantial evidence like expert opinion and like them is still valid. Of course must create knowledge documentation for his in sentence and the judge can not judgment unlike his knowledge.

It seems the Code of Civil Procedure Article 199, which says: "in all affairs of court, in addition to examining the reasons cited by litigants can act any type of investigation and the measures" documented legal discoverer of judge knowledge as the basis ruling but also is its priority. Islamic Penal Code Approved in 21/04/2013 judge's knowledge to the general manner is valid to prove all crimes.

Knowledge of the judge in civil cases has different with criminal affairs. unlike civil affairs, knowledge of the judge works in stage of reason is proof, knowledge of the judge is the basis of ruling in criminal matters and self is count reason of rigorous and independently for right proven.

Implies of public evidences ironically topic and some special traditions (license of judge cited to his science) is total and inviolable and there isn't a valid reason which is in conflict with reason. So, truth is that knowledge of the judge also is one of the evidence of claim proof and is one of the ways to discover the fact and judgment.

Expert located among the persuasive evidences and don't force on magistrate. However, since mentioned theory is in the case, the court can not be indifferent towards it and if th.

Expert opinion do not contented the conscience of the judge, must express as reasonable and justified, mentioned comments as ineffective in their persuading which required of this argument also is existence of reasons or circumstances opposition with expert opinion.

Legislator known local research as proof therefore, if in affairs verifiable through local research, cited because of mentioned and there are no conflicting reason in front of it, magistrate rules according to it, unless by reasoning and justification, express ineffective mentioned local research in his persuasion.

For some local examination which is done in order to obtain evidence and is considered a kind of circumstantial evidence, by inference, indirect and uncertainty of its results have less effective in persuading judges.

Opening the hands of judge is dangerous up in any field Due to the practice of science itself, endanger people's rights as a result, should be considered middle Promise. With this express which mustn't considered a place for judge's personal knowledge which is not caused by reasons.

Knowledge is valid which Provided conventional methods and regular, not from unusual ways such as revelation with the occult sciences (such as artificial sleep. Hypnotic. Magic).

Conflict of judge with other evidence, knowledge of the judge is preferred, Unless other evidence is so overwhelming sense which undermines knowledge of the judge, otherwise, knowledge of the judge is valid and prevail.

Independence of judges is valid until that do not be a means to transgress the rules and legal principles and individual rights.

There should be a source of knowledge of the judge in case and mentioned knowledge must be based on reasons and evidence and after hearing statements and defenders of both litigants and the defense is obtained in investigation and trial sessions.

Legislator the Islamic penal code approved 2013 in fact as a general rule in generalities and general principle ruling on evidences to prove criminal claim knowledge of the judge is considered as a reason for proving the for all crimes and another reason for the proof of guilt.

Magistrate independence, it is not prerogative and privilege and doesn't create immunity for him which will wild catters use of it. But also moral obligation which returns to his manners is also a legal obligation that against which the right people and society are located to enjoyment of justice and equality under the law.

Promotion of judges is one issue that if is not carefully looked at it and does not have clear and logical objective standards, makes it possible to put pressure on judges and makes serious damage to their independence. To prevent such damage, promotion should follow to certain objective criteria based on merit and quality of work.

The legislator in Islamic Penal Code approved 2013 created innovations about evidences to prove of criminal claims, the first innovation can be seen in the new law in this regard, assign a separate part of new Islamic Penal Code of book is to evidence criminal affairs. Another issue that can be specifically look at in discussing the judge's knowledge as an innovative approach and to resolve problems in this field, definition that criminal legislator has presented the knowledge of the judge.

Iranian legislator, in 2013 law. However, does not expressly forbid magistrate resorting to outside the personal knowledge from the contents of records but writing style Article 211 and its note is in a way that clearly it can be concluded that purpose of legislator from Knowledge, acquired knowledge arising from reason, circumstantial and hearsay evidence in criminal records.

Judges during make decisions, must follow anyone, except the law, freedom and without fear and without favor of litigants (personal independence). Judicial decisions are not immune from revision or make decisions without the influence of discussion does not take place in court (judicial independence).

Knowledge of the judge should not lead to oppression to right of defendants and violation of rights of sentenced person.

Poor performance of judges, led to public distrust, extensive intervention and non-containment others in tasks by Judiciary (IPOQ, 2002) and the lack of rights of the litigants and guards from judicial independence increased credibility of the judicial system and public trust.

Existence of multi-step process for closing of sentences, as well as bringing documentation to create knowledge for judge in judgements, documentary and ways for judges at higher levels create knowledge and causes independence strength and the dynamics of the judicial system and the establishment of justice and equity in the muslim community which is the main task of the judge.

REFERENCES

- Daneshgar, E. and A.D. Jamal, 2015. The position of knowledge of the judge in Islamic penal code. Naron Chartered Managers Institute, Shiraz, Iran.
- IPOQ, 2002. Legal Research Center, Sets of Votes of Jurists and Authorities in Criminal Matters. 1st Edn., Islamic Publishing Office of the Qom Seminary, Qom, Iran.
- Jafari, L.M.J., 2002. Encyclopedia of Islamic Judicial Sciences. Treasure of Knowledge, Tehran, Iran, Pages: 788.
- Jamaledin, D.E., 2015. Review position of knowledge of the judge in Islamic penal code. Institute of Chartered Naron Training Managers, Shiraz, Iran.
- Soghra, A. and H. Elham, 2015. The position of Knowledge of the judge in proving crimes from the perspective jurisprudence and Iranian law. Institute of Directors Idepardaz Capital, Tehran, Iran.
- Tabrizi, J., M. Taqi and L. Treatises, 2015. Institute for Compilation. 1st Edn., Publication of Allameh Jafari, Tehran, Iran.