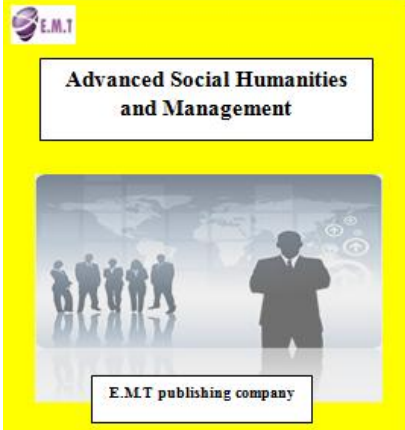


Status of the Principal of Innocence In Islamic Jurisprudence

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Abstract

Many European legal terms and Islamic jurisprudence have overlapping. So it is thought that there is no difference in their nature. But by a close examination of the terms and nature it can be said that any of these terms that are derived from their foundations, have different senses of the word which is seemingly similar. These include "the principal of innocence" that influenced by God-centered principles in Islamic jurisprudence and "the assumption of innocence" which is influenced by the Person-centered basis in the European law. Each one of these two terms has different domains and functions. In the Present study we are going to state the position of the principal of innocence in Islamic jurisprudence.

Keywords: Innocence, Islamic jurisprudence, Islamic jurisprudents

Introduction

The principal of innocence is of the four principals that study in the Principles of jurisprudence. These so-called principal are called the practical principals. Innocence, caution, selection, Istishab. It explained that sometimes the religious issue do not have any valid reason of four sources of Islamic jurisprudents (i.e. Qur'an, Sunnah, ijma, reason) that for the final. In this case, that person is hesitant, religious, religiously accountable directive to put feet to their religious duty to be determined. These instructions are to practice the principles Seminary. The principal of innocence also called "Asala Albarah" . Meaning the principles of presumption of innocence is that, in cases where there is doubt a religious duty, and the reason is the existence of such a duty, we believe that in practice, it is not obliged to. So what is meant by the presumption of innocence if it is required in the task unknowns doubt, it is the duty of the man proved to be, in doubt necessary leave it in doubt banned conviction is permissible. (Hossein Qomi, Mohammad, Izahol Kefaye, vol. 4 , p. 442). Man After God, the faith of Islam and Islamic law and found that the sentence of servitude and obedience and responsibility toward its duties, and is in charge for God, should conduct themselves at all stages of life harmonize with canon law and the laws governing society. From here the necessity of practical position and the necessity of knowing how to deal with any issue become clear. If the issues who has OCD, at all events was clear for all people, Detection of the desired position, the duty would have been easy for anyone, and no other means of scientific and technical studies else. We discussed the issue of these factors can be lack of sufficient evidence, lack of expertise views, is the lack of testimony or confessions. Given the ambiguities in the different issues that need is felt that other devices in our practice that if we fix responsibility and thereby the quality of our behavior in certain events. One of the things that can help judge during an investigation into a case is the presumption of innocence whereby it not only enjoyable but also provide freedom prior to the final convictions would doubt always be interpreted in favor of the accused. The rule of law is based on different materials, including the thirty-seventh constitution of the Islamic Republic of Iran has been accepted. Thirty-seventh principles provide that: "No person is considered guilty and the presumption of innocence unless proven guilty by a competent court." Therefore the current principle is that nobody has done that as a criminal act rather than criminal in a court of competent, legally recognized reasons based on proven, then the person is as guilty. In judicial proceedings, if there are sufficient grounds for conviction on the grounds the judge will hear the case and issued a warrant issue, but the problem is where there is not enough evidence to prove a crime. For example, we know that theft is a crime and they do know is stolen and have the person as accused in court but do not know

whether he actually committed a crime or not? The defendant does not deny the positive case and the reasons for the citation in this case is the duty of the judge? Do I need to spend a criminal offense and sentenced him his presence in court or judge that the task here is something else that is based on the presumption of innocence exonerate him? On the other hand, assuming that the judge wants this principle to impose the absolute right to use or not? On the one hand there is evidence against the defendant. On the other hand the presumption of innocence as a general rule in the hands of the judge, and he ignores the reasons for the presumption of innocence act and he ignores the reasons for the presumption of innocence operate or that the judge applied the principle is subject to the terms and conditions, in other words, whether the judge has the right to the presumption of innocence and put into the act in the face of evidence, and on the assumption that principle is subject to the terms and conditions it mean? On the other hand if the mere absence of reason can be appealed to the presumption of innocence Search? Another question that arises here is that if the presumption of innocence operate what are the consequences? Basically, that is the principle source of authority? And whether there is a presumption in law the presumption of innocence religious (religious rulings on the presumption that used to be) a relationship exists or not? However there are other principles that are not dissimilar to the presumption of innocence, such as the principle of non-permissible principle and Istishab not, they should be separately discussed to clear the similarities and differences with the principles of the presumption of innocence is also clear.

History of innocence principal

Roman judges, especially after the fall of the Western Roman presumption of innocence and attack the Germans refused and the accused must prove his innocence. The most common proof of innocence, was accused swearing and sometimes must be other people with him in the sense that I approve the defendant's reputation. For example, in the reign of "Karolenzhyns" it was necessary that the charge of stealing cattle 12 tons and 24 tons in some cases the accused were sworn, this number is important not only crime but also depended on the social status of accused that's why the Queen, "Fredgond," who was accused of adultery, swear not only her own innocence but 300 others swear with her and she was innocent of the charge. However, lack of presumption of innocence, in other words, the fact that the accused must prove his innocence, only the fourth to sixth century AD, Germanic barbarians after the attack had been accepted. During this period, if the person did not swear the oath he usually was not deactivated and therefore should give in "Ordalie" . In European languages (Ordalie) is in the Larousse dictionary defined as follows: the legal reason under God's judgment as was common in the Middle Ages and earlier.) Resorting to this kind of relic of idolatry is because according to this way of thinking if the accused is innocent really God helps him. For example, accused put his hand into boiling water in order to remove the object or molten iron was in his hand and walked nine steps, And immediately both hands he was dressing, if his hand was healed after a few days it was evidence of her innocence. His crime was proven otherwise. Acts of the accused demonstrated the accused must prove his innocence and this is contrary to the presumption of innocence. (Code of Criminal Procedure 1 Compilation M. Ashuri, p. 6) in Iran before Islam, resorting to "Vard-e garm" and "vard-e sard" existed to prove the innocence of the accused in the "Vard-e garm" hot oil or fire is gone. All divine religions and non theistic exist in the same way as in the assembly of the Laws of Hammurabi that when the Ibrahim(AS) cast into the fire, it has been ineffective.

The "Vard=e Sard" from sap of plants, water, and other things that used to fire going Siavash in Shahnameh stories refers to the use of "Vard-e garm" So resort to Ordalie at the time that the accused proved his innocence of this graph is that the presumption of innocence as a rule of judicial affairs has not gone, but the basic principle of culpability of the accused unless he has proved his innocence. Judicial duel, which coincides with the rise of Islam in Europe is there is another kind of Ordalie. For example, cattle theft if the plaintiff was prevented from swearing accused or witnesses, accused denied he could invite him to fight this fight was done in the presence of judges. This kind of duel between the plaintiff and defendant continued until sunset if he proves his innocence resist the return. Second paragraph of the Charter of Hammurabi is also accused of witchcraft, recourse to Vard-e sard was accepted, based on personal if someone accused of witchcraft and fails to prove the claims of those who have been accused of witchcraft can be dipped into the water in rivers and streams drown him if he claimed, and he takes it home. But if the river proves his innocence, claiming the lives and property of the accused claim to be home. And

Article 132 of the Charter of religion is also another case of Ordalie, whereby, when a woman married to a foreigner is accused of sexual relationship with that person but no one saw her in the bed, The woman should be immersed once for his innocence in holy river. (PhD thesis of Bagher Keykhosravi Moghadam, Tehran University of Law, p. 188). However, in medieval Europe was also charged with judicial Ordalie as a reason by which proved his innocence and appeared in 1215 AD by the decision of the arguments on the fourth high-ranking Christian Clergymen Council banned. (Criminal justice from the perspective of Hammurabi, p. 44, written by Dr. Ashuri).

The innocence in the word and term

"Innocence" literally means purity, erasure of the fault, Dorian, escape and come. [1] [2]. "Presumption of innocence", the term principles with the provisions of the outward and the four practical principles that the sum of the "jurisprudential reason 'or practical principle known. [3] The role of the principle, set a practical task the actual sentence is required in case of doubt; Whenever required in respect or obligation to object or current, or brief or conflict due to two reasons for the absence of doubt and after investigation, found evidence, scholars of Usul According to this principle, he is not obliged to Innocence and decree [4] [5], However, some other scholars of Islam to "Akhbaryyn" fame have such a person on duty in respect of doubt (doubt Banned) consider as a caution. [6] [7].

The definition of innocence

The presumption of innocence is a kind of practical principles, operational task required in cases where after the search and the lack of access due to the real task is doubt. In other words, the meaning of the presumption of innocence, a principle in duty bound to act when doubt and as a science, not duty bound and obligated to do it; For example, when required after the search and the lack of access due to the prohibition of smoking or formula doubts, the current presumption of innocence and the permissibility of using it possible sentence and the punishment against the actual sentence, safe. [8] [9] [10]. So, if after searching for the reason and the lack of access to it, the assignment doubt, it is the duty of the obligation cannot be fixed; A necessity in doubt, leave it, and the question of sanctions, committing it is allowed, no matter the origin of doubt, the lack of text, the text briefly conflict are two texts. [11] [12].

Duct of the presumption of innocence

Duct of the presumption of innocence is in doubt and the doubt, sometimes of doubt in the ruling (legal uncertainty) and sometimes in a matter of doubt (doubt topics) and legal uncertainty, sometimes necessity and sometimes legal sanctions and source of doubt in doubt, sometimes the lack of text , sometimes briefly and sometimes contradictory wording of the two texts [13].

The innocence assumption in doubts topic

In the discussion of the issue in the discussion of the presumption of innocence raised doubts sentence or not is controversial; some believe that the innocence principal in doubt topics is existed. Others believe that these doubts discussing current topics, because the rule is where or expression of the legislator was not issued or is not obliged to express issued and in case doubts, a statement that the task of the legislator has been compiled and is required because the overall task of the legislator expressed in sentences, not minor sentences and external threads; Therefore, the discussion of doubts subject outside of science principle of discussion. People you care about current

topics in doubt know, that clings to the presumption of innocence in a legal doubts, the search is possible, but subject doubts, except special cases, the search is not necessary.

Difference in pure authenticity and originality of innocence

The difference between pure authenticity and originality of innocence is:

1. Only in the current purity pure originality, but originality is the legal presumption of innocence in all fields;
2. Authenticity and purity of approved and accepted by all Taharatiyoon and Akhbaris, but some are denied the presumption of innocence and originality For this reason, the originality of purity ca not be discussed at practical principles. [14] [15] [16] [17] [18] [19] [20] [21] [22] [23] [24] [25] [26] [27] [28].

Documentary of innocence

Documentary presumption of innocence, sometimes Qoranic verses and hadiths that it referred to the legal presumption of innocence and wisdom that it's sometimes called rational presumption of innocence. [29] [30]. Documents before the Qoranic expression is worth noting two things:

1. Permissibility of presumption of innocence principle, therefore, the freedom of being responsible for the ignorance of the actual sentence is common, but the two differences with each other, including:
 - A. Permissible principal, permissible demonstrates appear in the sentence, but the sentence negates the presumption of innocence appear on stage. [31]
 - B. the case of permissible principle always have a place in respect of anything suspicious, but the presumption of innocence, including in respect of the doubt or doubts in necessity of something.
2. News and principled differences in the presumption of innocence, where required in respect of what was to brief reason or two why doubt or conflict (doubt of Tahrymiyeh Hakimiyyeh); But if the lower bound is in doubt (doubt Tahrymiyeh topic) of disagreement and to place both the presumption of innocence flow [32]; Also, if you doubt such confusion is Vojvubiyeh Hakimiyyeh or topic, Popular News and is the current principle of presumption of innocence. [33]

Originality of presumption of innocence in the constitution:

According to the presumption of innocence in every country in which "every person is presumed innocent until declared guilty" to the principles of the Constitution. Today, all advanced economies in terms of the principles of due process principle in the constitutions of the various terms included. Before the 1285 revolution in the constitution approved in 1324 AH Do not mention any of the rights and fundamental freedoms of peoples ,this issue was the obvious weakness of the law. But a year later amendments to the law on the principles of the eighth to twelfth amendment to the Constitution if the presumption of innocence and it works implicitly and not explicitly mention. Including the constitutional amendment on Article 9 read: "The people in terms of lives and property, homes and dignity are protected and safe from any harm and has protested No one cannot be, except as provided by the laws that define and training."Therefore, the constitution makes no mention of the presumption of innocence was not directly, but after the Islamic revolution, the rulers of this principle and its consequences in terms of attention and featured and the different constitutional principles that began in 1358 was the approval of the people. After the Islamic revolution in 1358, Article 37 of the Constitution of the Islamic Republic of Iran, as a general rule of the presumption of innocence is spoken. This principle provides that: "The presumption of innocence is and no one is to be held guilty unless his or her guilt is proven in court.

The presumption of innocence in Iran's law:

The presumption of innocence is a fundamental and basic right of individuals in society that in various legal matters, civil and criminal role in attention or inattention to one's homework plays. The principle of administrative domains due to the high value it is not limited to Islamic law and national laws and regulations, but the existence

and effect of this principle can be found in other laws and international regulations and domestic law traced to other countries.

As the legal presumption of innocence is the opposite of the principle of culpability. So in case we have any doubt about the defendant guilty verdict will be issued in favor of the accused. The existence of this principle in the law has consequences that can be expressed in detail.

First, according to the rule " «Burden of proof on the defendant and the right on the accuser AS» " based on the hadith of the Prophet (PBUH) has been established (The evidence on the defendant and the defendant's right) burden of proof to the plaintiff and proof of his innocence of the accused do not want this claim is contrary to the principle that should prove and if you are not able to substantiate their claims ruled in favor of the accused will be issued. The result is that the accused is not required to prove his innocence instead you must judge with reasons for suspicion voiced in the spirit if the presumption of innocence in favor of the accused could not be without any doubt claim that the responsibility is accused to prove his innocence in all cases to provide the evidence necessary.

Second: because the burden of proof is on the plaintiff and the defendant must prove it can remain silent forth, although they say silence is consent, but this silence cannot be an argument against the accused, but also in the context of the other evidence there's no reason, silence cannot be alone because of the conviction. Iranian law explicitly refers to the right to silence although not charged but the thirty-eighth constitution, which provides that: "Any kind of torture to extort confession or acquiring information is forbidden.

Third, in the judicial proceedings if the claimant fails to allege sufficient evidence to prove their claims and for the judge to charge a suspect accused of the act and accused the judge to condemn his doubt. In this case, the principle is accepted culpability of the accuser's culpability put whereas culpability is contrary to the principles and the above-mentioned principle of law that the presumption of innocence is accepted but if the doubt to the accused interpret. In this case, the presumption of innocence has accepted so another interpretation of the results of the presumption of innocence in favor of the accused is suspected.

Conclusion

Fundamentalists proceeded to prove innocence in cases where a person doubts in necessity or unlawfulness is, the consensus because reason also have argued. (FAVAedol Osol, Ansari, M. bin Mohammed Amin, vol. 2, S50-59Nahayatol Afkar, Iraqi, Aqazya'aldyn, vol. 3, p. 235). But all of these reasons is in full acquittal proves that there is no proof of assignment in respect of the doubt While a group of Islamic scholars (Akhbariyoon) claim that the reasons to prove the assignment in lieu of the presumption of innocence no doubt there . (Precautionary principle). The presumption of innocence discussed in Islamic jurisprudence is different from what is stated in the law the acquittal from an Islamic perspective means that when we say the forbidden or permitted doubt leaving caution because the legislator has therefore permissible for us to be suspicious. For example, if we doubt whether the canonical judgment tobacco use is lawful or unlawful, say the presumption of innocence and if you have not committed the unlawful act of smoking, so it would be permissible for us to commit it will not be any eagl. The authority of acquittal collection of verses of the Qur'an, the Sunnah, the consensus of jurists and the reason is that principles are discussed in more detail in the books, in contrast, discussed the issue of innocence in the law, certainly not on duty but also means that we have accepted the principle of the defendant's guilt but the initial encounter with the defendant know he's innocent person. And, except for the conclusive argument on the alleged culpability have exonerated him. It seems that although the concept of the presumption of innocence on the basis of the authority of law and jurisprudence is different and each one should be found in your source. . However, the judgment of acquittal can be passed to the legal presumption of innocence and to identify conceptually both. That is the general concept of presumption of innocence, the legal concept of jurisprudence can be used catcher.

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