



## **AUTHORITIES IN THE PRESUMPTION IN PROVING CRIMINAL LIABILITY**

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### **ABSTRACT**

*In European thought, the liberal approach is based on exclusion and, in some cases, the lawful criminality is introduced as an exception, and in the socialist approach the principle is guilty, and the burden of proof of innocence is always on the accusation. The judiciary is also considered in each round in the form of judge's knowledge. In jurisprudential thought, the principle is based on innocence, and exceptionally, the legal norm of the offense is raised in the Lutz case, and there is a significant difference regarding the power and value of the judicial authority in the form of the judge's knowledge of the proof of the religious offenses (right and wrong). The Iranian law of law, which is the result of the Islamic jurisprudential and European jurisprudence, has taken the root of the principle, but has questioned the use of the legal norm of the offense as an exception. At times, he accepted it and, at other times, he was against the constitution. In the case of the presumption, there is no significant difference in the legal status of criminal offenses in determining the amount of punishments, retaliation, and confessions, and there has been a significant difference between the judiciary and the lawyers. This article deals with analytical, descriptive, comparative and critical analyzes.*

**Keywords:** Principle of Innocence, Value and Power of Affairs, Legal Authority, Judicial Record, Criminal Liability

### **INTRODUCTION**

Taking a look at the presumption as a means of prosecution in the criminal process is one of the issues that has been accepted in the legal system of Europe (Roman-Armenian-common law) and the Islamic Imams and Islamic law, irrespective of the models governing criminal proceedings. But epistemologically (fundamentalism, necessity, methodology, and goal-oriented) have similarities and differences. This is largely influenced by the intellectual foundations and historical developments that have been formed through three phases of philosophy, politics, and law, and are flooded with those ideas. The humanistic philosophical European perspective has presented political liberalism and socialist politics, respectively, establishing a legal viewpoint with the natural and individual law school and the prosecution system in the model of social and social education and the audit system in the aggregate model. Axis the Islamic philosophical view also believes in the virtue of a belief in the political viewpoint of God<sup>1</sup>. This viewpoint suggests the rule of law with the Islamic rule model, which is the founder of a legal perspective with the Islamic and Divine Law School and the Islamic Proclamation. The Islamic law of Iran, which believes in the philosophical point of view of Islam, but in the political viewpoint of the lawlessness of altruism between the European

<sup>1</sup> . Michael Howard's speech to the conservative party annual conference in 1993

intellectual foundations And Islamic, in a political viewpoint and a model of government, has offered religious debate and, in the legal perspective, has benefited from a mixed judicial system. Generally, in the criminal procedure, two assumptions are made in order to obtain correct knowledge. The first is the ignorance of the subject, which is common to all three systems, but it is very different in the second hypothesis, which is the departure of ignorance. One of these differences in the structure of the criminal procedure and in the area of evidence of the lawsuit against the rule of the principle of innocence and the exceptions to it, and the difference in the power and value of the affirmation and the realm of the judiciary and the emirate in the process of proving the criminal responsibility that will be addressed in the article will be addressed. .

***First Speech: Authenticity of presumption in proving criminal responsibility in European law***

Today, European law recognizes the fair trial only in the form of a political liberal democracy, which has taken the principle of exclusion. Therefore, the rule of the system based on the persuasion of the judge's conscience has been identified in the light of the assumption of innocence that this approach has been accompanied by adjustments and contradictions that we will discuss accordingly.

***A: The rule of the judge's conscience-based system (in the light of the assumption of innocence)***

In European law, two basic mechanisms have been adopted, each of which has effects and results. The first mechanism of the guilty or innocent assumption is that in the countries subject to the Roman-German rule, they are usually referred to in this fundamental principle in the Constitution and the ordinary laws or in one of these two laws. Like Article 2-27 of the Italian Constitution, and Article 32, paragraph 2, of the Orange Criminal Procedure Code, and in countries under the jurisdiction of the Commonwealth of Independent States, the principle of exclusion has been identified as the legal norm of innocence. For example, in the United Kingdom, although not stipulated in the statute, it has been accepted in a judicial proceeding that, in the case of Lord Sunnyvale, in the Wallington v. DCP case of 1953, explicitly refers to the accused's innocence.

According to this principle, in British law, the accused is considered innocent unless proven guilty and criminal without doubt. The guilty assumption of innocence has been charged with defamation proceedings and defense rights. One of those works in the area of formal investigation is the requirement of the plaintiff or the prosecutor to prove the charge and provide reason against the accused. The proof of the triple elements of the crime and the circumstances surrounding the occurrence of a criminal incident and the development of the absolute material truth through the law, and with legitimate reasons, is the prosecution and the prosecutor's institution, which goes beyond the reasonable suspicion and conviction of the accused. And the other defendant has the right to remain silent before proving guilty. Which has been accepted in both systems as the effects of the principle of innocence on the defendant's right to defense<sup>1</sup>. The second basic mechanism in European law is the acceptance of a system based on the persuasion of the judge's conscience, and the value and credibility of

<sup>1</sup>. Rahmatol, Mansour, Criminal Procedure, Third volume, First edition, Tehran, Publishing house, 2016



any reason is dependent on the judge's opinion, unless the law makes a certain cause positive<sup>1</sup>. Therefore, the conflict of evidence in this system is ruled out. Today, in French criminal law, the verdict of the judge is in accordance with Articles 353, 427, and 536 of the Criminal Procedure Code, and may be based on a particular paragraph, although they are in opposition to this jurisdiction, the Emirates or other evidence. In addition, the principle of the legitimacy of studying the cause in English law is recognized as the "Polygamous Oxley Rule" and in French law as "Nullity of Reason."

***B: Modifications of the system based on the persuasion of the judge's conscience (in light of the guilty plea)***

Principally, the defendant will be held responsible for the time that the judge will reach the conscientious conclusion based on the reasons given, but in exceptional cases it is possible that a judge can convict the convicted person if the judge does not persuade him.

European law applies to these exceptions in very important crimes, which are the high interests of the society at stake. Like Articles 222, 229, and 334 of the French Penal Code, concerning a money laundering offense, which imposes such offenses on the defendant in the light of the offender's guilt system and charges the burden of proof of innocence, the accused has not only the right to remain silent, but also his silence Judiciary is guilty, as stipulated in Article 34 of the Code of Justice and Penal Law of the United Kingdom, adopted in 2003, and Article 58 of the Youth Justice and Criminal Code of England Act of 1991<sup>2</sup>.

***Second Voice: presumption Authenticity in Proving Criminal Responsibility in Imamieh Jurisprudence***

In Imamieh jurisprudence, the rule of the system based on the persuasion of the judge's conscience has been accepted in the light of Allahra al-Barra, and this approach has been subject to modifications as follows:

***A: The rule of the system based on the persuasion of the judge's conscience (in the light of Islat al-Barra)***

In the Imamiyah jurisprudence two mechanisms have been accepted. Hashestani is the mechanism of Isla'a al-Barra whose most important effect is the requirement of the accused to provide the reason for the guilty and the accused has the right to remain silent before the proof of the crime. According to the jurisprudential principle (al-Binana al-al-Madei), the burden of proof is claimed by the claimant. On the other hand, there is a controversy in the fact that the accused has the right to remain silent, some find it as a form of confession, and others as a criminal offense in the sense of some who also regard it as the right to be acquitted. A group also condemned silence solely in the offenses of right to life. The second mechanism is the judiciary-based system. Of course, there is a difference of opinion regarding the status of the judge's knowledge in proving the crimes of divine and allegoric rights. If the plaintiff makes a complaint, even if the judge does not reach science, he will vote on the conviction of the accused unless there is a conflicting judicial emirate<sup>3</sup>. In other words, the jurists are the



<sup>1</sup>. Alim al-Hadi, Morteza, Al-Ansar al-Ammaniyah, First Printing, Qom, Islamic Bureau of Publications, 1994.

<sup>2</sup>. Allen/christopher: practical Guide t.Evidence / Third Edition / carendish publishing / London 2004

<sup>3</sup>. Zander, Michal case and materials on the English legal system, Lexis Nexis, 9th ed., 2001.

cornerstone of the crime of murdering the accused who is not the reason against him. Supposedly and, contrary to the principle of innocence, asks the accused to swear allegiance for his innocence and his refusal to convict him will pay the Diyah.

### ***Third Speech: presumption Authenticity in Proving Criminal Responsibility in Iranian Law***

In Iran's penal code, the rule of mixed-system rule has been accepted in the light of the assumption of innocence that this approach has been accompanied by contradictory modifications, which we will outline below.

#### ***A: The rule of complex system based on the assumption of innocence***

In Iran's penal code, two mechanisms have been adopted in this regard in the context of the observance of European law and Imamie jurisprudence, each of which has consequences and effects. The first unconditional assumption mechanism is that in Article 37 of the Constitution and Article 4 of the Code of Criminal Procedure, approved in 2013, the accused is charged<sup>1</sup>. The most important effect of this principle is that the claimant claims to be guilty of blaming the guilty according to the legal principle (al-Binah al-al-Madei ...), and that the defendant has the right to remain silent in Articles 6, 52, 197, and (e) of Article 359 of the Criminal Procedure Code Reference is made. The second mechanism of the system based on mixed evidence is that it states in Article 161 of the Penal Code: "In cases where a claim is based on religious evidence such as confession and testimony that is relevant, the judge will rule on their arguments, unless the science "In addition, the reason for studying a reason is illegitimate in Iran's criminal procedure law. And only in Article 38 of the Iranian constitution it is prohibited to obtain confessions through torture, and in other cases, judicial proceedings have been adopted in accordance with general legal principles.

#### ***(B) Adjustments to the system of complex evidence (in the light of the criminal record)***

With the passage in the rules on the evidence of criminal evidence, it is concluded that not only is not the system of evidence of the ruling of Iran's criminal law clear, but also a specific clause cannot be mentioned for its modifications. And the legislator's position does not have a specific order. On the one hand, they have taken steps to comply with legal criteria that do not have a certain standard, and, for example, they make legislation in crime as a legal offense, but on the other hand, in order to comply with the criteria of European law that have a certain standard, But in practice, has acted in such a way that, in some cases, the material pillar of the crime is presumed, such as Article 64 of the Anti-Smuggling Act, and in 2013 and in the Law on the Purposive Murder of Article 313 of the Islamic Penal Code, approved in 2013, and Sometimes it is considered as a spiritual element, such as Articles 2 and 30 of the Malawi Law Corrigendum 2010 and Articles 42 and 44 of the Law on Protection and Exploitation of Forests and Rangelands approved in 1967<sup>2</sup>. Unfortunately, in the money laundering case, by accepting the priority of the criminal offense against the principle of abandonment in the Palermo Convention, adopted in 2000, and in line with the domestic laws of most countries in the Anti-Money Laundering Law of Iran of 2007, Iran is opposed to Article 37 of the

<sup>1</sup> . Lucky, Mohammad bin Hassan, Almabsout Fi Jalq al-Amasya, Volume 8, Najaf, Al-Mektah al-Muratzvayyeh al-Alahiya al-Ta'th al-Jufriya, 2001

<sup>2</sup> . Merle Ret vitu A. Traite de droit criminal. Cujas Jomell, Paris, 2014



Constitution, and the legislature has recognized its acceptance Refused. On the other hand, admitting a complex system based on Articles 161, 171, 187 and 211 of the Islamic Penal Code of 2013 is not a problem<sup>1</sup>. Because the legislation has the authority under the provisions of Articles 161, 171 and 187 of the law to confess and testify, whether it is useful or not, but in a strange act in the material, it accepts science contrary to confession and testimony, and in some way a system of conjectural reasoning Has turned into a system of convincing arguments. And the judge's knowledge of the Emirates and the evidence of superiority has been based on the religious evidence, which is in conflict with the jurisprudential definition of the judge's knowledge and the value of the proof of the religious evidence, such as confession and testimony<sup>2</sup>.

## CONCLUSION

In European law, the guilty plea of innocence as a guilty legal principle in the light of the model of crime control is in the form of an exception, and the right to silence the accused and the exceptions governing it and the level of proof of the crime (beyond reasonable doubt or certainty) and education of reason There is a special order in the legitimate way. In the jurisprudence of Imamieh, the principle of imprisonment is strictly considered, and the legal title of the offense is merely discussed in Lutz, and the position of the judge's knowledge in the offenses of divine and non-religious rights and the acceptance of the silence of the defendant is in dispute. Also, there is a certain degree of proof of crime, retaliation, and reprimand, or a certain suspicion of dissent. The rights of Iran are the result of the ecclesiasticism of European thought and Imam's jurisprudence. First, it accepts the principle of innocence in terms of subject matter, aside from the fact that the right to silence has also been recognized.

But in accepting a legal norm, the offense has a dual criminal policy. Accepted in some crimes and in others opposed the principle of innocence. Secondly, the reason for studying the cause remains in the illegitimate manner of Masqut al-Hekm. Thirdly, the judge's knowledge of the presumption was superior to that of the Shari'a which, with the jurisprudential definition, is a religious argument and their positive value in the change. And has caused the system of legal evidence to be a system of convincing evidence in the religious offenses. And this has raised doubts in the judicial process that can be used to justify such crimes in prohibited criminal offenses. Therefore, as soon as possible, it was necessary to amend the law and the height of the defects.

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<sup>2</sup> Billing fellena.m.w. The right to silence intransnational criminal procedures. (comparative law perspectives) springer, 2016



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