

# The Role of Science in Parentage Demonstration under Iran's Law

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## ABSTRACT

Developing the science and human access to the new scientific tools have influenced all aspects of human life . The field of parental rights was also influenced by science and technology development whereas one of the significant parts of parental rights which turns to the relationship between parents and children and contains a wide range of interaction between rights and responsibilities has been also undergoing by a major transformation. The connection between parent and child is called parentage in legal terms. This relationship had been proving with all proofs and tools in the past and today the problem of probability of proving connection between parents and children was mentioned by interference of scientific ways and tools. In this article, we pay attention to the role of science and technology in proving the parentage. The method of study is analytical-descriptive by using library and Internet tools.

**KEYWORDS:** DNA Test, Parentage, Science, Blood Test, Confession, Testimony

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## 1. INTRODUCTION

Family has been respectful as the main social organ during human history in all societies. Children were supported in emotional and momentary issues by their parents and child birth causes his/her parents to face with lots of responsibilities. From one side it contains the reinforcement of the basis of this saints' center and security of makers that family has considered under the legislators' protection and saved from disturbances and in the other hand the legal expansion and mutual responsibilities of parents and children have had this necessity that bearing children from illegal wife don't relate to the wife without reason.

Toward the achievement of these goals during history some special ways were planned till by means of them could help to its demonstration and reinforcement. Islam religion also approved the power of demonstration about reasons and existence tools and demonstrating the relationship between parents and children and rarely its demonstration according to the reasons and tools. By development of science and human's achievement to technology the probability of using scientific tools has been mentioned in legal parentage field. Ultrasound and probability of determining the exact age of fetus bone blood analysis and photography of gene's arrangement in cell "DNA" undoubtedly all of them are new instruments which expand its situation in the family territory and relationship between parents and children and it will be more effective every day in comparison to the past. In the past children was born often out of hospital and in the house by midwife or even without her involvement and issue of birth proof or recording birth happening were never done or even on time. Supposedly child birth was born by midwife; testimony was the best evidence for approving the child belongs to the mother. In case of losing the child according to the memories or clothes which child was worn or if that child had a photo this relationship was proved. Sometimes the child was kidnapped and child was grown up by kidnappers and they could provide a birth certificate for him/her and the child's biological fact became clear in the time of kidnappers' death or strange happenings and rarely it didn't become clear up to his/her death. Losing child and parent's replacement from one area to another area and also inexistence of technology were caused that the probability of finding the child or parents became impossible for so long years or even up to the death of parents. The important issue is that using Science is how much effective in demonstration of parentage? This article was mentioned in two ways which firstly involves the evaluation of traditional ways about demonstration of parentage and second is modern methods for demonstrating the parentage.

### First issue: Traditional ways for demonstrating the parentage

It's normal that the most initial and simplest tools for demonstrating the relationship between parents and children is the birth of child in the family and observing birth processes or judging according to the external position of child's living with his family or granting proofs which linked to the man and woman who claim that

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they are father and mother; therefore in the past the reasons for demonstrating the parentage included: testimony confession and Ferash. If there was not the probability of determining the child's parents they used lot. Using other instruments which also granted evidences about ownership of child to parents was probable too. Gradually the issue of birth or birth certificate also joined to the external reasons of parentage demonstration and the probability of using scientific and technological tools were mentioned.

### **1- Testimony (BAYENEH)**

Testimony means presence checkup and inform in lexical (Emami, 1964; p. 239; Jafari Langrodi, 2002; p. 397). It was one of the most important ways for demonstrating the parentage of child to his father and mother. In technical legal term testimony is transmission of fact from qualified person who has seen and earn toward judge and against one of the claimant owners and other guy advantage with taking swear and necessity to truthfulness (Madani, 1996; p. 355). Indeed observing with necessity to truthfulness construct the main prop of testimony to the investigator authority; some of jurisprudence defines "BAYENEH" as the thing that make the right clear (Javadi Amoli, 2007; pp. 345-346) the other jurisprudence believe that "BAYENEH" is a testimony which religious law considers it as the reasoning and claimant can refer to it for proving his claim (Handley Anderson, 1992) Others believe that "BAYENEH" is just profitable for hesitation but legislator considered it at the same level of science and some of them believe that testimony causes to ordinary science and custom accepted this reasoning and legislator also approved that. EMAMIYEH jurisprudences believe that science proceeds over "BAYENEH" and if the judge was aware of the fact he didn't need to "BAYENEH" and also couldn't issue a verdict against his knowledge. Among them a few accepted this theory just about private rights and some groups have mentioned that the knowledge of judge is absolutely preceded over "BAYENEH" (Zafari). Therefore it seems that the authority of testimony is not absolute but it's validated if we do not have the knowledge against it or there is a statement based on it by legislator (Hasani, 2011; P.17).

### **2- Confession**

Confession is infinitive and means lexically as demonstration put confession and mention (Rogers, 2002; p.397) Confession to be parent is a simple way in demonstration of parentage. This way is based on external fact and we can suppose that the person who confesses doesn't confess against fact according to the consideration of Islamic standards. Confession in technical legal term according to the article 1259 of civil law: (...it refers to the truthful news for others but harmfulness for you) (Jafari Langrodi, 2002; p. 71). In civil law (Article 1285) in discussion about claim demonstration confession comes as the first reason; in legal and jurisprudential books about confession it defines as the main reason and powerful reason (Aboee Mehrizi, 2001; P.110; Bahrainy, 2012; p.79) With this argument that a wise person never acts against himself unless it was to mention the fact and releasing from his duty. According to the article 202: "if someone confess to the problem which cause of rightfulness turn to himself there is no need for its prove." according to this basis some of writers believe that confession is only enough for removing hostility and I can be performed without needs of verdict and with reference to the article 1275& 1276 of civil law while the contrary of confession was not proved before of legislator only confession is effective (Safi Golpaygani, 2003; p.3). However with focusing on confession's conditions and also its nature reveals that mentioned reason has no perfect credit because confession is informing to rightfulness and like the other information there is always probable of its oppose or truthfulness ((Article 1277 says that: "...if claimant claims that his confession was wrong or according to a mistake and also brings an acceptable excuse for his confession he will be listened...")). From one point of view according to the jurisprudence theory the claim of guilty was not acceptable after confession (Nariman, 2011; p.153) and from the other side according to the article 1161 of civil law: (...if husband confesses to himself as a father implicitly or explicitly the claim of parent negation will not acceptable from himself)); apparently the incisive confession of claimant is the only way which its opposed reason was not accepted; however it seems that this verdict belongs to that confession which is far from any fault otherwise in the case of confessor's fault we cannot judge about the truth and credit of confession (Sheykhnia, 1995; p. 72; Emami, 1964; p. 172; Madani, 1996; p. 468; Katoziyan, 1993; p. 71-...) Because this verdict is against of justice.

### **3-Ferash**

The Birth of a child within the family tells the ownership of the mentioned child to his father and mother. This apparent condition was mentioned in Rome's law as Amareh Obovat ((Pater is est quemnuptiate demonstrant)) (Handley Anderson, 1992, 2002; pp. 1151-1152) and approved by Islamic law as Ferash (Prophetic tradition "the child to bed and the salacious to be stoned" (HorAmeli, No date; p. 568). According to

the apparent condition if a child was born in the territory of family that child belongs to the husband of that wife who has born the child; but the credit of this Ferash is not absolute and for its achievement we need to some special condition such as the probability of linking the child to the husband and considering rational time limitation. In the case of losing each of these conditions the probability of linking the child to father and establishing parental rights and responsibilities are impossible. Ferash is one of the reasons for the claimant demonstration and its differences with other reasons toward truth achievement are indirect way. Ferash according to the civil law includes legal and judicial Ferash. Ferash according to the articles 1158 and 1159 is considered in legal Ferash. The article 1321 of civil law about the definition of Ferash and its essence mentioned: "Ferash" is related to the conditions which by means of legal verdict or from the view point of judge was known as the reason for special purpose." "Conditions" which have been caused in achievement to the favorite; therefore the sign is indirect cause (Katoziyan, 2004; p. 126) Demonstrating the opposing of Ferash maybe probable with all reasons commonly and even special legal Ferash of each quarrel can be proved the oppose of common legal Ferash of verdict.

In regard to relationship between parent and child legislator made a decision which based on belong to the child who was born at the time of marriage to the husband by the condition of Ferash in the form of general verdict about parentage (Ibid). The parentage of Ferash and also coping with article 1322 of civil law has credit till; there is no reason against it (Khorsandian, 2004; p. 42). According to a well-known point of view judgments and methods are certain and according to Successor their authority is certain and in contrast to certainty .They are forged and follow the forging of a forger so the judgment can be an evidence of witness because the purpose of certainty is mannered not attributive so the more the method is real the more. It can be evidence for complementing detection and mindedly a Superiority is considered for them and in verses and news there is no trace that shows authority and creed forging but during the history and its signature by lawyer mindedly the action is criterion for authority and valid judgment (Khoeni, 2002; p.42). In the situation of Sonography system it's a suitable instrument for detecting the approximate age of pregnancy with a high accuracy and almost it used in all cases. So instead of referring to the guesses in the cases of hesitation it's better to use scientific tools toward achieving the fact.

#### **4- Lot**

"Lot" lexically means portion (Ragheb Esfehiani, No date; p. 264) and obtaining (Madkoor, No date; p. 728) and in legal term is: "it's the way to remove the doubt and confusion and also probability of making decision if there is no preference" (Mohammadi, 1995; p. 98). In the past "lot" used as the special way for demonstration of parentage when there was no way to detect the truth and also detect father between 2 persons. Some person believe that "lot" has no fault (Moosavi Bojnordi, 1993; p. 190) and others also believe that "lot" was used only for hostility separation and it is obvious that the "lot" is not a thing that has no fault inside of itself unless it was a divine message and actually it's not wisely because the necessary thing for it is that the "lot" is more powerful than signs (Mahmoodi Dashti, 1994; pp. 146-147).

#### **5- Identification card**

The birth of child in the hospitals and recoding the birth event by hospital's clerks and issuing the birth proof and granting it is the simplest way to detect the child from particular woman. The following way is to recognize the relationship between mother and child who has Identification card card and also based on positive relationship between child and claimant mother; indeed the clerk of registration of personal status with claimant person by referring to this organization and granting the proofs such as birth proof from midwife or hospital issues the Identification card for that child (Articles14 &15 Approved Rules of civil registration Act 1976) Recording the name of man in the Identification card can also be considered as a father. Therefore Identification card stands for granted proofs about relationship between parents and child to the registration of personal status` clerk and normally its credit is related to the credit of main reasons. Identification card is a documented proof and according to the article 1309 of civil law: "in the case of documented proof or even proof which its credit was clear in court the claimants who are not agreed with articles or paragraphs which are recorded testimony can't be considered for demonstration." however the thing which is considered legally is informing the birth to the legal clerk. However inaccurate informing to the registration of personal status clerk or granting the Identification card by woman who did not born mentioned child causes the biological fact of mother and child will immerse in deep hesitation. Now the registration of personal status has provided this possibility by means of computer system till the biography of every person available and in the case of losing the child and remembering the parents' names he/she was brought back to his/her family.

### **Second issue: New methods for parentage demonstration**

### 1- Blood test

Blood analysis and evaluation the blood type is an obvious way about the relationship between parent and child. From the aspect of experimental sciences blood types are divided to 4 main groups: (A B AB and O) and each main group is divided to some subdivisions (biologybampur.epage.ir). Implied blood types with (Rh) factor maybe in the forms of (AA AO AB BB BO and O) indeed the blood type of a person maybe (O B) but his blood type estimated (B) (Ibid). Blood type of each person is directly related to his father and mother and everything that inherits to him. One of the ordinary important determination ways for variation among blood types is the (ABO) system. Obviously all persons actually have one of these blood types (A B O or AB); according to this classification of blood system and considering to what was mentioned above anti gene and antibody of blood type:

- 1- If a person has the (A) blood type it means that there is anti-gene (A) on the surface of red blood cells and in his blood plasma; there is antibody (B).
- 2- The condition of a person who has (B) blood type it is completely vice versa of previous blood type. They have anti gene (B) on their surface of red blood cells and antibody (A) in plasma.
- 3- A person who has (AB) blood type there are both kinds of anti-gene of (A) and (B) on his red blood cells' surface and there is no barrier in plasma and also there is not antibody.
- 4- At last the (O) blood type because of having no anti gene (A) and (B) on the surface of red blood cells it has both kind of antibodies (A) and (B) in the plasma freely.

But discussion on blood types and differences among them don't end to this issue and for example if the blood type of a person is (A) beside of it uses the word positive or negative that this problem completely refers to his father and mother. Blood type depends on other factor with the name of (Rh). (Rh+) refers to the person who has the factor of this anti gene on the surface of red blood cells. (So it's normal that we don't observe any (Rh) antibody in his plasma. In the other hand persons who have (Rh-) on the surface of red blood cells they don't have such a factor. (These persons involve %15 of entire people).

#### Paragraph1: Blood Type Detection

In medical lab detection after taking sample of patient's blood the whole of his blood were abutting. (The blood which has anti coagulation and involves the entire blood cells and plasma) in the form of trickles with different reagents (anti A- anti B- anti Rh) were evaluated sticking or none sticking of globule in the vicinity of reagents' trickles and blood type determined. In the body after injection an incompatible blood also happen globule gathering processes. Because of this reason we must evaluate the compatibility of giver and taker of blood from the aspect of (Rh) and (ABO) system before blood injection. Because of effect of incompatibility between the globules of taker's person they stick together and in the following of that the blood vessels blocked and finally blood don't reach to each parts of body. In the other hand these cells which stick together contain Hemoglobin (proteins which carry oxygen) and pour its ingredients which are out of toxin cell in to the body and its conclusion at last is the death of blood taker (Rejection of giving blood) (redcrossblood.org).

#### Paragraph 2: Comparison of Blood Type

- If the combination of both husband and wife become (BO) in this situation there is the probability of this problem that their children have (O) or (B) blood type.
- If father and mother have (O) blood type it's impossible that their children have (AB) (B) or (A) blood types.
- Also if both father and mother have (A) blood type their children can't have the (AB) or (B) blood type (dnacenter.com).
- Today's from all children who were born in hospital we have done the blood test in order to distinguish and recognize inborn illnesses and other elements which beside of doing detection factor the blood type of child becomes clear. Therefore in the case of child and father blood type in comparison from one side referring to the legislator's goals about marriage sign and assigning another child to the husband who his wife born a child and in the other hand referring also has no legal logic.

### 2- DNA test

Genome project of human is an international attempt which took 13 years and formally in October 1990 it started to work with mutual cooperation of department of energy (DOE) and America national institute of health. This project had planned for 15 years but the fast progress of technology caused to accelerate in the process of completion and this project ended in 2003. Genome is the full content of an individual's DNA and

includes the individual's genes. The aims of project were: determining the sequence of 3 billion subdivisions of (DNA) determining all human's genes and making available the gene's data in order to biological research (History of the Human Genome Project). Also some part of this project related to Genome of human which was in parallel with the sequence of Genome for modeling creature such as; E-coli bacteria which is used in order to development of technology and also commentary on human's gene function. Department of energy about human Genome plan and national institute of health about human Genome research both of them jointly were supporters of human Genome project. More than 18 countries established the research plan on human Genome and human Genome Organization with universal cooperation contributes toward Genome project.

One of the newest ways for parentage demonstration is using the (DNA) test Nowadays there is a Human Genome Bank in many countries. (DNA) deoxyribonucleic acid is a kind of nucleic acid which contains genetic instructions. The major role of DNA molecule is the long-term storage of genetic information. (DNA) has made up of 4 same chemical materials which in summarized form called (A T G and C) that repeated for million or billion times in Genome. The goals of human Genome project are: detecting all of genes in the human Genome (more than 100 thousands genes) saving data in the data bases progress of ways for data analysis transmission of technology to the private sectors and emergence of behavioral legal and social aspects which have been expected from this project (Frequently Asked Questions). Some parts of (DNA) which carry the genetic data called gene. In fact a Gene is a certain part of a (DNA). (DNA) has other sequences which use toward its construction or regulation of use about the genetic data which exists in gene (Ghafari, 2009). These special parts have made up of 200 to 14000 bases which repeated in the length of (DNA); so they called repeated areas (Moazenzadegan, and Azimifar, 2005; p.150) The order of these sequences about involved parts in this repeated areas are particular in each person. Only the same twins have the same chromosomes (Godarzi and Kiani, 2010; p.123). Therefore there is the probability of person identification with the determination of sequences of bases in these repeated areas. As each person fingerprint is just related to him (DNA) is just related to himself (Sanaeizadeh, 2010).

For creating a child the cells of male and female should compound in the mother's body and it's called fecundation. Each cells of male and female have 23 chromosome an egg-like cell which is made up of combination of male and female cell and it has 46 chromosome and it also is a living creature. There are 46 chromosomes in each cell. Two of them are a couple; one of them heritable from mom and dad (Bahrairy, 2012) Determination of sequence among involved parts in repeated areas with (DNA) test which also called DNA TYPING an English man used genetically fingerprints for the first time at first this way used for disillusion a man. Who dishonored in England (Mohseni, 2011 'Butler, 2005; p.253) is very complex. In spite of blood groups which use for deny the relationships; DNA is used to prove its existence. because the member of these parts are so high and moreover (chromosome) and (DNA) are very tiny therefore the (DNA) test was done in several phases (Sanaizade, 2010) in order to make sequences of (DNA) first chromosomes which their scales are 50 million base to 250 million base break down to more tiny scales (sub cloning phase) and each tiny part is used as a sample for reproduction of a group of parts which differ as a size of one base in length that omitted base in each phase is detected in another phase. (Preparation Sample of phase and reaction of sequences). These parts are separated by electrophoreses (separation phase). New fluorescent color provides the probability off separation of 4 types of parts which are in one single was in gel. The last base was detected in each part. (Recalling based phase). This main sequence process (A T C and G) which made in first phase for each short part was made once again. These automatic sequences analyze the result and their outcome consists of one chromatograph which made up of 4 types of colors that each color represents one of four base of (DNA). After reading the bases computers use for assembling the sequence of short parts about 500 bases; they are analyzed to the continuous sequences which from the aspect of fault encoding genetic areas and other identifications. Sequences which are ended they are granted to the general sequence data bases. One of the most important and reputable of these bases is "GEN BANK". These sequence of data about human GENOME project are available for all people in this bank freely. There are 2 types of DNA testing (Landry Rockowitz, Dufour, et al, 2008):

#### **1- Restriction fragment length polymorphism with study on the signs of variable numbers of tandem repeat:**

The using of this method refers to the 1980. Preciseness of this test about identity detection and parentage demonstration is about 99/99% but its time circle is too long (dnacenter.com). DNA in this method obtains with chemical methods and by restricting enzymes they cut to some parts; the length and numbers of these parts are different from one person to another.

## 2- Polymerase chain reaction with study on the signs of short tandem repeat:

This advance method (PATERNITY TESTING USING HLA TYPING AND PCR (POLYMERASE CHAIN REACTION), 2012) had been used since 1990 and its strength on demonstration is over %99/99 (Nariman, 2011) which is faster rather than the previous method (Ibid). Short tandem repeat has ordinary 2 to 10 pairs of bases length. The number of repetitions are different in each person in this way the probability of fault about a person with another one is almost zero (Fazel, 1388; p.9; Mohammad Asef Zafari; Suter, 2010, p.6). At the time of comparison among signs if child even is different in one part with his father or mother the relative relationship was not approved. To use ABI for recognize these cods. DNA s in this method after the examinations goes in some tubes and classify according to their size. They compare the DNA s sizes with the parents' one. The fault percent of this test is so small (about  $7.2 \times 10^{-19}$ ) (Fazel, 2009; pp.8-9; geneticlab.ir). In coroner the blood type of mother child and probable father was evaluated; if there was no similarity between probable father and child and then the genetic fingerprint will be done (Olia, 1389; p.8). Although in each of these solving issues there are always the cases of prove or father rejection we can discuss about them definitely (Saboori & Yadegari, 2008; p.28). However the results of these test never reach to %100 and its causes is for achieving to just one result of %100 it's necessary that all men in the world should be tested till we obtain a precise result for completion of statistic society; however the probability over %99/99 represents that there is special relationship between child and probable father that this probability with such a genetic estimation is almost impossible and this problem practically represents the father relationship demonstration (Genetic connections, 2012).

### The reliability of new genealogy-proof methods from the jurisprudence and law viewpoint in Iran

Due to the newness of electronic equipment blood and genetic tests there is no available example in the writings of the jurists. The topic of genealogy proof in jurisprudential texts has not been investigated; however it is investigated under topics such as descendants inheritance etc. It is not possible to find a statement regarding this topic among recent jurisprudential ideas either (HoreAmeli, No date; p.117; Bahrani, No date; p 330; Helli, No date; p173). However the Islamic jurisprudential based on examining Josef's shirt and the sentence against Zolikhha in Quran have concluded that it is lawful to pass a sentence based on the witnesses that can be used in fingerprinting blood tests etc. which are common today (Bi Azare Shirazi, 2005; p.50). There are also some sayings in narrative sources which emphasize on the scientific ways to prove the truth (Ibid, P.51).

Different religious authorities have been consulted regarding the use of genetic tests: ((Is it possible parentage proved no confession or other evidence and DNA positive test? According to Civil Law Act 1167 the child of adultery is not joined to the libertine. Other sub questions rose which Takes place in the context of the original question that there are no children the man who confessed to adultery. Therefore for brevity of expression is a void. They are classified into 2 groups based on their responses. The majority believe that you can act based on the gained knowledge if there is any (Moosavi Ardebili; Noori Hamedani; Khamenehi; Saufi Golpayegani, Fazel lankarani; Hasani, 2011). Some others believe that you cannot judge according to the knowledge gained from such tests and it is not possible to prove genealogy by these tests (Makarem Shirazi). There are also disagreements among the religious authorities regarding the contradiction of these tests with the judicial evidence (Tabrizi; Makarem Shirazi; Safi Golpaygani: Ibid). Some believe that these tests are not accurate and therefore cannot precede the judicial evidence. Some others claim that a judge can act according to his knowledge if he makes sure (Sistani; Ibid).

The civil law has named these proofs in provision 1258 without defining the litigation proofs (Volume IV approved to 5<sup>th</sup> October and 28<sup>th</sup> October 1313). The civil trial law by defining the *proof* as: "the proof is the statement that litigation clients rely on it to defend themselves." has compensated this shortcoming. The litigation proofs involve: (Article 1258) confession written documents witnessing and swears. In addition to the above factors the civil trial law has added the following items to the list: inspection of the location local research (Section Five of the Chapter II of 248-257) and expertness. So the legislator has not considered any restrictions in presenting proofs (Section six of the Chapter II of 257-270). There is no stipulation regarding genealogy proof's reasons and provisions 1158 1159 and 1160 merely point to the judicial evidence and provision 1273 has pointed to the genealogy. Although it seems that you can refer to any of above- mentioned proofs to prove genealogy.

The ways of proving genealogy also have been studied under the topic of Ferash and other reasons in law books (Emami, 1965; pp. 155-172). The use of genetic tests has not been elaborated comprehensively by legal experts and only a minority has studied this issue briefly. One of the outstanding law masters believes that the judicial evidence is not the only legal proof and it is possible to use other proofs such as medical tests to prove

genealogy due to the fact that it is not recognized as the only proof unless the law stipulates it and rejects the other proofs as negative (Ibid). Others have also considered 'DNA' tests as the expert proof. They believe that DNA tests can be used to relate the child to the husband but they by themselves cannot be used to prove the genealogy. They can be used by the judge as a partial of judicial proofs (Nayebzadeh, 1380; P.302; Emami, & Safai, 1996; P.57).

The law office of judicial authority in a statement has declared that although the genealogy proof of the man and the child born by adultery is possible by medical tests the child is not heritable to the man. However some of the responsibilities and duties of the parents such as fostering and donation and also some religious commands such as marriage with confidantes based on natural genealogy are derived from and only heritage and birth are derived from legal genealogy. Although the statements of the legal experts are limited to the mentioned factors but the important point is that from among the same minority group no one has denied completely the reliability of DNA tests and the contradiction is just about the way of relying on it. In contrast some other religious authorities have claimed that such tests are basically unreliable. As conclusion it can be inferred that genetic tests can be used to end a conflict if they help the judge to gain knowledge on the issue. The researcher believes that the reliability of DNA tests which is based on the scientific standards is higher than other proofs and they are preferred over the other proofs.

What is the meaning of "knowledge"? And which type of knowledge can be used by religious experts to prove a case? What is the meaning of "certainty"? Is it possible to judge based on some uncertain evidence and commands? Can genealogy proofs be used to judge a case for sure or they are not certain enough to be judged?

### **The meaning and reliability of concept "knowledge" according to proofs**

#### **The meaning of "knowledge"**

The dictionary meaning of the word "knowledge" is: wisdom recognition and understanding of issues (Ragheb Esfehni, 1983; P.343). It is defined as "certainty" and "sureness" in jurisprudent sense (Jafari,1374; P.468). And in some books the word "knowledge" refers to certainty and sureness (Askari, 1412; P.374) "Sureness" means "a complete separation (Ebn Mnzor, No date; P.276) and cutting off" (Ansari, 1996; P.7). The principles have not defined this term clearly and have just defined it as "absolute separation" (Ibid; Sadr, 1406; P.177) and their argumentation obviously show that mistakes are not probable in their definition of "certainty" (Alamolhoda, 2011). Generally speaking certainty can be defined as: "a firm belief that the certain person equals it with reality". Therefore the certain person considers the event as an obvious fact with no probable mistake (Mozafar, 1995; P.26).

#### **The reliability of knowledge**

The principles have classified certainty into two groups: way (manner) certainty and topical certainty. The former refers to certainty without any special topic and it is only a way towards the reality while the latter refers to certainty feature against the other features of ego such as doubt and suspicion in religious commands and therefore such commands revolve around certainty (Ansari, Ibid; P.8). The early rule of certainty is mannerism except the case that there are enough reasons for the topical certainty. Therefore in case of any suspicion one should refer to the way (manner) certainty (Ibid).

The principles believe that certainty argumentation is intuitive because certainty is for sure a way towards reality. It means that mannerism and separation are parts of its essence like "even" feature for number 4 and therefore the forging of the legislator does not belong to it (Ibid, p.8-9). Some principles also believe that the proofs of certainty include common knowledge (Khorsandian, 2004; P.61). They claim that common and conventional knowledge are intuitive. It is interpreted that certainty discussed by principles is not a kind of certainty without the probability of any mistake but it is defined as a higher level of "idiomatic certainty" Ideal of Discovery: The Stage Which Human Dose not Make a Mistake as his Divine's nature & Temperament. Idiomatic certainty is an extended definition of discovery that cannot be at the level of 100% certainty and in most cases it has the probability of contradiction with reality although this probability is so minute that even the precise people do not rely on it as a theoretical or practical base. Therefore the proof of certainty is neither intuitive nor rationale. It is a conventional and innate concept which is credited based on the nature and creation of mankind (Hoseynee, 2010).

Knowledge is derived from certainty in law and religious texts too. It does not mean gaining the knowledge that there is incognito but it means the common sense of knowledge that by which the litigations solve their problem. It has been discussed under the topic: "conventional or common certainty". It is also called the "suspicion and certainty to knowledge". Therefore the common knowledge is the knowledge that when most

of the people gain it they do not pay attention to its probable mistake even if its contradiction is rationally probable although the minority of people act based on it because the common knowledge causes to sureness and people consider the conventional knowledge as the reality (Madani, 1999; P.379; Khorsandian, Ibid, P.61). Action or practice based on the uncommon knowledge causes derangement and disorder in the creation system since the divine will belongs to the affairs which are based on the natural causality system and also based on the common knowledge of mankind. Due to this fact the prophets and Imams did not use to apply their omniscience (divining power) to heal their sicknesses (Safi Golpaygani, 2003; P.121; Koleyani, 2002; P.260).

As discussed before it is concluded that 'certainty' does not refer to the knowledge without any mistakes but it means that knowledge to the level that makes sure the duty-performer is adequate and therefore the religious experts consider the sages' verdicts as the basis of conventional knowledge (Javadi Amoli, A. 2007; P.103) which is not rejected by the legislator (Mazaheri, 2010). The judge's knowledge is discussed in details in legal and religious texts. Well known religious leaders completely accept the verdict and knowledge of a well-qualified judge (Khorsandian, Ibid, p60) since it is the same common knowledge which causes to ego calmness and habitually its contradiction is not probable and it is adequate to confirm the judge's knowledge (Ibid, p.61). Therefore the genealogy proofs are essentially derived from the common knowledge (Ahani, 2002; P.30) and all of them are doubtful; and since acting based on them is proper in spite of their suspicion the common knowledge or certainty in the former sense can be used as the basis of verdict (Madani, 1999; P.379). In addition none of these proofs refers to 'topical' certainty. Therefore the entity of these proofs is suspicious and their reliability is relative (proportional) and they are only considered as a way to discover reality by the legislator.

### **Monopoly or lack of monopoly of the genealogy-proof methods**

The monopoly of the genealogy-proof methods is not discussed in details in religious and legal texts but there are two general theories regarding it: The Verses of Masoomin It is said by Sahihe Ebne-Hesham via Imam Sadeqh that Great Prophit (HoreAmeli, No date; P.169) some believe that using the monopoly elements which are indicated as the uniqueness of the conflict proofs as 'manifestation' for the claimant and "swear" for the denier and no other reason except it is acceptable (Jafari Langerodi, 1993; P.40; Khooini, 2002; PP.450-451; Moosavian, 2005; P.17; Khorsandian, 2004; P.67; moemen). Some others believe that firstly these conflict proofs are not unique since in the mentioned sayings "confession" is not part of these proofs; therefore it is not logical to give a verdict based on their monopoly (Khooinee, 2002; p.11). Secondly 'manifestation' means an obvious reason and something which proves something else (Raghef Esfahani, Ibid; PP.68-69) and therefore it involves the same ways of discovering the truth. The same reasoning is used in genealogy-proof methods. Firstly the genealogy-proof methods have not been discussed in details in religious texts and they are discussed under different topic (Mozafar, 1995; PP.127-129; Sarakhsi, 1414; PP.226-227) secondly no monopoly element is used in the genealogy-proof methods argumentations. Thirdly there is no special reason about the monopoly of genealogy-proof methods. Fourthly there is no direct law on genealogy-proof methods and legislators have no limitation in referring to these proofs.

### **Conclusions**

By enjoying the availability of new techniques using the scientific instruments in humanity and science field is also possible. Studying the genealogy-proof methods reveals that these proofs are not particular and they included all proving reasons in its own period and there was no other reliable method except what is discussed in religious texts. The judicial evidence is recognized as the simplest way to prove the genealogy but it is conditional. It is according to established scientific principles in a way that it can be claimed the judicial evidence had been the only way of proving genealogy in past and it was not easy to prove its opposite at that time. Today there are new scientific genealogy-proof methods in addition to the past methods which make it possible to identify lost children and parents. In higher levels blood and DNA tests which are based on scientific facts are more reliable and in contrast to other genealogy-proof methods which are based on external and superficial evidence these methods connote to the truth of a relationship specially DNA test that determines the relationship between the child and parents when this relationship is vague this test definitely identifies the genealogy and makes the conflict over. Therefore due to these facts that: 1.The nature of traditional genealogy-proof methods is suspicious and their reliability is relative 2.they are only determined by the legislator as a way to discover the reality 3.they are not considered as 'topical' certainty 4.they are not limited to the mentioned cases by the legislator it is possible to refer to other new genealogy-proof methods too. Therefore DNA tests



because of their unique features are recognized as an independent genealogy-proof method and most of the religious authorities approve their reliability when they are based on science.

It is clear that among all the genealogy-proof methods which are common today in the case of any contradiction or disagreement blood tests and DNA tests are trouble shooter and they are reliable to a great extent. However at the present time due to the lack of any direct law or rule the application of new genealogy-proof methods by legislators is questionable. It is not clear whether the legislators can request DNA tests from the court or not or whether judges are allowed to accept such requests or they can reject it by themselves. Based on the present regulations there is no problem in accepting the request of the legislator and referring to specialized laboratories. Judges can give verdicts based on the knowledge which is acquired by such tests to end the conflicts until the time that these DNA tests are confirmed by the law as a tool to discover the truth. However it is recommended that the legislator states the rules of genealogy-proof methods and the exact condition of using DNA tests clearly in the law in order to prevent judicial misunderstandings.

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