

Evidence proof of (hudood); crimes; particular punishments prescribed by Allah in Quran for specific crime under specific conditions, by (DNA); Genetic imprint

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Abstract

The aim of this study is to investigate the proof of (hudood), crime ; particular punishment prescribed by Allah in Quran for specific crime under specific conditions, by (DNA) , genetic imprint on the jurisprudential and legal levels. This study contains an introduction that contains the reasons, objectives and importance of the subject and the limits of the research and its problems and hypotheses and the methodology used in writing the research. The second topic: the establishment of (hudood), under the presumption of DNA in comparative law, the third topic: a comparison between Islamic jurisprudence and comparative law. The researchers concluded the research with the most important findings and recommendations the most important ones are: The acceptance of the results of the modern physical proofing evidence in the evidence to lead to the consolidation of justice and the establishment of security and stability in society and thus achieve the purpose of the legislator to save people, their lives and their families and their money from aggression and maintenance it of violation. Among the recommendations are the establishment of specialized institutes and research centers to study modern physical evidence in the various scientific, legal, and judicial viewpoints, and to reach conclusions, recommendations and proposals that greatly help to identify the truth and what is the modern physical criminal evidence.

Introduction

Praise be to Allah, the Lord of the Worlds, and peace and blessings be upon His Messenger, and His Compassionate Companions.

Although DNA is the true identity of man through his genetic qualities in a remarkable sequence within each cell of his body, it is nevertheless not intended to be a definitive guide to proving the legal sharia, (hudood), crime; particular punishment prescribed by Allah in Quran for specific crime under specific conditions, that depend on proof of the act, such as adultery,

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rape, theft and drinking alcohol. This is not the fault and the lack of DNA. Rather, it refers to God's mercy in man in the criminalization of the act that is forbidden to him. We address this topic in Islamic jurisprudence and law, for comparison.

The importance of the topic:

The importance of this study lies in the fact that it deals with a topic related to the identification of DNA in (hudood) crimes.

Reasons for choosing a topic:

This topic is chosen for a number of reasons, including:

- 1- The need to benefit from and quotations from the analogy and jurisprudence of preceding Islamic jurists, especially of the four orthodox and this is through the texts that allow jurisprudence and legal issue of the introduction of proof of (hudood) crimes with genetic fingerprint in Islamic jurisprudence and law.
- 2- To recognize the enormous information revolution that has allowed modern scientific theories in the field of using modern methods.

The hypothesis of the study:

This study attempted to answer the hypothesis of accepting the Islamic jurisprudence of modern methods in proving (hudood) crimes with DNA.

Study Questions:

This study attempted to answer:

1. Does Islamic jurisprudence accept the proof of (hudood) crimes with DNA;
2. What controls are required for these means?

Research Methodology :

The researcher followed the method of inductive analytical analysis of the correct deduction , and analyzed the modern methods of analysis of blood and urine in the cases of descent and its argument including the clerics of Islamic jurisprudence.

The researcher also attributed the verses to the Qur'an and the hadiths to their correct and authentic sources.

He also relied on the main references of jurisprudential books of the different sects as much as possible, in addition to many modern literature presented by Islamic jurisprudence in a simplified scientific way.

Study plan:

The researcher divided the research into three topics. The research included an introduction that included the reasons and importance of the subject, its hypotheses and problems, and the methodology used in the

research as follows:

The first topic: Proof of(hudood), prescribed Islamic rules against certain crimes under the evidence of DNA in Islamic jurisprudence.

The Second topic: Proof of(hudood), prescribed Islamic rules against certain crimes under the DNA hypothesis in comparative law.

The third topic: A balance between Islamic jurisprudence and comparative law.

The first topic:

Proof evidence of(hudood) under the benefit of doubt of (DNA) in Islamic jurisprudence

If a woman claims that a man raped her or aborted her for adultery, and she made in her case, the seminal remnant in her clothes from the effects of his act, or said that her pregnancy is an effect of that act, or found a woman who is not married and is pregnant, and named certain person that he has convicted adultery, and raped her, or if well-known poor who suddenly looks like the richness of wealth, and found in his hand a certain money known to others, and demanded by them through the judiciary. The results of the DNA proved the validity of their claims (the woman who claimed the crime of adultery, and the stolen money), is the (hudood), crime on the accused based on the results of DNA analysis or not?

The (fuqaha), jurists, fiqh scholars differed on the answer to this question on two points:

First, the majority of modern jurists and scholars have argued that it is not permissible to set (hudood) crimes such as; (adultery, rape, stealing, drinking alcohol), based on the results of the DNA,¹ and they quoted their doctrine as follows:

First: From the Holy Quran:

Allah Almighty Said⁴ (And those of your woman who commit illegal sexual intercourse, take the evidence of four witnesses...)².

And He said: (And those who accuse chaste woman and produce not four witnesses...)³.

The significance of this is that the Prophet (p, b, u, h) forbade the adultery of (Maiz) unless it was approved four times⁴. This states adultery

1- Badai al sanai-Ali Al-Qardhaghi, op. Cit., P. 30, Dr. Nasser Abdullah Al-Maiman: The previous reference to the Qur'an, , P. 434, and notes that this is what was endorsed by both the Fiqh Council of the Muslim World League in the past, Its sixteenth session held in Makkah from 21/ 10 / 26-1422H, and the Fiqh Seminar of the Islamic Region for Medical Sciences..

2- Al - Nisa' verse -15.

3- Surah Al – Nour-4.

4- Al-mogni to Ibn Qudamah: A 10, p. 187, Scouts of the mask for the Bhouti: C 6, p. 103.

crime cannot be established by DNA, but by four eye witnesses¹.

This reasoning is discussed as follows: There is nothing in the verses or in the hadeeth which indicates that the methods of proving the crime of adultery are prohibited in acknowledgment and testimony.

One of the means of proving the crime of adultery is nothing else, as evidenced by the fact that the Commander of the Believers Omar ibn al-Khattab (may Allah be pleased with him) set the (hud); crime of (zina); adultery on the basis of the presumption of pregnancy on the one who does not have a husband or a master and did not mention any suspicion or coercion. Adultery if he is immune from men and women if the evidence of the pregnancy or confession)².

The scholars have agreed to say that the Sahaabi is not an argument on the part of one of the Companions who are hard-working, and they differed in that it is an argument against others, and the most correct of the scholars of the fundamentals is that it is not There is no argument at all, and this is chosen by the Amidah, al-hagib Jadeb al-bydawe³.

Secondly: From the Sunnah of the Prophetic:

- 1- Narrated by Ibn Abbas, may Allah be pleased with them said: The Messenger of Allah peace be upon him said: (If i (rajmat); stoned anyone without evidence ,I would have stoned her...she has appeared suspicious in the logic and body and ...)⁴.

In this hadeith, the Prophet (peace and blessings of Allah be upon him) did not (hada); punished the woman who showed evidence of adultery, which is the appearance of suspicion in her logic and body, and the entry of foreigners on her. Even if he was accused of treason, and measured by the rest of the (hud), including the extent of theft⁵. Al-Shawkani said after mentioning this hadeih:

(It is not necessary to limit the charges - that there are evidence that makes him in the place of accusation - because the establishment of the (hud), is damage to those who must not be harmed by it, which is ugly and rational

1- D / Abdulrahman Ahmad Rifai, op. Cit., P. 440.

2- Sahih al-Bukhari: thechapter of stoning the pregnant in adultery if he is immune, c 6, p. 2505, Hadith no. 6442, Sahih Muslim : C 5, p. 556, door stoning al-Thib in adultery, Hadith No. 1691.

3- In the words of Omar ibn al-Khattab may Allah be pleased with him to impose his argument controversial, but it does not lend to the reasoning, why? It was narrated by those who say that it is not permissible to establish boundaries with evidence from ahaadeeth, and to do so, and to put the saheeh's view.

4- Sinan Ibn Majah: C 2, p. 118, Hadith number 2559, the door of the obscene, and said at the Imam Sindi: Isnadh right and his men trusted.

5- Fat'h Al-Bari: C 12, p. 188, the door of those who showed obscene and dirty and charge without evidence.

and legitimate, it is not permissible to set the (hud), punishment only after the certainty, because the mere intuition and accusation and suspicion is the case for error and error, So that he should not be punished .

Muslim and harming him without any difference¹.

There is nothing in the hadeith which indicates that it is not permissible to set the (hud), punishment of adultery, theft, etc., with genetic imprint, but rather indicates that it is not permissible to establish it without proof, and the genetic imprint evident . The adultery against this woman was not established due to the weakness of the marks that appeared on her, which did not amount to definite clues so that the (hud), was not ruled out².

This discussion answered: that the meaning of the evidence and the testimony of the witnesses, which is intended. Because the most evidence for the statement is witnesses³. And this answer can be as evidence, as Ibn al-Qayyim; said, the evidence is name of all that shows the truth and shows it, and the one who singled it out with the two or four witnesses or the witness and the two women, has not been proven. The evidence has never come in the Qur'an by the two witnesses, , and the group ... evidence includes all the clues and not one type without another⁴.

- 2- Narrated by Ibn Abbas, may Allah be pleased with them - he said: a man drank;(Fisker), intoxicated ,so he was taken to the Prophet peace be upon him, when he reached neighborhood of the Abbasid Abbas escaped and Abbas caught him, and told that to the Prophet peace be upon him, who said: (Did he do that?)⁵. He did not command anything.

The indication that intoxication is a presumption of drinking alcohol, and with the existence of this context, the Prophet (peace and blessings of Allah be upon him) did not order the flogging. It can be discussed in this reasoning that: The Messenger of Allah peace be upon him did not apply the drinking punishment on this man, because there was no confirmation before him, nor testified that he saw him drink wine...

And nor because he accompanied Abbas the uncle of the Prophet peace be upon him. Peace be upon him⁶.

- 3- It was narrated that Aa'ishah (may Allah be pleased with her) said: The Messenger of Allah (peace and blessings of Allah be upon him) said:

1- Nail Al-Awtar, Al-Shawkani, 7 ج, p. 104.

2- Dr. Muhammad Al-Zuhaili, Proofs, C2, p. 510, Dr. Mohamed Ra>fat Othman, Judiciary in 14-Islamic Jurisprudence, p. 282.

3- mogni al mohtag: C 4, p. 461, d / Abdul Rahman Ahmad Rifai, op. Cit., P. 441.

4- al torog al hukmeya: Ibn al-Qayyim, p. 11, informing the signatories, c 1, p. 90.

5- Al-Fajj, is the broad and wide road, see: al mesbah al moneer; Fayoumi, p. 176.

6- Mohie.

«ward off,(hudood), of the Muslim as you can....¹ The Prophet (peace and blessings of Allah be upon him) said in this hadeith that the (hudood), should be based on the possible suspicions, and the possibility of suspicion is not in itself, but in what is worn or mixed with suspicions related to the circumstances surrounding it².

(Most intelligent scientists believe that as long as there are humans, the probability of error is either through contamination of the samples used, a defect in the technique of analysis, statistics, etc.).

There is no doubt that each of these two similarities is sufficient to prevent and ward off,(hudood), on the accused³.

Third: From the prophetic tradition:

- 1- What is narrated that a woman came to the Commander of the Faithful Omar bin Al Khattab may Allah be pleased with him; she said: I have no husband and I'm pregnant, I am heavy sleep woman with a heavy head, a man coupled me while I was sleeping, I did not wake up until he finished. In this case he prevent and ward off,(hudood), on her⁴.
- 2- Narrated by al-Bara ibn Sabra⁵ from Omar bin al-Khattab may Allah be pleased with him that ; came pregnant woman, and claimed that she was forced to adultery, he said: let her go free, and wrote to the princes of the armies not to kill anyone except with his permission⁶.

The sign of significance: In these two tcases, the Commander of the Faithful Umar ibn al-Khattab (may Allah be pleased with him) did not punish the unmarried women who found pregnant or claimed coercion of rape.

The (hud), punishment of adultery does not take place only in the context of the presumption or the DNA, and that same for the other (hudoods)⁷

Fourth: It is reasonable: The evidence of reasonableness is that there is a suspicion that the (hud) may not apply. It may be a matter of suspicion or coercion,⁸ and the presence of the stolen money may in the hands of the accused or a or coercion. Narrated by Ali, and narrated from Ali and Ibn Abbas, they said: If the (hud) (may) and (perhaps)it is disabled⁹.

1- Dr. Mohammed Ra'fat Othman: The previous reference, p. 283.

2- Nile Awtar: Shawkani, c 7, p. 105.

3- D / Wahba al-Zuhaili, op. Cit., Pp. 17- 18.

4- D / Wahba al-Zuhaili, op. Cit., P. 17- 18, Dr. Nasser Abdullah al-Maiman, op. Cit.

5- Mogni: Ibn Qudaamah, c 10, p. 187.

6- Mogni: Ibn Qudaamah, c 10, p. 187.

7- Mogni: Ibn Qudamah, c 10, p. 187, d / Abdul Rahman Ahmad Rifai, op. Cit., P. 443.

8- The woman may bear the impurity, and to enter the water of the man in her vagina either by doing or doing other, see the creator to explain the mask, Ibn Mafaleh, c 9, p. 82, and beyond.

9- The treasure of the workers: the son of Hossam al-Din al-Hindi, c 5, p. 401, book of the border, Hadith No. 13423.

This evidence can be discussed as follows: The possibilities you have presented are rare, and the shar'i rulings are based on the majority, not on the rare few, and most often the pregnancy comes from the abyss and not from the introduction of water, although it is conceivable that it is rarely ruled¹.

The answer to this debate can be answered by two things:

The first thing is that what you have said can be invoked in money or in matters other than (hudoods) issues, because the latter is suspicious, and since the possibility of pregnancy is not guaranteed, it is a suspicion that the (hud) is prevent and ward off.

The second thing is that this statement is undermined by another rule: that the evidence, if touched by the probability, has fallen into the infallibility²...

Fifth: The evidence of consensus: Haji Ibn Najim unanimity of scientists to the prevent and ward off, (hudoods), of the (shabat), suspicion³.

The second view: Seeing the proof of all (hudoods), under the presumption of DNA, and so some said.

And some of the imams who say⁴: that the (zina); adultery should be imposed on the woman without a husband... or the theft with the presumption of the existence of the money stolen by the thief⁵.

The viewers have quoted their doctrine as follows:

1- The verse: (a witness of her household bore witness(saying) if it that his...)⁶.

The reason behind this verse is : that it is permissible to rule in the marks and evidence in the crime of adultery, because it is permissible to know the truth about them from the liar, and this is only a work in the marks⁷.

Ibn al-Gharas said in his saying: This verse is invoked by those who see the rule of the marks in the absence of evidence⁸. Ibn al-Qayyim said: God

1- D / Abd al-Rahman Ahmad al-Rifa'i, op. Cit., P. 444,, Ezzat Obaid al-Da'as, Fiqh Rules, p. 38, first edition, Hama, Syria.

2- D / Abdul Rahman Ahmad Rifai, op. Cit., P. 444.

3- «Ibn al-Muhajaj», p. 145, al-Mughni: Ibn Qudamah, c 10, p. 187, locality: Ibn Farhoun, c8, P. 331.

4- P. 343, Arab Center for Security Studies and Training in Riyadh, 1414H / 1993, Dr. Mohammed bin Mohammed al-Sabeel, op. Cit., P. 55.

5- «Ibn al-Qayyim, p. 102,» Ibn al-Qayyim, p. 8, informing the signatories, Ibn al-Qayyim, c. 3, p. 202- 221, The Canons of Islam, for the Prophet, c. 2, p. 252.

6- Surat Yusuf, verse: 26- 27 -28.

7- Dr. Ahmed Abdel-Moneim Al-Bahi, Methods of Evidence in Sharia and Law, p. 73, quoting Dr. Muhammad Ra'fat Othman, op. Cit., P. 226.

8- Saheb al tabsera went to the emergence of the pregnancy freely municipality is not strange and does not know her husband, it is a challenge, as well as the nation that has no husband or master or that the master denies that he set foot, they challenge if the pregnancy appeared, because that witness adultery ... See: The Interpretation of the Rulers, Ibn Farhoun, c. 2, p. 118, d / Abdul Fattah Abdul Hadi Abed, op. Cit., P. 332.

mentioned the witness's testimony and did not deny it¹.

He may object to the reasoning of this verse that: This is in a law other than our Sharia, we do not have to, and this was answered by saying: «What Allah has revealed to him is revealed to him in favor of benefit.» Allah says: «Those who are guided by Allah, I follow them.»²

The Prophet (peace and blessings of Allah be upon him) said: «The scholars have agreed that a law that is prescribed by us is lawful for us if it has been preceded by a path that is good and not denied. In this case of what is stated, and this verse³.

- 2- The words of God, Blessed and Exalted: (So when he had furnished them forth with their provision....)⁴

Evidence of these verses indicates that the existence of the stolen in the hand of the thief is sufficient evidence in establishing the (hud), against him. Rather, he is like his approval. It is stronger than the evidence. The intention of the structure is that he can benefit from it. It is obligatory to (hud) of pregnancy in adultery and smell in alcohol⁵.

He objected to this reasoning: that may have been permissible in their law, contrary to the Islamic Sharia, which prevented the establishment of the (hud) of the theft of that presumption, and did not address it from the thought or the possibility of the failure to establish the (hud). Ibn Hazm al-Dhahiri says: «... the fact that a stolen person is not a statement that he is a thief, but he thinks, and it is not permissible to cut off the Muslim's hand with suspicion.»⁶

1- Al torowg al hokmyea, Ibn al-Qayyim, p.

2- Surah Al - Ana (verse 31).

3- He previous narrations were different in the previous witness: «If his shirt has been passed by, and he is a liar, he is the student.» (Ibid., P. She defended herself, (although his shirt was from the house of Vtkbt which is the truth), she is a student and the fugitive of it, Furwa that he spoke in the cradle of the cradle said Suhaili: It is correct to talk about the Prophet peace be upon him and said other: On the authority of the minister, he was consulted in his affairs, and it was from the people of the woman and it was said that she was her cousin, he said al-Sadi, the second saying is correct, and narrated from a surly son that he was men of private money K. Al-Qurtubi said: If you descend upon a witness to be a child, there is no indication of the work in the Emirates ... If a man is correct, it is permissible to have an argument in the sign in the clip and many places ... The son of Farhaan followed what al-Qurtubi said: He said, because if he is a child, the argument is based on the permission of Allaah. He has guided us to his serenity, to observe and look at the signs and signs, which he teaches about the truthfulness of the truth and the invalidity of the words of the invalidator. (See Tafseer al-Qurtubi, c. 4, p. 3496, edition of Dar al-Ghad al-Arabi), the vision of the rulers: Ibn Farhoun, c 2, pp. 1118 -119.

4- Surat Yusuf verse 70- 76.

5- Information of the signatories: Ibn al-Qayyim, c. 2, pp. 202 -221.

6- Al mohali: Ibn Hazm, c 11, p. 340.

Secondly: From the Prophetic Sunnah:

It was narrated from Alqamah ibn Wael al-Kindi that his father said that a woman who came out at the time of the Messenger of Allah (peace and blessings of Allah be upon him) wanted to pray, so a man coupled¹. And she passed a group of immigrants, she said: That man did so and so, so they caught him, and took the man who thought to be to the prophet(p,b,u,h), when the prophet(p,b,u,h). ordered to stone him, the real one who coupled her stood up and said I did that.

So the prophet(p,b,u,h), said to her: «Go, God has forgiven you.» And ordered to stone the real man who coupled her..²

The evidence indicates that this hadeith indicates the evidence is based on proving the crime of adultery and establishing the (hud), and this is applied on the other(hudoods)³.

The scholar Ibn al-Qayyim said after mentioning this hadeith:

The Prophet (peace and blessings of Allah be upon him) said: ordered to stone al Mujeth without any evidence.» This was one of the first signs on the basis of evidence and taking the evidence of the conditions in the charges. It was narrated by Umar, and the scholars of the people of the city(al Madina), and Ahmad in his doctrine.

It is also true that if a person is found guilty of stealing if he finds that he is stolen, then this man is not aware of what he is trying to escape. The woman said that he did it to me and he admitted that he was a Muslim and came to her. In this evidence showed that the owner of it, and the presumption of it does not fall short of the presumption of evidence and evidence of the possibility of mistake and hostility of witnesses as the possibility of mistake and hostility of women, here, but thought enmity of women in this subject very exclusion and the end of the matter that this apparent taint does not rule out the proof is proven in the same way as in shar`i⁴.

Discussion of this evidence: This reasoning can be discussed that this hadeith is (dha;ef);weak not correct, some narrated that the Prophet peace be upon him abstained from stoning who admitted adultery to repent. And some of them are explicit in his stoning, and this is weak in the hadeith, so it is not permissible to infer it⁵.

1- Tjilha, (couoled).

2- Sunan al-Tirmidhi, 3, p. 7, the door came in the woman if she committed adultery, Hadith No. 1454.

3- Mohammed Ra`fat Othman, op. Cit., P. 279.

4- Eilam al mowageen, Ibn al-Qayyim, c. 3, p. 20, The methods of governance, Ibn al-Qayyim, p. 71.

5- He said in Musnad Imam Ahmadk when the Prophet ordered his skull said: «O Messenger of God, I said to the woman (Go, God has forgiven you, and said to the man said well, he was told the Prophet of God not translated? The city before them), see Musnad Imam Ahmad bin Hanbal: C 6, p. 399.

The narrators of the hadeith went on to say that this hadeith was narrated by the Messenger of Allah (peace and blessings of Allah be upon him) where he ordered the stoning of that man even though the crime was not proven against him, so that he claimed to have committed the crime. Ibn al-Arabi said in his commentary on Sunan al-Tirmidhi: (This is a great wisdom, because the Prophet (peace and blessings of Allah be upon him) ordered him to be stoned before he committed zina, even if he did not prove it. This is a reason to show the psychological when he feared that someone who did not do so would be stoned. (Peace and blessings of Allah be upon him)¹.

In the footnote of Aoun al-Ma'abud, in the margin of Sunan Abu Dawood:

(It is obvious that hadeith is problematic the stoning is not valid without the evidence and confession, and the saying of the woman does not fit him - but she is worth to (hud), of defamation².

It is supported by the above, the review of the Prophet peace be upon him to that man when he confessed himself to adultery four times, so the establishment of the (hud), on one who denies this incident do not settle³. The answer to the discussion: The response of those who say that the evidence is a means of proving in the (hudoods) , of this discussion that: Disturbance in the hadeith is not in the matter of stoning, the one who saved her, but it is in stoning the one who committed the crime of adultery with her, and the base of our reasoning is stoning which was saved based on the presumption that is evidence of the case of the arrest of the one who saved, and the insistence of women that he. This has been agreed upon by the Tirmidhi and others, and thus proved it is valid.

In addition to the above, Ibn al-Qayyim, who mentioned this hadeeth to support his doctrine, said that this hadeeth is a disturbance in his 4848-Sunnah, and that your imam is a Muslim who left it to this disorder, even though the hadith is on his condition. See the wise ways Ibn al-Qayyim, p. 70. Dr. Shehada Abdul Muttalib Hassan, p. To infer⁴.

The answered by saying that the disagreement in the hadeith indicates the weakness of that hadeith.

Third: From the prophetic tradition:

1- Aredat Al-Ahwadi with the explanation of Saheeh al-Tirmidhi, Ibn al-Arabi, c 6, pp.

2- The Prophets of the Idol Explanation Sunan Abi Dawood, Abu Tayyib Muhammad Shams al-Haq al-Azim Abadi, vol. 6, c 12, p. 28, first edition, 141 AH / 1990.

3- In addition to the above, Ibn al-Qayyim, who mentioned this hadeeth to support his doctrine, said that this hadeeth is a disturbance in his 48.

4- Sunnah, and that your imam is a Muslim who left it to this disorder, even though the hadith is on his condition. See the wise ways Ibn al-Qayyim, p. 70. Dr. Shehada Abdul Muttalib Hassan, p.

What was narrated from Ibn Abbas said: Umar ibn al-Khattab said: «when Allah revealed the verse of stoning, we read it and rationalized it and ... it. The Messenger of Allaah (peace and blessings of Allah be upon him) stoned and we stoned after that. I am afraid that in the long coming time people have to say: There is no stoning in the Book of God, but it is true, on the one who committed adultery if he is (mohsa'n-immune); married if is men or women if the evidence is made, or is the pregnancy or confession¹. Meaning: In this evidence that a woman without a husband or a master, if found pregnant and did not mention suspicion, it proves the pregnancy, and this is what Omar said on the pulpit, not denied by one, so, it is same as consensus².

Discussion of this evidence: This reasoning can be discussed as that: This is the saying of Omar, and the words of the companions are differ in them, whether they are suitable to be an argument or not, so taken Omar's saying to prove such a great command that leads to the loss of souls. And Omar said this in group of companions and no one denied that, it does not need to be unanimous because denial in matters of judgment - in which opinions differ - is not necessary required for the violation, especially if it is stated by Omar, which is similar in the issuance of companions and others³.

The answer to this discussion: Al-Tahaawi answered this discussion by saying: (The benefit of saying of Omar: Stoning is right on the adultery, if the pregnancy from the offense of the adultery, if so, but must be proven to be adultery, and to be stoned with the possibility of it, because Omar asked the pregnant women, she was crying, asked: Why are you crying? she said that a man Fucked her while she was sleeping, so Omar prevent and ward off, (hud)⁴.

On the assumption of the convening of this meeting, it remains the same as the Scottish consensus, whose argument is considered a matter of dispute among the scholars of the fundamentals. See the jurisprudence of Shaykh Muhammad Abu Zahra, p. 205

This answer can be refuted by two things:

The first thing is that The first thing is that the analogy of our master Umar ibn al-Khattab may Allah be pleased with him, the pregnancy by confession does not mean that it does its place, because the instance of

1- Mohammed Ra'fat Othman, Judiciary in Islamic Jurisprudence, p. 279,280.

2- Al-Bari: Ibn Hajar al-Asklani, c 12, p. 148, Sahih Musallam, explaining the nuclear, C 5, p. 556.

3- Salb al-Salam, al-San'ani, 4, p. 8.

4- On the assumption of the convening of this meeting, it remains the same as the Scottish consensus, whose argument is considered a matter of dispute among the scholars of the fundamentals. See the jurisprudence of Shaykh Muhammad Abu Zahra, p. 205.

the thing is not the same, Ibn Hajar says, commenting on the words of the Taghawī: (It is not hidden to, Omar, but the person who does not adopted the (hud) as soon as the pregnancy does not see the possibility that the adultery is not ascertained adultery and that prevent and ward off, (hud)¹.

The second thing is that Omar's rule was not a general one, but rather a policy of a situation that required it. Some modern jurists say: «This may be a policy of life for the circumstances that dictated that².

Imam Ali - may God be pleased with him narrated - that he said: «O people, whatever woman came with a pregnancy or recognized it, the Imam is the first to stone, then the people, ...

What is narrated from Imam Ali - may God be pleased with him - that he said: O people, adultery is adultery: adultery if it is a secret or seen and indented, if it is secret to testify witnesses, so witnesses are the first to stone then the public³

The significance of these two hadeith:

This statement from Imam Ali - indicates that the appearance of pregnancy is evidence of the occurrence of the crime of adultery, and shows that this is required to establish the (hud), and that the first to stone is the ruler to throw the prostitute who appeared to be pregnant, and if the adultery has been proven by the presumption, the Pregnancy, so to the extent of adultery all other (hudoods) ,are also confirmed by presumption, or DNA.

Hadieth of the Caliph Umar ibn al-Khattab may Allah be pleased with him, in addition to that it was narrated from the Imam Ali ,where he said: If in the (hud) perhaps and may be, it is suspended disabled, It was narrated that (Abd-Allaah ibn Mas'ood, Maa'adh ibn Jabal, and) Aqba ibn (Aamer said that they said: «If you suspect the the (hua) prevent and ward off, if you can»⁴

There is no doubt that the emergence of the Pregnancy from the unmarried woman, or the presence of traces of semen on the clothing of the victim, and the testing of the fingerprint on it, is not without suspicion compounded to prevent the (hud).⁵

It was narrated that Uthmaan ibn Affan (may Allaah be pleased with him) came to a woman who was born in six months, and he ordered that it be stoned. Ali ibn Abi Talib said to him: This is not what Allah says in his (book); Quran.

1- Open Al-Bari: Ibn Hajar al-Askalani, C 12, p.

2- Open Al-Bari: Ibn Hajar al-Askalani, C 12, p.

3- Methods of Judiciary in the Islamic Sharia, Sheikh Ahmed Ibrahim, p. 423, Dr. Abdul Rahman Ahmad Rifai, op. Cit., P. 447.

4- Singer: Ibn Qudamah, c 10, p. 187.

5- D / Abdul Rahman Ahmad Rifai: op. Cit., P. 447.

He said: (And the parents give their children full turns for those who wanted to be breastfeeding ...)¹.

Pregnancy may be six months, no stone in that, so Osman sent in her request and found she had been stoned².

The evidence is that the caliph Uthman (may Allah be pleased with him) ordered the stoning of this woman, who was born in six months, on the basis that this pregnancy was not for her husband³.

Fourth: the work of the people of the city (Madina): Imam Malik said in the mouata (If unmarried woman found pregnant and said she was forced, that is not acceptable, so (hud), must be applied, except to have evidence that she was married or that she was forced, or came bleeding if she was (Bakr), virgin, ..., If she did not come to any of this she will be stoned⁴.

Discussion of this evidence: that the work of the people of the city; (Madeina) does not agree on as argument.

The majority of the (Sahaabah); the companions of the prophet (p,b,u,h) left the city; (Madina) and dispersed in the territories, and with them many of the Sunnis were taken away from them by the people of these territories. Some of these Sunnis may have been invalidated. Sunnis were not limited to them alone. Their work is similar to their version of the Messenger of Allah peace be upon him⁵.

Fifth: The authors have argued that the DNA (clues) as a means of proof in the (hudood) by analogy, in two ways:

The first aspect: It is permissible to set (hudood); of adultery and theft, according to the results of the DNA, compared to the requirement that the wife should be based on the faith of (al-La'an); oath of condemnation according to the majority of the scholars of the Maalikis, Shaafa'is and Hanbalis⁶.

Discussion of this: This can be discussed by: The analogy of the DNA on the pregnancy is corrupt, because of the conditions of the validity of the analogy, that the basis of analogy is by the text or agreement of the opponents⁷, it has not been established to (hud) the adultery by recoiling by textual text from the (book); holy Quran or sunna. The fuqaha Islam jurists are agreed

1- Surah Al - Ahqaf verse.

2- Surah Al - Baqarah verse 233.

3- The position of Imam Malik explain Zarqani, c 4, p. 146.

4- Ibid., P. 150.

5- An analysis study of the Maliki doctrine, Dr. Abdul Jalil al-Qarashawi, p. 6, a lecture series on graduate students at the Faculty of Sharia and Law.

6- The beginning of the hard work: Ibn Rushd, c. 2, p. 119, end of the needy, Ramli, c 7, p. 115, Zad al-Maad, Ibn al-Qayyim, c. 4, p. 100, locality of Ibn Hazm, c 10, p.

7- note in the fundamentals of jurisprudence: Muhammad Amin Shankiti, p. 324, fifth edition in 1422 e library of science and governance in Medina.

that it is so. The Hanafis and Hanbalis went in the most correct of the two narrations that the nakul is not evidence of zina and it is not permissible to (hud) it. If a woman abstains from (al-La'an); oath of condemnation, she will be imprisoned until she believes or acquires his claim or recognizes four¹.

If it is proven that the analogical thing is not correct, and that the Nkol is invalid, and the nullity of establishing the (hud), the analogy of the DNA is also, corrupt terms². The answer to this discussion can be: that the wife has not been punished only for her Nkol, but also by the oath of defamation of her husband³.

Nkol, which is in itself a suspicion, It does not eliminate it in any of the (hudood)⁴. But if it is not achieved by the husband's tenderness alone, then the woman may not be able to reduce the (hud)⁵. So they have two possibilities:

The first: There is no (hud) to it;

Secondly: It is necessary to (hud) it, because (al-laian), oath is the husband's concern⁶.

The second is to establish (hud) to adultery and theft under the presumption of DNA, in comparison to the permissibility of establishing alcohol drinking (hud) with a pinch of odor⁷. These issues, in which some scholars have proven the (hud) and the punishment of non-witnesses and not the evidence,⁸ but by taking the evidence and ruling it, then the adoption of the genetic fingerprint and judgment under the cases of (hud) and (qasas); retribution away from the right and not contrary to the right in comparison with those. And the accuracy of laboratory, development and the replication of experiments, especially in more than one laboratory, and by other experts

1- The singer of Ibn Qudamah, c 8, p. 75, says the owner of the innovations: (Our doctrine that it is any wife if she refrained from locking up even to condemn or recognize adultery, and punishment for the punishment of imprisonment is suffering, see Bdaiy al-Sanaa, Kasani, C 3, p. 348.

2- D / Abdel Rahman Ahmed Rifai, pp. 449 -450.

3- Singer, to Ibn Qudamah: C 8, p. 75.

4- Singer to Ibn Qudamah, c 7, p. 445, Zaid al-Maad Ibn al-Qayyim: c 4, p. 97.

5- Singer to Ibn Qudamah, c 8, p. 75.

6- The Illustrator of Shirazi, c. 2, p. 129.

7- Ibn al-Qayyim, Zaid al-Ma'ad, c 4, p. 97, singer of Ibn Qudamah, c 7, p. 445. See Dr. Abdul Rahman Al-Refai, op. Cit., Pp. 450451-, Dr. Saad Al-Din Musaad Hilali, op. Cit., Pp. 431- 432.

8- Some of the fuqaha have pointed out some of the limits and shortcomings in the evidence and the emirates that indicate their reasons, even if this is not proven by a certificate or a confession. (D) Proof of the extent of theft for those who have stolen money; (e) Proof of retribution against those found alone in the possession of a knife when a person is dead. See the letter of Ibn Abizaid al-Qizwani, with the margin of fruits Al-Duwani: Al-Nafrawi, 2, p. 182, Sheikh Muhammed al-Sadiq, p. 8, p. 82, Islamic book edition, the creator of explaining the maskan, Ibn Mufleh, , In the reform of the shepherd and the parish, to the sheikh of Islam, Ibn Taymiyyah, pp. 102,108, Jihad Press, 1381 AH, 1961 AD.

who reassure the Governor of their safety, And their experience, and other clues and conditions that carry legitimate ruler reassurance to the validity of the results, and suggest the emergence of the truth and his statement has a genetic fingerprint, if the evidence is affected from the face of the truth and demonstrated by any means¹. The scholar Ibn al-Qayyim: (Allah Almighty sent messengers, and sent down his books to make the justice done on the earth and heavens, if the signs of justice appeared, and resulted in any way that was the way of God's law and religion..., and God knows best and wisest and fairer Justice ... the intention is analogy to establish justice between people)². The analogy of alcohol drinking (hud), with the smell, is true rule; because of the conditions of the validity of the, the rule of the measured asset is fixed by the text or the agreement of the opponents, which is not achieved in the measure here, The measurement is corrupt.

Sixth: The (rational) reasonable: The evidence of reason, it is two ways: The first aspect is that the existence of a pregnancy is not absolute except from (zina), adultery and the (hud) is proven by that, except that it is refuted by the woman, and this indicates that there is a suspicion. Ibn al-Qayyim says in his book: The companions of the Prophet (peace and blessings of Allah be upon him) punished adultery by pregnancy and drinking alcohol and vomiting. This is the correct view. The evidence of vomit and smell, and the rope for drinking and adultery is absolutely correct³. He said in another place: (He was full of wisdom and mercy, that he did not take the perpetrators without an argument as he did not torture them in the Hereafter only after the establishment of the argument on them, and make the argument that takes them either one of them, the acknowledgment or what is in place of the status, From the confirmation of the tongue, if the evidence of the case of the crime as the smell of alcohol, and vomiting, and the pregnancy of a woman with no husband or a master, and the existence of stolen in the house of the thief and under his clothes.

These last two are explicit text they are not suspicion⁴.

Ibn al-Qayyim says in his book: The methods of governance: (The imams and caliphs are still ruled in absolute terms if found stolen money with the accused, and this evidence stronger than the evidence, and recognition, they address the truth and lying, and the existence of money with him explicit text does not address suspicion)⁵.

1- D / Omar ibn Muhammad al-Sabil: The previous research, pp. 55 -56.

2- El'am al moageen: Ibn al-Qayyim, c. 4, p. 309, methods of governance, Ibn al-Qayyim: p.

3- Ibn al-Qayyim, Al-Mu'awabeen, 2, p. 310.

4- Ibn al-Qayyim, the two sites, c. 2, p. 67.

5- Ibn al-Qayyim, the methods of governance, p. 8.

He says in his book: el'am al moageen: (But the legislator did not stand in the provision of rights at all on the testimony of two males, not in blood or money, nor in the vulva and in the(hudood), but the elders and companions wine by smell and vomiting, as well as if found stolen when the thief was first limiting the appearance of the rope)¹.

Discussion of this face: This can be discussed in two ways:

The first is that the view that the clue is stronger than the evidence and the confession is contrary to what is proven by the Prophet (peace and blessings of Allaah be upon him) that he did not(limit), the woman to what appeared from the signs of adultery². And stealing is from the(hudood)is not permissible, to (hud), it by comparison with regard to adultery³.

Second: The existence of money stolen by the thief does not oblige him to be the thief, for the possibility of his arrival to the one who tempts him (gift, or even coercion of theft)⁴. The presence of the defendant's DNA at the place of the theft is not necessary he is the offender, for the possibility of passing through that place by chance to spend something, or to do a specific purpose, and each of these possibilities of suspicion enough to prevent the (hud)⁵.

From the inferences of each of the two groups, and the discussions on the evidence, one can almost certainly say that the general public's view is not working with evidence or DNA at the (hud), is favored for the severity of the (hud), and the greatness of the matter and for the safety of the evidence on which this opinion was based. The most powerful of these evidence: that the presumption has many possibilities, and hover around suspicions, (hudood) and suspicions⁶.

However, the DNA illuminates the path to justice and guides them to persons who have already passed the scene of the crime or the victim's body. Justice, with its insight, has the right to decide the accusation of the accused in the first instance: on the basis of excluding the application of parish (hudood), with the slightest suspicion⁷.

1- The same is true of the existence of the stolen property with him, and he said, «I will not take it unless it is stolen.» Bshahdi justice or stability by choice, and voluntarily say contrary to legitimate policy.

2- Ibn al-Qayyim, informing the two signatories: 1, p. 87.

3- D / Mohammed Al-Zuhaili, Evidence, c. 2, p. 509.

4- Ibn Majah, c. 2, p. 118.

5- Al sharh al sageer of Dardiri, C 4, p. 138, d / Saad al-Din Musaad Hilali, op. Cit., P. 41.

6- DrAbdul Rahman al-Rifai, op. Cit., P. 470.

7- (2) and to the weakness of those who have relied on the legitimacy of the work of evidence in the borders.

The second topic:

Proof of (hudood), under the DNA hypothesis in comparative law

First: To prove the crime of adultery and rape under the DNA. If an unmarried woman is pregnant, according to the concept of adultery in law

This is not considered adultery and does not result in punishment, because the crime of adultery in positive law means that a married person, a man or a woman, has intercourse with a non-wife. Adultery is a crime committed by a wife if she sexually contacts a man other than her husband and is committed by the husband if he sexually contacts a woman other than his wife¹.

Therefore, the fact that a married woman is one of the pillars of the crime of adultery in positive law. In addition, if sexual intercourse is found by an unmarried woman, it is not adultery, even if it results in pregnancy².

If the comparative law requires that adultery be committed for the fact that a woman is married and has sexual contact with her husband, what is the adaptation of the act if the sexual relationship is between the unmarried?

Comparative law finds that sexual intercourse is between a man and a woman who is not married, and they are eighteen years old, such sexual intercourse may have been consensual or may have arisen from the victim's dissatisfaction³.

If consensual sexual intercourse is made, the act is not a crime, but is the use of sexual freedom, and therefore, according to the codified scheme, it must be excluded from the scope of the prohibition⁴.

If the contact arises without the consent of the victim, this is considered rape. This is because the concept of rape is: a man contacts a woman with complete sexual intercourse without proper consent. This is explicitly stated in Article 267 of the Egyptian Penal Code: (If a woman is a victim of unconsensual sexual intercourse the doer shall be punished with hard labor.) It is agreed upon by the legislator that the comparative legislator did not specify evidence to prove the crime of adultery, except for the partner of the adulterous wife. Thus, the general rule of criminal proof in the statutes is the freedom of proof in all ways and means. The judge can draw from the evidence presented what

1- Mahmoud Mahmoud Mustafa, Explanation of the Penal Code (special section): - p. 337 - edition 1984, published by Dar al-Nahda al-87--Arabiya, Dr. Mahmoud Naguib Hosni, summarized in the explanation of the Penal Code (special section): - Paragraph 759 -500.

2- Mahmoud Mahmoud Mustafa: The previous reference - p. 338, Dr. Mahmoud Naguib Hosni: Ibid. Paragraph 667 - p.

3- If contact with the desire of the woman and without the consent of the man, this is an antidote to the show.

4- Dr. Mahmoud Naguib Hosni: Ibid. - p. 464, Dr. Shehata Abdul-Muttalib Hassan: ibid. - pp. 98 -99.

he considers productive in the case¹. This is explicitly stated in article 302 of the Egyptian Code of Criminal Procedure: (The judge shall judge the case in accordance with the faith which he has formed in his full freedom, but he may not build his judgment on any evidence he has not presented before him in the hearing).

Thus, the comparative law sets out the evidentiary evidence for the partner of the adulterous wife only². As for the wife herself, the husband and his partner and other persons, in accordance with the general rule of criminal evidence, their sexual offenses may be proved by adultery, rape, etc., by all means of proof, with no DNA. The French legislator has authorized the identification of the offender with genetic fingerprints in criminal offenses, including sexual offenses, in article 226 -28 of the new French Penal Code which states that: (Search to challenge or identify a person's identity or identification of a person with his genetic fingerprints, may only be for medical or scientific purposes under criminal or judicial proceedings).

In the area of Arab legislation, the Libyan legislator approved the crime of adultery by scientific means. Article 6 bis of the Libyan Penal Code No. 70 of 1973 ³ stipulates the following:

(And the crime of adultery provided for in article 1 of this law shall be proved by the confession of the offender or by the testimony of four witnesses or by any scientific means).

With this provision, the Libyan legislator has added to my way of proving the crime of adultery with the recognition and testimony of witnesses, a third way is the scientific means, and equated them with the value of proof. It should be noted that the term «scientific means» in the text is an absolute term that is not specific, allowing access to all methods and methods described in the text, such as the use of technical or technical devices and medical analysis.

Accordingly, if the crime of adultery or rape is proved by such scientific means as the DNA, the (hud), may be based on its results, such as recognition (confession) and witness testimony⁴.

The Yemeni legislator has taken the Islamic jurisprudence, where it is required to prove the crime of adultery according to the Islamic jurisprudence of the conditions, in articles (263 to 269) Yemeni sanctions.

1- The same reference - p.

2- Article 276 of the Egyptian Penal Code establishes the evidence of the partner of the adulterous wife by saying: «The arrest of him when he is actually wearing it, his confession, the existence of a ketubbah or other written papers, or his presence in a Muslim house in the premises of the harem.

3- This article is added pursuant to Law No. 10 of 1999, concerning the establishment of adultery and the amendment of some provisions of the Penal Code.

4- D / Abdul Rahman Ahmad Rifai: Ibid.

Second: To prove the crime of theft by DNA:

The existence of the stolen object with the accused of stoling from the judicial evidence¹, which sees by a majority.

Comparative jurists² are one of the original methods in criminal law. They are a stand-alone evidence. This is what the Egyptian Court of Cassation has upheld in many of its rulings, in which it ruled that:

(Watching several people walking along the road with those who carry the stolen goods, entering them in a house, and disappearing with them, presuming their involvement in the theft)³.

The German Jurisprudence and Jurisdiction have determined the entry of DNA or DNA analysis under Article 81, paragraph (a), of the German Code of Procedure, which allows the identity of the accused to be proven⁴, and the crime of theft as other criminal offenses may be proven by all means of proof, According to the results of physical tests or medical examinations, of the offenses for which he is likely to be punished after his conviction⁵.

In the area of Arab legislation, the Libyan legislator stated that it is possible to prove the crime of theft and the punishment of a thief under the results of the DNA or other scientific means. Article 9 of the Penal Code No. 23 of 1996 on the grounds of theft and theft states that:

(The offenses of theft and theft - provided for in Articles I and IV of this law - shall be proved by the confession of the offender and by any other means of proof).

In general, general rules of positive criminal law allow the offense of robbery to be proven by DNA results. These rules give the judge broad freedom to take the evidence he sees Fit and rest to him and his conscience and reassure his conscience, whether that guide.

Direct as testimony and recognition. Or, indirectly, such as evidence and, he - the judge - in all cases is not restricted based on the rule to certain

1- Dr. Mahmoud Naguib Hosni, Explanation of the Code of Criminal Procedure - 487.

2- D / Hassan Sadiq Al-Marsafawi, The Origins of Criminal Proceedings - p. 692 - Publisher Ma'aref Establishment in Alexandria - 1964, Dr. 96-Mahmoud Naguib Hosny: The previous reference - Al-Nahdah Al-Arabiya, 1984. Dr. Mohamed Zaky Abu Amer, Criminal Procedures, S853, Al-Ma'aref Institution, Alexandria, Dr. Raouf Obaid, Criminal Proceedings in Egyptian Law, p. 727, Explanation of the Code of Criminal Procedure: - 680 - the second edition - in 1991 presses of the Egyptian General Book Association.

3- Registration on 191945/3/: The set of rules - C6 No. 527 - p.

4- See: Article 302 of the Egyptian Code of Criminal Procedure, as well as Article 179 of the Lebanese Code of Procedure.

5- We have already mentioned that the French legislator authorized the identification of a person with DNA in crimes, including the crime of theft, under the provisions of article 22628- of the new French Penal Code. See: Dr. Ghaith Mahmoud Al-Fakhri, Evidence and its Impact on the Evidence of Crimes, a PhD thesis presented to the Faculty of Sharia and Law, Cairo, 1421H (2000), p.

evidence, when he was in his judgment and reason in the logic of reasoning that led to his conviction, which is provided by the Egyptian legislator in the law of Article 302 of The Code of Criminal Procedure, as well as the Lebanese legislator in article 179 of the Code of Criminal Procedure¹.

As for the Yemeni legislator, we find it in the Code of Crimes and Penalties has been taken according to Islamic jurisprudence (297) ((proving the crime of robbery positive to (hud):

- 1- To recognize the judiciary before it is amended before implementation.
- 2- By the testimony of two righteous men.
- 3- The testimony of a man and two women Idol.

It should be noted that the theft of (t'azer) , which did not meet the conditions of reduction in accordance with Article (294), the researcher believes that there is no objection to taking the DNA as long as this does not entail a limit or punishment pursuant to article (300) Yemeni sanctions².

We conclude from the foregoing that if the crime of theft is proven by genetic fingerprints, the judge has the right to reject the evidence derived from it, or to accept it and the sentence that the accused convicts by virtue of its results. This is not restricted to the evidence resulting from it, which reassures him of his conscience and conscience. Put forward at the meeting

The third topic:

A balance between Islamic jurisprudence and comparative law.

After talking about the position of Islamic jurisprudence and the positive law of establishing (hudood) under³. Clues, including DNA, we can observe the following:

First, as there was a dispute between the scholars of Islamic jurisprudence in proving the (hudood) of evidence, the positive law's interpretation also differed in considering clue as evidence that can be proved and relied upon in criminal articles.

Secondly, the pregnancy of a woman who has no husband or a master is not considered a definitive proof of the extent of adultery among the majority of scholars, while the Maalikis and Ibn Taymiyyah and Ibn al-Qayyim, and Imam Ahmad, considered the pregnancy is a presumption of (hud), if the woman does not prove that she was forced to commit adultery It comes and it is destroyed or begged and it is on that case.

Thirdly, if an unmarried woman contacts more people sexually, it is not considered adultery punishable by law, even if she is charged with this

1- Ghaith Mahmoud Al-Fakhri: The previous message - p. 663 and beyond.

2- Note that this opinion taken by the Zaidi.

3- Dr. Abdul Rahman Al-Rifai: The previous message - p.

sexual intercourse , and there is nothing that is expected to be imposed on her in this case. It should be noted that the positive law is consistent with the view of the majority of fuqaha that there is no punishment for a woman who is pregnant or has a husband or a master¹. Fourth, the positive law differs from the view of the majority of jurists on the basis of which it is based on non-punishment. The basis on which the majority is based on not setting a (hud), on those who are pregnant with a husband or a master, or the existence of stolen money in the hands of the accused is that the presumption of love is not valid. The pregnancy may have been caused by coercion, or the (water) ; semen has entered her vagina, or the possibility of accepting money is a gift or a nudity, or even a compulsion to steal, and the (hudood) are suspicious. However, if the pregnant woman admits that this pregnancy was adultery or that four male witnesses testified, or if the accused confessed to stealing the money that was found in possession of it, it is permissible to do so².

Non-punishment in positive law has arisen from not considering such an act as a component of an offense. This is because the crime of adultery does not take place unless the woman is married, if a woman calls married to her husband without sexual intercourse, this is what is considered adultery, and punish the wife then the penalty prescribed by law, namely imprisonment for a period not exceeding two years (Article 247 of the Egyptian Penal Code)³. If the unmarried woman calls more people, it is not considered adultery, and punishment is not punishable by adultery, because the crime of criminalization in positive law is a violation of the wife's sexual devotion to her husband, each of the spouses can take into account the sexual relations of his wife⁴. As for the unmarried woman, there is no obligation that has been breached, and the act in her case is not a crime accordingly, and this is one of the fallacies of positive law⁵.

1- D / Shehata Abdel Latif Hassan: The previous reference - p.

2- Previous reference - p.

3- D. Mahmoud Naguib Hosni: Summary in the Explanation of the Penal Code, paragraph 769, p. 506. It is strange that the case of adultery does not take place in positive law except by a complaint from the husband. The Public Prosecution can not move the case of adultery unless the husband raises the complaint. The crime of adultery is a crime. What is more strange is that if the husband raises the complaint against his wife's adultery, then his plea is not heard if the wife pays zina for her husband's adultery in the marital home. See details in: Dr. Sameh Sayed Gad, Criminal Proceedings in Egyptian Law. - 50 - 52 - edition of the Arab Union Printing House - in 1989, Dr. / Mahmoud Mahmoud Mustafa, explain the Penal Code (special section) - p. 340.

4- Mahmoud Naguib Husni, summarized in the explanation of the Penal Code (Special Section) - Paragraph 760- 500, Dr. Mahmoud Mahmoud Mustafa: ibid. - p.

5- D / Shehata Abdel-Muttalib Hassan: The previous reference - p.

Fifthly: The laws differ between proving the adultery of the wife and proving the adultery of her partner, and she asked for special exceptional evidence to prove his adultery: arresting him when she was actually doing it, confessing him, having notes or other written papers, or found in a house of women¹.)

As for the wife (or husband and his partner and other persons), the legislator did not require special evidence for her adultery, but it was proven by all means of proof, such as proof of genetic imprint, so that if the judge was convinced of any of them, he had to convict the wife and punish her.

In this case, if the wife's partner is not zina, the positive law is consistent with what the Maalikis, Ibn Taymiyyah, Ibn al-Qayyim and Hanbali said in one of the narrations and some contemporary jurists. It is permissible to prove adultery and rape with evidence or genetic fingerprints².

Sixth: The positive law agrees with what the Shaafa'is said in the face of Imam Ahmad in the narration of Ibn al-Qayyim and some of the modern scholars. It is permissible to prove the crime of theft and to impose the punishment on the accused with genetic fingerprints or fingerprints. Money stolen by the accused and under his clothes³.

This is contrary to the view of the majority of jurists that no clues or fingerprints at the (hudood) are ever implemented, including the extent of theft, in accordance with what is established in Islamic jurisprudence that the (hudood), are suspicious.

In accordance with this, and in keeping with the opinion of the majority of jurists, finding a biological or genetic trace of the accused at the scene of the crime, as if the criminal left a blood or seminal wound, or even an imprint on the character of a mail or a glass of water ... But after succeeding in reaching and holding him, we do not conclude that he is the real culprit, because his presence coincides with the crime (adultery, rape, robbery) and leaves an impression behind him and has nothing to do with the crime. It is also likely to be the real actor, but there were other motives and circumstances that weaken the elements of the crime and its conditions, as a mistake, forgetfulness or coercion, or so, and each of these possibilities of suspicion enough to prevent it.

There is no doubt that the ruling on the reduction of the (I hudood), on

1- See: Article 276 of the Egyptian Penal Code, and the Egyptian Court of Cassation has confirmed this exception (see: Revocation on 161941/5/: Group of Legal Rules - Q 115473- - No. 259).

2- There is no difference in proving the crimes of adultery and rape between the offender being a man or a woman and not being married or unmarried.

3- We have previously seen that the French, German and Libyan legislators have authorized the use of genetic fingerprint analysis as a crime of theft.

the accused, in such cases, or preferred to punish him with the suspicion that the limit, according to the words of the Holy Prophet:

(... The imam to make mistakes in amnesty is better than to sin in punishment)¹.

Conclusion

The paper concludes with findings, recommendations and suggestions as below:

First: Results:

- 1- The introduction of the modern physical evidence leads to the widening of the circle of evidence, which enables the society to prosecute the offender and apply the punishment.
- 2- Taking the results of modern evidence leads to the consolidation of justice and the establishment of security and stability in society and thus achieve the goal of the legislator to save people their lives and their families and their money from aggression and maintenance and maintenance of violation.
- 3- The scholars of the Islamic Shariah differed on the extent to which it is permissible to prove the(hudood) in evidence. Ibn al-Qayyim and Ibn al-Faris agreed that all the crimes of the may be proven by evidence. Imam Malik went on to say that some of the crimes of the(hudood) may be proven by evidence. , And considered the appearance of the smell of wine in the mouth or vomit presumption by the limit, but the Shaafa>i, Hanafi and Hanbali did not take evidence in (hudood) e crimes in general except the wife of the wife Nkul in Al-Lana, where they considered positive to adultery - the Hanafis and forced the imprisonment of the wife.
- 4- The Sudanese law has taken the opinion that it is permissible to work with evidence to prove some of the crimes of the border, where he took the presumption of pregnancy for the unmarried woman as a proof of adultery, and also took the proof of the adultery with the presumption that the wife was cursed. In the crime of the drinking (hud), he was taken with the smell of the smell, provided that Adlan saw that it was the smell of wine, or the testimony of an expert, and he did not take the vomit, and the Sudanese law also used evidence to prove the (hud).

1- Sunan al-Tirmidhi: 2, p. 438- 439 - the door of what came in the prevention of the border, the great Sunan: Baihaqi - c 4 p 228 - the door of what came in the prevention of the border suspicions, Almtadrak on the right: for the governor of Nisaburi - C 4 p246, Sunan Aldarkutni: C 4 P: 84 - edition Allam books.

- 5- Jurists agree that the scientific evidence to be acceptable in the proof must meet two basic conditions:
- A. Be the result of legitimate actions.
 - B. The result of which is categorical from the scientific point of view.

Second: Recommendations:

1. Use of physical evidence and use it to identify the fact of the physical impact to limit the circle of suspicion of the investigation and criminal investigation.
2. Establish specialized institutes and research centers to study modern material evidence in the various scientific, legal, and judicial viewpoints, and reach conclusions, recommendations and proposals that will help to identify the reality and the essence of modern physical criminal evidence.
3. Rehabilitation of legal cadres from the judiciary - law professors - lawyers - police officers and criminal investigation - to establish short training courses aimed at knowing the role of criminal laboratories and the importance of their results in criminal evidence and linking the course with its multi-faceted aspects.
4. Qualifying the technical cadres working in the criminal laboratory in order to enable them to perform their mission with accuracy, efficiency, scientific honesty and practical experience, and test their efficiency and monitor their performance, the seriousness and sensitivity and importance of the report they submit to the judiciary as this report has become one of the most important bases of judgments issued by national and foreign courts on Both.
5. Organizing seminars, , lectures, conferences and writing legal researches so that the people of government and justice will know the legislation, law and judiciary of the facts and the importance of physical evidence from the legal and scientific perspective.
6. The need to keep up with legal legislation development of criminal science and modern scientific theories in the discovery of facts and work on the significance of these scientific facts, which enjoy scientific stability and the prevention of criminal evidence.
7. Alerting the legislative and judicial specialists to the need to work to eliminate the results of modern readers until the crime is limited and restricted in the narrowest range.

8. The need for international cooperation in the fight against modern crime because it transcended the borders of the country and exceeded the boundaries of States and includes land, air and sea, and this will be done only with international cooperation to recognize and recognize the need to introduce the reasons for scientific and technical development in the field of combating and proving crime.
9. Drew the attention of the Ministry of Higher Education and Scientific Research the development of a special university curriculum for the faculties of Sharia and law includes the study of forensic medicine and its relationship to crime and to establish a relationship between this scientific study and its effects in the achievement of justice by uncovering the revenge of the crime and the identification and the significance of which helps in arresting offenders and stability and security.
10. Also drew the attention of law researchers to the importance of this research article and the issuance of more extensive research in this aspect, which contribute to highlight the role of evidence in modern proof of crime and justice.

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