

## Effective enforcement of Sharia and Pakistani law through embedding DNA in the evidence Act An Analytical Review

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### ABSTRACT

These are the two lights which guide human existence on each and every aspect of life. The coming together of humanity is the basis of formation of society, which naturally cultivates conflicts and issues. These issues are related to health, wealth, honor and dignity. The Islamic law promulgates "Testimony" as the rule for mitigating these issues. Using these claims of plaintiff are judged in court of law. Issues are a plenty, but the most important ones are the ones which are related to human life like, murder, rape, defamation and theft. This is also known as "*Hudood-ul-Allah*" Advancement of Human Civilization has given rise to new issues, one of which is "Testimony". Can these new forms of evidence (forensic reports, DNA, fingerprints, blood reports, audio, and video) be equivalent to testimony presented by a Human being? Especially in *Hudood* cases where most often the loss of human life is observed. The distribution of topics in the article is as follows. In the first and second part' portion of this article issues related to testimony, meaning of testimony, important sources of testimony and rules & regulation of testimony are discussed. The last portion sheds light on latest forms of types Evidence used in Testimonies and their legal status in Sharia Law.

## Introduction

The judicial system is of paramount importance in any society. Because of that, peace and tranquility are created in the society where as its deterioration leads to the ruin of society. The fact is that "testimony" plays a unique role in this system. The real factor behind justice and injustice is the testimony. In view of this, the importance research on the subject increases due the fact that the system of testimony should be such that false evidence cannot overturn this system. This is possible only when the lie of the liar is exposed. Scientific research and inventions have been very helpful in this regard, but it is also very important to know their legal status, keeping in mind the limits put forth by the *Qur'an* and *Sunnah*. Whether permanent witness status can be granted or not- My job in this regard is (to analyze the modern things that can be a source of testimony) to provide a repository of evidence that is sufficient in every way, and especially the things that have been witnessed in this era. In terms of knowledge and research about them, it is necessary to explain the meaning of the *Qur'an* and *Sunnah* according to one's knowledge. The main questions that this research attempts to answer are, can modern scientific inventions DNA, fingerprints and blood reports be given witness status or not?

Objectives to contribute to the development of *mujtahid's* views and thoughts on modern means of evidence in research. So that the solution of the problems of the *Ummah* can be offered so that more security can be provided to humanity. The Importance of Truth in Testimony: There are clear arguments that a fair person is required to be a witness in a testimony. Arguments: For example, the word is Almighty: Translation: And make two just witnesses from among yourselves Similarly comes another verse:

﴿مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ﴾

Translation: The one you like among the witnesses, (make him a witness).<sup>(1)</sup>

The result is that the witness is the favorite man among the people and the favorite man can only be accurate. The liar cannot be the favorite among the people, so it is necessary for the witness to be honest. This is because the testimony of a man who is adorned with the attributes of a court will be as reliable as his testimony, and the verdict will be accurate and fair.

### Rational reasoning:

Evidence and testimony are based on truth and justice. If a person commits a sin and does not avoid it, it is possible that he is lying. Therefore, the testimony of a liar will not be accepted but will be rejected. When the

testimony of a transgressor is not accepted due to false accusation, it will be a condition and necessary for the witness to be righteous.<sup>(2)</sup>

There is a well-known rule of Sharia:

(( مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ ))

Translation: What is necessary for the payment of the obligatory is also obligatory.<sup>(3)</sup>

One thing which is not necessary to do but another thing which is obligatory and obligatory makes it obligatory to do something unnecessary as well, such as performing prayers is obligatory, but performing ablution is not necessary in itself because it is a waste of water, but for the obligatory prayers, it has become necessary to perform ablutions. In the same way, in this age, it is obligatory to do all the things that are not obligatory and necessary in itself, but because of other things that are obligatory and necessary. For example, Allah has commanded you to publish my religion, so now it will be necessary to use all the Sources that will help and assist in the publication of the religion so that the religion can be spread as much as possible. Similarly, in the world of law, when a crime is committed, it is imperative for the judge to have access to the real culprit and to catch him. But the situation is that the witnesses are not being found. No one was present at the time but the modern sources of evidence are available, so it is necessary to try to prove the guilt of these new witnesses. The real culprit could be reached. This proves that it is not only permissible to use all the modern means, but it is also necessary to use and benefit from them properly. Therefore, it proves that sometimes it is not necessary to do one thing but it becomes necessary to do it because some other necessary work depends on it. Since our discussion is about adopting modern sources, it is important to examine whether it is right to use all the modern things from the point of view of Sharia's or what are the limits of their use?

This will be explained in the light of the Qur'an and Hadith and the sayings of the jurists. There is no harm in using modern things if the intention is right and the purpose is also right. Because in this case, the purpose of using modern sources will be far from the publication of amusement. Items which do not contain any abomination in the very essence of the soul, but are found from outside, are permissible without committing external sins.

(( الإِبَاحَةُ فِي الْأَشْيَاءِ أَصْلٌ ))

Jurisprudential rule: Translation: It is permissible to use things according to *sharee'ah*.<sup>(4)</sup>

The fact is that the use of things is permissible. Items of the *Shari'ah* about which the *Shari'ah* is silent, whether their use is permissible or not. If the *Shari'ah* reveals a rule about them that their use is permissible or unlawful, then it is necessary to act in accordance with this new command, whether it is about its obscenity or its prohibition. The argument of those is this, Almighty Allah says:

﴿هُوَ الَّذِي خَلَقَ لَكُمْ فِي الْأَرْضِ جَمِيعًا﴾

Translation: Allah is the One who created for you all that is in the earth.<sup>(5)</sup>

The jurists have argued that there is nothing wrong with using anything that benefits humanity. In another place, Allah says: They prove the justification through this verse and take the proof of the justification from other similar verses as Allah Almighty has said:

﴿وَسَخَّرَ لَكُم مَّا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ جَمِيعًا مِنْهُ﴾

And He made all things subservient to you, whether in the earth or in the heavens.<sup>(6)</sup>

This does not mean that it is permissible to use There are so many things in the world, as many scholars and the public have understood. But they may not know that when God forbids them to use it, then there is no justification. For example, alcohol was used until a command was revealed, but then when Allah made it *haraam* to drink it in three stages, then it is no longer permissible for anyone to drink it. In the same way, Allah forbade the playing of instruments and songs, and now it is forbidden to trade in all kinds of songs and instruments.

﴿قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ﴾

Allah says: O Prophet, tell me who forbade the adornment of Allah which He has created for His servants and from eating of the pure things.<sup>(7)</sup>

﴿قُلْ لَا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً﴾

In this regard, the Almighty has said: Translation: Please tell me that I did not find in the revelation that has come to me anything that is forbidden to the one who eats it except that it is dead.<sup>(8)</sup>

From these verses it is clear that the real thing is lawful and Prohibition is an exception. But some people call this statement invalid. Their doctrine is that in everything there is no absolute lawful but after the exception of God Almighty. When something is declared lawful as an exception, it becomes permissible, otherwise it is not. Their arguments are as follows:

﴿وَلَا تَقُولُوا بِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلَالٌ وَهَذَا حَرَامٌ﴾

Translation: And do not say with your tongues that it is *halal* (lawful) and it is *haram* (prohibition).<sup>(9)</sup>

Ibn-wahb says that Imam Malik was not one of those scholars who used to say without any hesitation that it is *halal* and it is *haram*. Rather, Imam Malik would say, "Protect yourself from it," and he would say, "I do not make it lawful or unlawful until I find some evidence for it." Because only Allah Almighty has the authority to make something *halal* or *haram*, and it is not permissible for anyone to make something *halal* or *haram*.<sup>(10)</sup>

From this statement it is clear that the prohibition or dissolution of a thing is not related to the determination of the humanities, but the authority to make something lawful or unlawful belongs to Allah Almighty alone and the knowledge of the condition and prohibition is not known without His command. The proof of this is this verse of the Qur'an:

﴿وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ﴾

Translation: And He has made clear to you what He has forbidden you, except when you are compelled to eat of it.<sup>(11)</sup>

This statement also shows that the fact is that there is no permissible in things, And those who are convinced that the permissible of things in their use, Their answer is that *Surah An'am* has just passed a verse 145, in which it is said that it is permissible to eat things that are related to food. As it is mentioned in a hadith in which he said:

(( الْحَلَالُ بَيِّنٌ، وَالْحَرَامُ بَيِّنٌ، وَبَيْنَهُمَا مُشْتَبِهَاتٌ ))

Translation: Halal and *haram* are clear (which things are halal and which haram are) and there are some suspicious things between them.<sup>(12)</sup>

Another argument is that there is legitimacy in things, such as the words of Allah:

﴿خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا﴾

Translation: Allah has created everything in the earth for your benefit.<sup>(13)</sup>

The question in verse 37 of Surat al-A'raf is Denial.

It is narrated in a hadith of *Sahihain* that he said:

((إِنَّ أَعْظَمَ الْمُسْلِمِينَ فِي الْمُسْلِمِينَ جُرْمًا مَنْ سَأَلَ عَنْ شَيْءٍ لَمْ يُحَرِّمْ عَلَيْهِ الْمُسْلِمِينَ فَحَرَّمَ عَلَيْهِمْ مِنْ أَجْلِ مَسْأَلَتِهِ))

Translation: The Prophet (peace and blessings of Allah be upon him) said: The greatest fault among the Muslims is that of the Muslim who asked something and it was not *haraam* but became *haraam* because of his asking.<sup>(14)</sup>

This *hadeeth* proves that the use of everything is correct according to *sharee'ah*, whether it is related to eating, drinking, wearing or using it in any other way. From all the previous arguments, it is clear that the fact is that there is lawful in things and prohibition is a temporary thing about something. Similarly, *Hazrat* Salman Farsi (RA) asked him about *Saman* and *Jaban* whether they are *halal* or *haraam*?

((الْحَلَالُ مَا أَحَلَّ اللَّهُ فِي كِتَابِهِ، وَالْحَرَامُ مَا حَرَّمَ اللَّهُ فِي كِتَابِهِ، وَمَا سَكَتَ عَنْهُ، فَهُوَ مِمَّا عَفَا عَنْهُ))

Translation: He said: Lawful are those things which Allah has made lawful in His Book and unlawful are those things which Allah has made unlawful in His Book and those with which Allah has remained silent are forgiven.<sup>(15)</sup>

This *hadith* implies that those acts and things which the *Shari'ah* is silent about whether they are *halal* or *haraam*, then they have the option to use them or not, because they are not allowed to do them. Nor is there any prohibition. The chapter written by *Allama Badruddin* (may Allah have mercy on him) proves that there is no harm in adopting those things which are beneficial and those which are harmful are forbidden to be used. Therefore, it is proved that there is no prohibition in the use of modern sources if there is no harm in using them.<sup>(16)</sup>

The Prophet (peace and blessings of Allah be upon him) said:

(( مَا أَحَلَّ اللَّهُ فِي كِتَابِهِ فَهُوَ حَلَالٌ، وَمَا حَرَّمَ فَهُوَ حَرَامٌ، وَمَا سَكَتَ عَنْهُ فَهُوَ عَافِيَةٌ  
فَاقْبَلُوا مِنَ اللَّهِ عَافِيَتَهُ، فَإِنَّ اللَّهَ لَمْ يَكُنْ نَسِيًّا، ثُمَّ تَلَا هَذِهِ الْآيَةَ {وَمَا كَانَ رَبُّكَ  
نَسِيًّا})

Translation: What Allah has made lawful in His Book is lawful, and what He has made unlawful is unlawful, and what the Shari'ah is silent about, is unforgivable. So accept forgiveness from Allah, and Allah does not forget. *Hazart Muhammad* have recited this verse which means that your Lord is not forgetful.<sup>(17)</sup>

Ibn Rajab says under this hadith that Allah has divided the rules into four levels: duties, (obligations) *mahram*, (prohibitions) *hudud* (limitations) and *muskoot anhu* (silence), all the rules of the religion are confined to them in four. Some people have said that there is no other hadith in which there is no summary of all the rules. Ibn Rajab says that Allah did not mention the rule of *Muskoot Anhu* (the thing about which the Shari'ah is silence, That is, it is not called *halal* or *haram*, but such rulings are waived, so it is a proof that there is nothing wrong with the one who does it. Ibn 'Abd al-Barr, while interpreting the hadith of 'Abdullah ibn 'Umar (may Allah be pleased with him), states that there is nothing wrong with using those which the *Shari'ah* does not say are *haram* or *halal*. Yes, if there is a *Shari'ah* about them that it is not right to use them now, then it is not permissible to do them. According to the hadith of Ibn Umar, the Prophet (peace and blessings of Allah be upon him) used to wear a gold ring and the *Shaba* also saw him and started wearing the ring, but Allah later commanded that it is not permissible to wear it now. So he (peace and blessings of Allah be upon him) stopped the Companions from wearing it.<sup>(18)</sup>

### **Rational Argument:**

Whether it is DNA or anything else that is new electronic material about which the *Shari'ah* has not been mentioned and all the modern means that benefit humanity is not harmful, then in their use No problem. The reason for this is that if there is no specific text about it, but the *Shari'ah* is silent about it, then it will be one of the rulings about which the *Shari'ah* is silent. And the law does not oblige man to do what he cannot afford. Therefore, such a matter and work will be permissible and its use will be permissible. For example, DNA is a command of Allah which Allah Himself has mentioned to be considered in other words:

﴿وَفِي أَنْفُسِكُمْ أَفَلَا تُبْصِرُونَ﴾

Translation: And do you not see within yourself?<sup>(19)</sup>

In the verses above, Allah has explicitly commanded that one should introspect oneself. I have also created a world within you (Imam al-Ghazali has explained this in great detail in *Revival of Sciences and the Chemistry of Happiness*). Whether it contains DNA or any other research related to our body such as fingerprints etc. is included in it so all these investigations will be included in the permissible *Shariah*. Reliability of material in *Shariah Qareena* means the connection or affinity of one thing with another thing or closeness or interrelationship, In addition, it means speculation, conjecture, analogy and symbolism. And *Qareena Madiyah* means a thing which can be seen or felt. In *Shari'ah* or legal terms, *Qareena* means the name of a testimony given on the basis of conjecture, analogy or doubt. *Qareena* is a collection of *Qarain*. It is derived from a *Muqarina*. It means to be connected and united with each other, and it means that which indicates something and through which one can access something. And in the terminology of the jurists, *Qareena* means something which refers to the desired thing, and in the language of the jurists, *Qareena* is an important intermediary, which creates the form of a law between certain events or is a result of which the judge decides because there is no evidence.<sup>(20)</sup>

To adjudge a matter by looking at different *Qarain* (evidences) is also one of the principles of *Shari'ah*, whether the proof is present in form of the real evidence, ie witnesses or with the confession, or the real evidence does not exist at all but circumstantial evidence exists. Ibn al-Qayyim says that the person who rescinded the signs and symbols in the *Shari'ah* invalidated many of the rules and rights.<sup>(21)</sup>

### **Judicial evidences**

For example, if a thing is in the possession of a person, the judge will rule in favor of the person who possesses the object, reasoning based on the logic that when a thing is in the possession of a person, he must be its owner. If circumstantial evidence is definite and reaches the level of certainty, then only that circumstance will be considered sufficient for a court decision, for instance a person holding a dagger in his hand or a tool that can kill someone with it, which was blood stained, comes out of the house and someone is found murdered in the same house, then this person will be declared as a murderer. If the context is inaccurate but there is a



predominant suspicion about it, such as *Urfi Qarain* or such evidences which are related to the events and dispositions of the claim, then such *Qarain* (evidences) will be considered valid and preferable. According to all jurists, these *Qarain* (evidences) will not be judged in the *Hudood* (limits), because the limits are broken by doubts, and even in *Qisas*, the verses will not be judged. Yes, of course, the *Qasamat* (If a victim is found in a neighborhood but his killer is not known, in case of a claim by the heirs of the victim, fifty men of that neighborhood will be sworn in, otherwise they will pay *Diyat*) will be decided on these *Qarain* (evidences). So that caution can be exercised in the matter of life, while in financial matters and personal matters a decision can be made on the basis of *Qarain* (evidences).

Ibn al-Qayyim (may Allah have mercy on him) said: The majority of jurists are with Imam Malik, Imam Ahmad and Imam Abu *Hanifa* (may Allah have mercy on them) Outward appearances and those in which most of the assumptions are correct are far from doubtful they have more credibility. Allah Almighty has established different signs and symbols on the truth and the lawful matter and has established different signs on faith and hypocrisy. Hazrat Muhammad SAW and his companions have considered different signs in the rulings, some of which are: pregnancy for adultery, smell of alcohol and vomiting of alcohol, growth of pubic hair to determine puberty, menstruation and non-conceivment of pregnancy has been declared a symbols. So in many such rulings the symbols have been relied upon, so in the same way the *Qarain* (evidences) can be relied upon in the decisions of the *Shari'ah* rulings.<sup>(22)</sup>

The *Shari'ah* also relies on the *Qarain* material, which is guided by some of the injunctions of the Qur'an and Hadith, such as the story of Yusuf in the Holy Qur'an, who happened to bring a shirt between his brothers and his father *Yaqub* and not believing Jacob because the shirt was perfectly intact no cracks or stitches.<sup>(23)</sup>

So Jacob argued with a material and sensory thing and Allah mentioned it as a speech. The commentators have indicated in the details of this verse that the ruling can also be taken from the material. The second story is of *Hazrat Yusuf* (as) that when Aziz Misr found Yusuf and his wife at the door, a decision was made by one of his family. If the shirt is torn from the front then Yusuf is a liar and the woman is true but if the shirt is torn from the back then Yusuf is true and the woman is one of the liars. So when the

shirt was seen, it was torn from behind. Her husband told his wife that it was your own delusion. There is nothing wrong with Joseph<sup>(24)</sup>.

This verse indicates that the judge took the argument from the front or back of the shirt, that if the shirt is torn in this way, it is true and if it is torn in this way, it will be true. The Holy Qur'an has stated this command as a text (acceptance of this decision) and has not commented on it in any way. How the decision-maker took the argument simply indicates that the judge can take evidence from the material.<sup>(25)</sup>

Allah has mentioned many times in the Qur'an why you do not ponder and why do you not ponder over what I have created in the heavens and the earth, why do you not look at yourself that From whom and how did I create you and through what stages did I make you a complete human being? And then He gave you the ability to think and to understand, the fact that Allah has repeatedly commanded us to think and reflect is also a proof that the intellect and the soul and its rules must be related to each other to some extent. If there was a complete difference between the two, then Allah would never have commanded meditation and most importantly, Allah has said in many places that you should meditate in your souls and lives. So you will definitely see my unity, whether it is DNA or fingerprints. These are the things that Allah has placed in man, that every human being has his own sample inside him, everyone's fingerprints are different, these are all proofs of his unity and things that compel him to think and reason.

The present age is the age of modern technology and communication revolution, today the world has come together and taken the form of a village and a home. Thousands of miles away, one can be reached in a few moments and one's feelings and thoughts can be conveyed from one end of the world to the other in a few moments. Therefore, in today's age of modern communication system, there is no condition of unity for communication. Therefore, in most of today's issues and problems, they are being used with the latest communication system. Islam is an eternal and universal system of life and law- it is capable of guiding humanity through every period of history. In fact, the more developed the human system of the world, the more the breadth and universality of Islamic law will become apparent. The jurists have explained that the ruling on dealing

with someone through writing and dealing with them verbally is the same. Just as it is *haraam* to gossip orally, so it is *haraam* to gossip in writing, and the pen is also called a kind of language in proverbs and idioms. Just as a pen is a tool that can be used both right and wrong, so too audio and video sources can be used in two ways. Positive use will certainly be right while negative use will be wrong-

It is clear that the device cannot be ordered per se, but is applied to the user after use. The relation of objects is also towards the user. For example, even though the rules are between the device and the machine, the verb is directed towards the person instead of the device. For example, killing someone with an instrument, making sculptures with machines, and hunting Jews on Saturday are defined by the law as actual killing, sculpting, and regular hunting. Similarly, if a person hits a dog or any animal with a stick, etc., the instrument does not bite the stick but at the killer. Therefore, the requirement of reason is that just as killing by tool of a device and sculpting by tool of a machine, killing by *sharee'ah* and making pictures and making sculptures were declared *haraam*. Similarly, the right thing to do is to be right on the telephone or email, Skype, WhatsApp or any other electronic device through which we can send or hear our message to each other. Because just as old or modern things are a tool, so are these new things a tool. Therefore, just as the use of letters, etc., is correct according to *sharee'ah*, so should the use of these new items be correct, so whatever happens through them will be correct, the condition is that there should be no sin in them.

DNA is actually an acronym for Deoxyribonucleic Acid, which preserves the programming of life, which grows by the sequence of specific nucleotides. What will be the size of the body, its shape and form, eye color, texture, hair color, hair shape, etc., all the physical characteristics?<sup>(26)</sup>

Each DNA contains genes that are involved in controlling certain traits, these chromosomes are present in pairs in living organisms, half of which they inherit from the father and half from the mother. In this way he composites the features of both, however, some traits may appear during this time that are not present in his parents at first glance. This may be due to mutations in certain genes or sometimes certain genetic traits inherited

from the parents to the child for some reason not appearing in the parents. But those traits are inherited from their ancestors and appear in this person. To which *Hazrat* Muhammad also pointed:

Translation: Abu Hurayrah (may Allah be pleased with him) says that a man came to the meeting of the Prophet (peace and blessings of Allah be upon him) and asked: O Messenger of Allah? I have a black boy. He said, "Do you have any camels?" He said yes, He asked what color they were. He said red, The Prophet (peace and blessings of Allah be upon him) said: There is a white and a black among them. He said: Yes. He said: Why does this happen? He said that a vein had pulled him, so The Prophet (peace and blessings of Allah be upon him) said that it is possible that the same thing happened to your son here.<sup>(27)</sup>

Following this hadith

Imam Nisa'i narrates a hadith: It is not permissible for a person to refuse a boy who has been born by his wife, even though he does not have the appearance of a man. Yes, he can only deny that when he has seen his wife committing immoral acts, it will be known in a *shar'i* way that she has committed adultery.<sup>(28)</sup>

DNA is a molecule that contains all the genetic instructions that are used in all living things and in the growth, improvement and reproduction of many viruses. DNA is an inherited substance that is present in humans and all other bodies. Almost every cell in every person has the same amount of DNA. Most DNA cells are present in the nucleus (hence it is called nuclear DNA) but a small amount of DNA can also be found in mitochondria, mitochondria are rod-like organisms that The cell's power generator is thought to generate electricity.

It has always been the rule of the jurists that when a new problem arises in the *ummah*, they try to resolve it in the light of the rules of the Qur'an and *Sunnah*, The reason is derived from the rules of Qur'an and Sunnah as an addiction And then that reason helps solve new problems, So whether there are modern electronic things can be made as a witness or not, or how much they can be trusted.

In this regard, some rules of jurisprudence are presented:

"الضرورات تبيح المحظورات"

Translation: Needs and necessities make even the forbidden thing permissible.

"إذا تعارضت مفسدتان ارتكب أخفهما ضررا"

Translation: When two corrupt things clash (in terms of use), then whichever of them is less in terms of harm will be used.

"إذا ضاق الأمر اتسع" -

Translation: When there is a difficulty in a matter, then it is expanded.

"المشقة تجلب التيسير"

Translation: Hard work brings ease.

"يختار أهون الشرين"

Translation: Of the two bad things, the one that is less bad and harmful is preferred (depending on its use).

"الحاجة تنزل منزلة الضرورة"

Translation: Need is taken to the place of need. <sup>(29)</sup>

An example of this is known in Urdu that need is the invention of the mother.

From all these principles it is clear that it is permissible to opt something at hour of need which is actually impermissible to use. For example, it is impermissible and *haraam* to say the word *kufr* in the name of Allah, but if one utters it in a state of severe compulsion, there is no sin, for example, there is a danger to one's life. Similarly, if a person is very thirsty and believes that if I do not drink water, I will die, is it permissible for him to drink alcohol so that he can live? And there are many such incidents and evidences in the Qur'an and *Sunnah* which are permissible to use under Compulsion. Therefore, it is permissible to use all the modern sources of *Shariah* testimony in court proceedings, and it is permissible for a judge to judge on the basis of them in the absence of male and female testimony.

### As DNA evidence

Forensic scientists use DNA in the blood, sperm, skin, saliva or hair. So that an individual can be compared to the substance that was found at the scene. This process is formally called DNA Profiling. But it can also be called a genetic fingerprint. This method is generally considered to be

highly reliable so that it can be identified by comparison. However, the identification process can be complicated if the scene is contaminated with the DNA of many people. The method of DNA profiling was invented by Sir Alec Jeffrey's, a British scientist in 1984, and was first used in forensic science to convict Colin Pitchfork in the Ender by murder case in 1988. DNA did not exist before 1984.<sup>(30)</sup>

The development of forensic science and the ability to find modern genetic similarities has forced or re-examined many cases. It is now possible to uncover evidence that was not previously possible in science and was not possible on the basis of scientific research. Therefore, in many previous trials, the plaintiff failed to provide sufficient evidence to convince the jury. But this scientific advancement has made it much easier and now people involved in serious crimes can be forced. That they give a sample of DNA so that it can be taken to the laboratory and matched and then the judge can make a better decision by looking at the sample.

Sample source: The source of the sample for the DNA test is that any cell can be taken from the whole body as a sample for genetic fingerprinting. The only condition is that it contains DNA, it can be taken from cell hair, skin, bone fragments or any part of the body. Cell samples are usually taken from body fluids in criminal investigations. For example, samples are taken from the victim or from blood marks or sweat or any other physical effects on the killing device.<sup>(31)</sup>

DNA accuracy ratio: According to the data obtained as a result of scientific research, the standard of accuracy is 99.9. The rest of the human error investigation can be effective in this matter which is a completely unscientific matter. The real process is an external variable that is difficult to control socially. But the quality of its accuracy can be greatly improved by testing it independently and in multiple laboratories.<sup>(32)</sup>

#### **Provisions of DNA accuracy criteria**

The Islamic Organization for Medical Sciences has made the following recommendations regarding the quality of DNA accuracy:

- 1) The test should be performed in at least two laboratories and ensure that the results of one laboratory do not inform the other.
- 2) It is better for the laboratories to be under the control of the government and to meet credible academic and local requirements, provided that the people working in these laboratories are strong in terms of knowledge and character. And that they have nothing to do with kinship, friendship, enmity or any kind of gain or loss from this test and the two claimants who have the test. Therefore, there should not be anything that would hinder their dignity and trust.<sup>(33)</sup>

### **The importance of modern criminal justice for the judge**

There is no doubt that the judge must be convinced of the guilt in making a decision, otherwise he will not be able to give a verdict. In this case, the judge will order a DNA test, and before that the investigating officer must have taken possession of all the evidence and ensure that samples from all these evidences are collected for DNA testing and sent to forensic laboratories. And then, after matching the DNA, it can be concluded who the real culprit is. The question is what role do eyewitness and forensic evidence in crimes, especially DNA reports, play in issues of Islamic limits (Hudood) and retribution, and how much and how much can be relied upon.

#### Stages of proof of guilt

Proof of guilt consists of three stages:

- 1) Elements of research and plaintiff's claim are submitted.
- 2) Preliminary research is carried out. Samples are DNA tested and mixed.
- 3) Deciding in the light of laboratory evidence and other evidence whether the accused is indeed guilty and this process requires certainty. It is not a matter of conjecture and on the basis of this it is decided whether the accused is acquitted or not. The crime and the accused are judged accordingly. In Islamic jurisprudence, such arguments have the status of technical arguments. In Islamic jurisprudence, arguments are divided into the following types.
  - 1) Argument should be as strong as confession.
  - 2) The testimony of a witness, the testimony of an eyewitness who is just and trustworthy.
  - 3) Be rational and have arguments.

Among these rational arguments and proofs are also material arguments whose characteristics remain and these are arguments which do not have a language (this means material arguments). This means that they are not likely to lie because when they do not have the ability to speak, how will they lie, so in the light of modern research, their importance increases even more.

Legally, the quality of a DNA test is more reliable than that of a *Qiafa* (Telling the truth about one's character, thoughts and other characteristics by looking at or reading one's face is called morphology.) test because it does not have as much reliability as the DNA test. As mentioned earlier, 99.9 DNA has the aspect of certainty, yes, if there is no other obstacle. For example, the testers are not honest or there is something wrong with the

laboratories being tested. And secondly, not everyone is known in *Qiafa*, but in very few people, as has been known from the previous hadith.

In case of acquittal of the accused, DNA test will be considered as acquitted under a rule of Islamic jurisprudence "The original is clearance" especially in crimes related to crimes unless there is strong evidence against it.<sup>(34)</sup>

In this regard, the results of the DNA test make it possible, that the presence or absence of the accused in the crime is proved, which opens the way for him to decide whether he is a co-offender or a non-co-offender. If enough biological evidence was found somewhere and their test results did not prove the presence of any accused. And if its absence is being proved by other evidences, then it will be acquitted of the crime until concrete evidences are obtained against it.

Sometimes the real culprit is found through DNA, as a result of which other accused are acquitted and there are many such examples in the history of crimes. However, after many years of imprisonment, when this method of investigation was proved, the situation of this case changed. And the person who had been convicted earlier was found to be not only the culprit but also someone else. In the US state of Idaho, for example, a man was sentenced to death for raping and killing a teenage girl. A court sentenced the man to death and he spent 18 years in prison. Meanwhile, a DNA test had been invented. The man's lawyer requested the court to conduct a DNA test, which was accepted. Samples of semen were also taken from the body of the deceased girl and also the hair of the killer was found from the victim. As a result of DNA test, it was found that these two things were not related to the prisoner. Due to the absence of this invention, which proved his innocence, he had to spend 18 years in jail to prove his innocence.<sup>(35)</sup>

Who has the authority to get a DNA test?

In criminal investigations, the Supreme Court has the power to conduct DNA tests under a judge's order. In order to prove crimes, the government should set up a regular department to diagnose DNA, appoint the most skilled people and work under a high academic and research committee. Tests should be conducted in two different laboratories under a judge and each should have no knowledge of the other, otherwise the results may be questionable. It should be noted that there is only one forensic laboratory in Pakistan which is working at present and all cases depend on it.<sup>(36)</sup>

The status of DNA in court arguments:

Different order and acceptance arguments in the judicial system:  
Confession, testimony, oath, the judge decides with his own knowledge,



with a definite decision (*Qareena*), one judge contacts the other judge and decides accordingly. Also included are *Qiyafah*, lottery, *Fras at*, *Ahl-e-MA 'Rifat*, *Istihashab*, *Araf* and *Adapt*. Confession and Testimony have the highest priority among them. DNA takes precedence over oath, personal knowledge of the judge, judgment of another judge *Qiyafah*, lottery and intellect. Therefore, this is the decision of the organization of *Almuntazam* in this regard. It is not correct to replace DNA with *Qiyafah*, because it depends on intellect and estimation, and this is a weak type of speculation. The only problem with DNA dissatisfaction in Proof of lineage is that it is hidden. This is the view of researcher *Saeed Yazri* and *Dr. Allama Wahbat Al-Zuhili*. DNA will be recognized as a reference that can be used in many fields.<sup>(37)</sup>

The status of consultation with infidel experts in DNA

Sometimes there is a situation where it is necessary to seek the opinion of experts in the decision of crimes and sometimes infidels are also included in the investigation. Especially in the present age, they are ahead of us in technical matters, so their advice and their opinion will be acceptable. That is why non-Muslims from Europe have been involved in many of the issues of the *Almuntazma* so that their consultation can be included and the right conclusion can be reached. *Allama Ibn Abd al-Barr* has said in *Al-Isti'aab* that it is permissible to consult the disbelievers in medicine if they understand it.

It is narrated that *Saad ibn Abi Waqqas* was ordered by the Prophet (peace and blessings of Allah be upon him) when he was suffering from a disease to seek treatment from a disbeliever doctor and to seek advice from that disbeliever about the disease. Therefore, there is a clear evidence in this *hadith* that it is permissible to consult or treat a disbeliever in medical matters, and there is nothing wrong with that.<sup>(38)</sup>

Therefore, just as the Prophet (peace and blessings of Allah be upon him) allowed the infidels to be treated, so in this present scientific age, they are ahead of us in technical matters, so there is no harm in seeking their help, because even here the matter is sometimes a matter of honor and life.

### **Comparative review**

The summary of the decisions by *Majami' Faqeeh* regarding DNA usage in crimes is that the Islamic association of Natural Sciences from *Majami' Faqeeh*, in its 11<sup>th</sup> Conference, that took place on 23<sup>rd</sup> of *Jamadi-ul-Ukhraa*, falling on 13<sup>th</sup> of October 1992, in which this issue was taken up, and after which a committee of researchers, that was formulated to dig further into the matter, suggested most of the recommendations on

achieving the highest standard on DNA test. It was given a place much higher than the *Qiyafah*.<sup>(39)</sup> *Al-Mengmah* has given the following decision regarding the matter in subject that if the symptoms on the body or the surroundings of the criminal relate to the same person, it would be certain, but, if there occurs DNA from multiple people, the matter is discussion becomes ambiguous. It will, and then is assumed that the person in question reached the crime scene, just by an accident, after the incident.

***The Resolution of Al-Majma' Al Fiqhi Al Islami (The Congregation of Islamic Jurists)***

This assembly presented a number of recommendations in its sixteenth session, held between 21<sup>st</sup> to 26<sup>th</sup> Shawwal 1422, from January 5<sup>th</sup> to 10<sup>th</sup> 2002, a few of which concern the achievement of standardized DNA accuracy criteria. These recommendations were adopted from the Islamic Association of Natural Sciences. But, for crimes, this congregation recommended that there is not restriction, as far as *Sharia* is concerned, to use genetic methods in investigation of crimes. This could be made a basis in crimes that don't panelize with the *Hadd-e-Sharai'* and *Qisas*. As it comes in the slayings of the Holy Prophet (May Allah's Salutations and Blessings be upon Him) that the *Hudood* should be dropped/freezeed if there occurs a suspicion. This would encourage prevalence of peace and justice in the society. A criminal would be panelized for his crime and the innocents would be saved. This all, in actual, is the original gist of the purposes *Sharia'* serves.<sup>(40)</sup>

**The Congregation of Islamic Jurists (recommendations of Jeddah)**

According to Article 194 of **the Association of the Islamic Jurists**, which was held in *Al-Jazair* from 26<sup>th</sup> Shawwal to 2<sup>nd</sup> *Dhul Hajj* 1433 AH, held on 13<sup>th</sup> to 18<sup>th</sup> September 2012, in which the types of *Qarinah* were defined that *Qara'in* included the types of DNA, pictures, recorded voices and email. In the recommendations of *Sharia* the real thing is Evidence, Confession, Testimony, and which is right, this has been told that do justice with these things, and if the concrete evidence is not available then do which is nearest to the right, in financial rights the decision can be done if the concrete evidence is not available but the thing is which is near to right, but not in the cases of *Hudood* and *Qisas* (In the religion of Islam it refers to punishments that under Islamic law (*sharia*) are mandated and fixed by

God.) but the *Qazi* can decide the matter if there is no strong evidence is available in the matters of Rights which makes it void but if the *Qazi* is satisfied with other arguments can be decide it.<sup>(41)</sup>

Similarly, if someone in a fax and internet by email or through Skype, writes to a woman that I marry you, and the women showing the fax or internet email to the witnesses asks these witnesses to bear witness to the marriage, will enforce the marriage. The logic of this is an instance of *Allama Shami*, in which he claims that a marriage could be enforced by a letter. In this case a man sends the proposal to the women in written form and upon receiving the letter the women calls upon the witnesses and shows them letter and accepts the marriage proposal by saying that she has married that man or by just saying that she has been proposed and she accepts the offer. This will bind the marriage in *Sharia*.<sup>(42)</sup>

### **The aim of Islamic Academy of India**

The Islamic Jurisprudence Academy presented its following recommendations on the use of DNA test crimes conducted at 10th Century, 10.14 *Safar-ul-Hafir* 1427, on 11.13 March 2006. These proofs have limited evidence of evidence DNA tests will not be valid but their evidence is required by texts, apart from specific limits, DNA tests can be taken in the investigation of other crimes and the *Qazi* should also force it if necessary.<sup>(43)</sup>

The Association of Islamic Jurists, under the Islamic Association of Natural Science, enthusiastically participated in the Kuwait Conference which was held in October 1998 which included the provisions of Islamic criminal law related to crimes dealing with deaf, also it was clear that this can be used as a context other than the cases of Islamic Sharia.

The DNA test is a useful scientific invention through which many facts are revealed and can be supported by the investigation of crime, but in boundaries and criminal cases, since the Koran is one of the evidence for the crime of extortion. It is important to adopt the standard and specific punishment and adopt the same shareware standards in these crimes, despite being a useful tool, the DNA test does not meet this criteria, so that all cases can be supported by this and it is valid However, it is not as reliable as the main testimony in the limits.<sup>(44)</sup>

### Arab scholars' position

Along with the use of modern sources, the author of the authentic scholars of Al-Arab (*Al-Albani, Shaykh Ibn Bazishkh ibn Ibn Jibrān and Shaykh Muhammad Ali Sahabuni Rahmatullah*) will also be useful. The reference is being sent to him by the narrator, *Al-Nasser Nasiruddin Al-Rahmani*, the Merciful:

Although we are convinced of the whole legacy of the image of every image (picture and hanging) of the image, but despite the fact that in the making of a picture that has a certain advantage and does not describe any harmful harm Do not understand this. However, this benefit is not possible to get other than this legitimate method, such as the image of medicine in medicine, or in order to capture and protect criminals. These pictures are not only permissible but also occasionally. It is obligatory to argue that this is two verses.<sup>(45)</sup>

### Lahore High Court's decision-based on DNA test

Lahore High Court has ruled in a decision that no one can be punished for adultery under the *Hudud ordinance*, based on the DNA test. It has its own merit according to the *Hudud Ordinance* according to which a minimum of four witnesses are a prerequisite. The Lahore High Court gave this ruling against application of bail in a case filed under the *Hudud Ordinance*. One person named *Syed Imtiaz Ali*, living in America, filed a case against his wife *Um-e-Shireen* and one man name *Azhar* under the *Hudud Ordinance* and alleged that both of them had sexual relations in his absence which bore a girl. *Imtiaz Ali* had his and the girl's DNA test done, the report of which testified that the girl was not his child.

The police arrested the accused *Azhar*, who in his plea before court ordained that he never had any relation with the wife of *Imtiaz* and this girl was not her child. He further said that DNA test report alone can't be made the basis to constitute a case of *Hudud Ordinance*. The court ordered the accused *Azhar* to be released on bail, saying that there is a consensus on this point of view that Islam isn't against research and science. Instead, Islam encourages it to be carried out.

The judge also retained that the DNA test could provide evidence of a child's biological father's identity but under Islamic law, in *Hudud*, it

cannot be taken as conclusive evidence. The court further stated that to verify this further, Islam has separate criteria of witness. According to the court under Islamic law only four witnesses, who have seen the adultery being carried out, and who fall on the criteria of witnesses as set by Islam, are worthy to testify. <sup>(46)</sup>

DNA, blood report or fingerprints do not hold their position more than a strong circumstance. That is why there is no obstruction to seek their help in digging into the crimes or acquittal of the criminal, provided that the matter doesn't pertain to *Qisas* or *Hudood*.

When the test the status of test is lifted upto a degree of it being a useful suspicion for research and investigation, this could be used on an unwilling offender, to assist in investigation of a crime is a responsibility of every citizen. On the other hand this test alone cannot make a criminal out of anyone, as in such case when one is claimed to be a certain criminal, his (*Hesiyat-e-'Urfi*) and (*Ma'roof*) gets slayed in the court as one has to be named a criminal. <sup>(47)</sup>

*Ibn-e-Qayyam* scribed a whole book entitled "*At-Turq al Hikmiyuaah fi-al Siyasah Al-Shari'ah*" on such arguments, verses, and evidence, which is authentic and acceptable in the law; *Ibn-e-Qayyam's* discussion is very thought provoking and a brief quote of his discussion is being presented here. He raised a very important question regarding some friends that if such a case comes before a ruler on which there is no apparent evidence or confession, but he could reach the conclusion through wisdom and facts, what should be his course of action? *Ibn-e-Qayyam* is of the view that in such matter, insisting only on apparent evidences or confession could result in loss of a number of rights and duties which in turn could open the gate of evils.

*Ibn al-Qayyam* has given references of several verses of Quran and Hadith in which it is mentioned that the decisions are based on evidences and facts. For example in the story of Prophet Yusuf (May Allah's mercy be upon Him) the decision taken was upon the fact that from which side the shirt of the Prophet Joseph is torn. Similarly two women came to the court of Prophet *Dawood* (May Allah's mercy be upon Him), both claiming to be mother of a child. Prophet *Dawood* awarded the decision in favor of the older women, but the Prophet *Sulaiman* (May Allah's mercy be upon Him)

ordered for a knife to be brought to the court. This order brought to light the true sentiment of motherhood, as the original mother instantly screamed to give away the child to the other women; just a smart way to solve such a complex issue. Likewise the Imams and the Caliphs used to impose punishment of theft on the thieves who were caught in custody of stolen things at their homes. *Ibn-e-Qayyam* in the last has driven the attention to this fact that the Prophets and Messengers were sent to raise justice in their respective societies. Hence, once the signs of justice emerge, in any kind, the responsibility of imposing those rests on the shoulders of *Ummah*. There is no specific set of laws or merit in this regard.<sup>(48)</sup>

The DNA test is not available in the Criminal Act 510, therefore the report maker himself testifies in the court, or this testimony is not accepted. The DNA test could help court reach an important decision. But, the court, based on the DNA report alone, cannot impose harsh punishment. So a circumstantial and factual witness is a must.<sup>(49)</sup>

Therefore, in light of the scribed details, fingerprints, blood reports or any other evidence from material objects, all are reputable evidences in the current era. If they are not to be elevated to the status of *Shadah*, they should be included in *Qarai'n-e-Qata'iah* and evidence. It could be safely said that their standing is more than that of *Qara'in* and evidence. The reason for this is that the basis of *Qara'in* is on suspicion and assessment, whereas the basis of fingerprint and blood report is on knowledge and research. The margin of error is less than one percent if these are implied honestly whereas in *Qara'in* the margin of error is far more stretching than that.

Similarly, all of the institutions are in Mecca, Kuwait, India or Pakistan, related to the Islamic *Fiqh* or the reports of the same council of Islamic Ideology, all agree on the same thing; help could be sought from them and the fingerprints. But, in case of *Hudood* and *Qisas*, *Sharai'* punishment cannot be awarded based on its basis, except that on these basis a rigorous punishment could be awarded. But it is noteworthy that all of the above have set conditions for it like conducting these tests with extreme care and honesty and the people conducting these tests should be professionals of their field.

In regards of the *Sharai*' status of the fingerprints, there is an incident of *Hadrat Anas bin Nadarr*, whose detail through which we have gone a short while ago. According to this incident he was martyred on the day of *Ahadd*. His body bore more than 80 wounds and moreover it was badly mutilated which rendered him beyond identification. It was that no one was able to identify him but his sister who recognized him from his fingertips. This shows that if fingerprints are properly used in the crime investigation, a lot of problems related to the cases of murder and theft could be easily dealt with.

So, with whoever I met, answered verbally or in a written form. After analysis of all these, it could be inferred that any *Qadhi* or Judge cannot issue a decree, depending on these advance tools of witness be it the case of murder, rape or adultery, especially in case of *Hudood* that falls against the parameters that have been set by the Almighty. One and the only justification regarding this in the minds of these people could be that, to prove the crime, in case of *Hudood*, the Almighty has set a condition of self-acceptance or a specific number of witnesses. In this case it is very difficult to go against the set parameters. It is true that a judge, on the basis of the latest tools, cannot issue a decree that is set. So as so a judge has to consciously work with conscience as to look for the number of the witnesses, which if don't accumulate to specific numbers, should pave way for the presence of a crime, verified by these latest tools, a judge should sentence the criminal with a punishment that is horrible in its nature. For example, if a girl is raped, the offender should not only be imprisoned up to 20 years, but should be financially fined as well. Such is the case that honor killings are largely prevalent in our society. A father, or in other cases the family members, would kill or least burn her alive in the name of honor. It is a common practice in villages to forcefully marry off girls if they dare show their interest in anyone, or are either murdered for merely showing such interest.

These modern things are for the benefit of human beings, provided that they are used honestly in a correct manner. As according to my opinion, everything has two aspects, one being positive, while the other negative. Having said that these new technologies could benefit us in having a look into the world of crime. Moreover these could extremely help us in

eradicating the evil from the society, if they are honestly used. This is why the statement of a Sinner (فاجر) witness is not accepted as he will lie whenever he speaks. Same is the case with using these technological advancements. If they are misused, they will find their standing in the same grade as of a sinner (فاجر). Just like a sinner (فاجر) witness is rejected, any statement arising out of these electronic things would also be rejected.

### References

- <sup>1</sup> - Al-Baqara:282:2
- <sup>2</sup> -Al-Haskafi, Muhammad Alauddin, Al-Dar al-Mukhtar, (Dar al-Fikr Beirut, 1996) Kitabal-Shahadat, 4:388.  
Al-Haskafi, Muhammad Alauddin, Al-Dar al-Mukhtar, (Dar al-Fikr Beirut, 1996) Kitabal-Shahadat, 4:388.
- <sup>3</sup>- Al-Ghazali, Abu Hamid Muhammad bin Muhammad Al-Ghazali Al-Tusi, al-Mustafi, Tahqiq Muhammad Abdul Salam Abd al-Shafi, (Dar al-Kitab al-Ulamiya, al-Tabbat al-Awli, 1403 AH, 1993), 57:1
- <sup>4</sup>- Sarkhsi, Muhammad bin Ahmad bin Abi Sahl Shams al-Aymah al-Sarkhsi, Usul al-Sarkhsi, (Dar al-Marafah Beirut, 1996), 120:2
- <sup>5</sup>- Al:Baqara:2:29
- <sup>6</sup>- Al-Jathiyah:45:13
- <sup>7</sup>- Al:Aaraf: 7:32
- <sup>8</sup>- Al-Anaam:6:145
- <sup>9</sup>- Al.Nahl:17:116
- <sup>10</sup>- Al-Qurtubi, Imam Muhammad bin Ahmad bin Abu Bakr bin Farah Abu Abdullah Ansari, Al-Jaami-Le-Ahkam al-Qur'an, (Dar al-Fikr, Beirut, 1998), 19
- <sup>11</sup>- Al-Anaam:6:119
- <sup>12</sup>- Al-Bukhari, Muhammad bin Ismail, Al-Jami' al-Sahih, (Maktab-e-Haqqania, 1415 AH), al-Riqam: 38
- <sup>13</sup> Al-Baqara: 2:29
- <sup>14</sup>- Imam Muslim, Abul Hussain Muslim bin al-Hajjaj bin Muslim al-Qashiri, Sahih Muslim, (Dar al-Jail Beirut, 1998) Number: 6265
- <sup>15</sup>-Ibn Majah, Muhammad Ibn Yazid Ibn Abdullah Ibn Majah Al-Qazwini al-Rabi, Sunan Ibn Majah, (Darlfiqr Beirut, 1986) Number: 3367



- <sup>16</sup>- Imam Zarkashi, Badr al-Din Muhammad bin Bahadur bin Abdullah al-Zarkashi, *Al-Bahr al-Muhayt*, 1998, (Dar al-Kitab al-Ilamiya, 2000), *Al-Asal fi al-Munafi wa fi al-Muzdar al-Manaa*, 324:4
- <sup>17</sup>- Imam al-Hakim, Muhammad bin Abdullah Abu Abdullah al-Hakim al-Nishapuri, al-Mustadrik for al-Hakim, research by Mustafa Abdul Qadir Atta, *Taleeqat on Al-Dhahbi fi al-Takhlis* (Dar al-Kitab al-Ulamiya Beirut, 1411), *Kitab al-Tafseer, Tafseer Surat Maryam*, Number: 3:145:419
- <sup>18</sup>- Ibn Abd al-Barr, Abu Umar Yusuf bin Abdullah bin Muhammad bin Abd Al-Nimri al-Qurtubi, (publisher of Al-Qurtuba Foundation 1412), 95:3
- <sup>19</sup>- Adh-Dhariyat:51:21
- <sup>20</sup>- Mansoor Muhammad Mansoor Hafnawi, *Suspicious and Effects in Criminal Punishment in Islamic Jurisprudence Compared to Law*, (Muttabat al-Amanat, 1986) (259)
- <sup>21</sup>- Imam Jarjani, Ali bin Muhammad bin Ali, *Al-Tarifat al-Jarjani*, Dar al-Fikr, Beirut, 1999) 152
- <sup>22</sup>- Ibn Qayyim Joziya, Muhammad Ibn Abu Bakr Damaschi, *al-Tarq al-Hikmiyyah fi al-Siyasat al-Sharia*, (Dar al-Fikr 1989), 99.
- <sup>23</sup>- Yusuf:12:18
- <sup>24</sup>- Yusuf:12:26,28
- <sup>25</sup>- Al-Jami Le-Ahkam al-Qur'an:9:149,179
- <sup>26</sup>- Altaf Hussain, *Altaf Hussain Langriyal, Jihat al-Islam January-June 2015*, 8/189
- <sup>27</sup>- Sahih al-Bukhari, *Kitab al-Talaq*, Number: 4999,
- <sup>28</sup>- Imam Nasa'i, Ahmad bin Shoaib Nasa'i, *Sunan Nasa'i, Kitab al-Talaq*, (Maktab-e-Rehmania, Urdu Bazar Lahore) Number: 3480
- <sup>32</sup>- Imam Qarafi, Abu al-Abbas Shahab al-Din Ahmad ibn Idris ibn Abd al-Rahman al-Maliki al-Shahir al-Qarafi, *Al-Farooq*, (Alam al-Kitab Beirut 1422), 146:4. See also: Taqi al-Din, Taj al-Din Abd al-Wahhab ibn Taqi al-Din al-Sabki, *al-Ashbah wa al-Natayr*, ( Dar al-Kitab al-Ulamiya, al-Tabbat al-Awli 1411 AH), 49:1
- <sup>30</sup>- Dr. Fouad Abd al-Munaim Ahmad, *Al-Basmata al-Waraatiyah and Durha in Criminal Evidence between the Shari'ah and the Law*, *Al-Muktab Al-Masriya*, 14

<sup>31</sup>- Rajesh Bardale, *Principles of Forensic Medicine and Toxicology*, JP

Medical College and Hospital Ltd. New Delhi, India, Edition1, 2011,p 7-9

<sup>32</sup> - Edited by U S Congress , Congressional Record, V. 149, PT. 1, January 7, 2003

<sup>33</sup> - Jahat al-Islam, January-June 2015, 8, p. 192

<sup>34</sup> - Majlat al-Ahkam al-Adliyyah, Al-Maqala al-Thaniyyah fi Bayan al-Qa'maal al-Kiliya al-Fiqhiyyah, Noor Muhammad Karkhana Trading Books, Aram Bagh, Karachi,

<sup>35</sup> -Baltimore man released from prison after 18 years when DNA evidence proves his innocence in 1998 killing.see also:<http://www.foxnews.com/us/2016/10/06/man-freed-after-18-years-in-prison-wants-innocence-declared.html>.

<sup>36</sup> - Jahat al-Islam, January-June 2015, 8, p. 201

<sup>37</sup> - Al-Zahili, Allama Wahbat Al-Zahili, Qadaya al-Fiqh and Al-Fikr al-Mudaqim, (Damascus Dar al-Fikr, Al-Zahili Maktaba al-Asad, 2006), 429:8

<sup>38</sup> - Ibn al-Athir, al-Mubarak bin Muhammad al-Shaibani al-Jazari, Jami al-Asul-fi-Ahadith-e-Rasool, (Muktab Al-Hilwani 1969), 286:12.

<sup>39</sup> - انعقدت الحلقة النقاشية على مدار يومي الأربعاء والخميس 28 ، 29 /1/ 1421 هـ الموافق 3 ، 4 /5/ 2000 م بفندق الميريديان . قاعة الصالحية . الكويت . وقد بلغ عدد ساعات العمل في الحلقة 45 ، 10 ساعة في ست جلسات ( أربع جلسات يوم الأربعاء . جلستان صباحاً ومساءً . و جلستان يوم الخميس . واحدة صباحاً والأخرى مساءً ، خصصت الجلسات الأربع الأولى يوم الأربعاء على مدار سبع ساعات لإلقاء ملخص بحث الدكتور سعد هلالى عن البصمة الوراثية وعلاقتها الشرعية واعتباره ورقة عمل أساسية ، أعقبها المناقشات التفصيلية

<sup>40</sup> - Jihat-ul-Islam, January to June, volume 8, 2015, page no; 207

<sup>41</sup> - Wahran Al-Jamhuriya Al-Jaziriyya al-Shaabiyyah, 26 Shawwal – 2 Dhu al-Qaida 1433 AH, corresponding to: 13 – 18 September (September) 2012 Decisions No. 186 – 194

<sup>42</sup> - Imam al-Shami, Muhammad Amin Ibn Abidin al-Shami, Hashiya Rid al-Muhthar Ali al-Dur al-Mukhtar, Kitab al-Nikah, Mutalib al-Tuzaj Barsal Kitab, (Maktab-e-fikr Beirut, 1420) 12:3

<sup>43</sup> - Islamic Fiqh Academy, New Issues and Decisions of Fiqh Academy (EFA Publications, New Delhi India, 2012), 413

<sup>44</sup> - Islamic Ideological Council Government of Pakistan Islamabad, Annual Report, 2012, 1433, 98

<sup>45</sup> Muhaddith, Muhammad Shafi Madani, Reasons for Harmat Image and Tabligh-Deen in Modern Times, Lahore, Majlis al-Tahqiq al-Islami, June 2008.

<sup>46</sup> -[www.bbc.com/urdu/pakistan/story/۲۰۰۵/۰۵/۰۵۰۵۲۱۲](http://www.bbc.com/urdu/pakistan/story/۲۰۰۵/۰۵/۰۵۰۵۲۱۲)

<sup>47</sup>- EFA Publications, Shariah Arguments on DNA Test and Genetic Science, (EFA Publications New Delhi, 2013), 172

<sup>48</sup>- Al-Raqq al-Hikmiyyah fi al-Siyasat al-Sharia, 4

<sup>49</sup>-Code of Judiciary -1898, section 510- The Law of Martyrdom ,1984,Article112,84,79,78,74,73,61,60,59,49,48

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