



The Scope of Referring to Experts in Criminal Offenses from the Perspective of Islamic Jurisprudence and Iranian Law

Ali Sadeghi¹

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Abstract

Determining the scope of recourse to expert opinion in criminal offenses is of particular importance, as the complexity of most crimes makes consultation with experts instrumental in uncovering the truth. The present study examines the scope of referring to experts from the perspective of Islamic jurists and under Iran's Islamic Penal Code. Employing a descriptive-analytical and comparative methodology, the study investigates the circumstances in which expert assessment may be relied upon in determining the factual and technical aspects of criminal offenses. One of the principal findings of the study is that Islamic jurists, and consequently the Iranian Islamic Penal Code, require or permit judges to seek expert assistance in determining the external manifestations of various legal and factual matters, including the loss or impairment of bodily functions and faculties—such as the senses of smell, taste, hearing, and sight, as well as speech and reason—the classification of injuries, the determination of whether an injury has spread or extended, and the identification of principal and accessory bodily organs. Expert opinion is likewise necessary in determining the amount of *diyah* (blood money) and *arsh* (compensation assessed by judicial discretion). According to the preferred view adopted in this study, the judge is responsible for determining legal attribution, while the identification of the relevant factual circumstances should, as appropriate, be based on customary understanding (*'urf*) in non-specialized matters and on expert opinion in specialized matters. Accordingly, customary concepts should be established through prevailing social custom, whereas the identification and interpretation of specifically religious-legal concepts should be entrusted to specialists in Islamic jurisprudence, namely, jurists (*fuqahā'*).

Keywords: expert opinion, criminal offenses, determination of facts, *arsh*, legal attribution.

1. Ph.D. in Criminal Law and Criminology, Assistant Professor, Department of Law, Faculty of Literature and Humanities, University of Religions and Denominations, Qom, Iran. a.sadeghi@urd.ac.ir

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1. Introduction

One of the most important issues addressed by Islamic jurists concerning the recourse to expert opinion in criminal matters is the field of bodily offenses (*jināyāt*). The present article examines the circumstances in which Muslim jurists, particularly those of the Imāmī school, have referred to expert opinion in cases of bodily offenses and considers whether expert opinion serves as a means of establishing judicial knowledge (*‘ilm al-qāḍī*). The relevant issues are examined from the perspectives of both Islamic jurisprudence and Iranian legislation.

A number of studies have been conducted on expert opinion in criminal matters, but their focus differs from that of the present study. Among them are the following:

The article “Expert Opinion in Criminal Matters: Constitutive or Evidentiary?” by Sheida Soufijan examines whether expert opinion constitutes an independent form of evidence or merely serves as a means of enabling the judge to acquire knowledge. By contrast, the present study investigates the scope of the evidentiary authority of expert opinion through an integrated analysis of Islamic jurisprudence and Iranian law.

Another relevant study is “Regulations Governing Expert Examination in Criminal Matters and Their Impact on Citizens’ Judicial Security under Iranian Criminal Law,” by Sahar Mahdavi and Seyyed Abbas Jazayeri. That study examines the regulations and rules governing expert opinion, whereas the present article focuses on the specific instances and circumstances in which recourse to expert opinion is warranted from the perspectives of Islamic jurisprudence and Iranian law.

The following discussion therefore examines the scope of recourse to expert opinion in criminal offenses, beginning with cases in which expert assessment is required to establish the external factual manifestation of the subject matter.

Determination of the External Factual Instance of the Subject Matter

Many jurists have relied on the opinion of experts (*ahl al-khibrah*) in various matters for determining the external factual instance of a legal subject matter. In cases of factual doubt (*shubuhāt mawḍū‘iyyah*) and the identification of the external manifestation of an issue, recourse to experts is generally accepted. On the basis of the established practice of rational persons (*sīrat al-‘uqalā’*), expert opinion in such matters may constitute independent evidence upon which a judge may rely in issuing a ruling (see ‘Alī Ṣādeqī, 1399 SH, p. 40). The following sections discuss the principal instances of factual determination addressed in juristic writings and Iranian legislation.

Determination of the Loss of Bodily Functions

One instance in which expert opinion may be required for identifying the

factual manifestation of a legal subject is the determination of the loss or impairment of a bodily function. Certain provisions of the Iranian Islamic Penal Code, including Articles 459, 461, 580, 671, and 672, indicate that expert assessment may be required to establish the loss of a bodily function.

Article 671 of the Islamic Penal Code is particularly significant. Since expert opinion is expressly mentioned in that provision alongside the judge's knowledge, it may be inferred that, in determining the loss of bodily functions, expert opinion constitutes an independent evidentiary basis, rather than merely an indication (*amārah*) through which the judge acquires knowledge. Nevertheless, an alternative view maintains that in every instance where an expert is consulted, the expert's opinion merely functions as an indication leading to the judge's knowledge.

Further examples of the determination of external factual instances are discussed below.

Loss of Sight and Determination of Its Onset

One circumstance in which recourse to expert opinion is required arises when an offender strikes the head of an injured party (*majni 'alayh*) and the latter claims to have lost vision. In order to determine the validity of this claim and whether the loss of sight has actually occurred, expert assessment is required (al-Ṭūsī, 1387 AH, Vol. 7, p. 127).

The author of *Sharā' al-Islām* regarded the testimony of two just experts as a condition for establishing the loss of sight (al-Muḥaqqiq al-Ḥillī, 1408 AH, Vol. 4, p. 256). This position, however, has been criticized. If expert opinion is treated as testimony, the report of an expert cannot properly be classified as testimony, because it is based on inferential or specialized knowledge (*khbar ḥadsī*), whereas the testimony of an ordinary witness is based on direct sensory perception (*khbar ḥissī*) (Khvānsārī, 1405 AH, Vol. 6, p. 256). If, on the other hand, the authority of expert opinion is grounded in the accepted practice of rational persons, there is no requirement that the expert satisfy the formal conditions applicable to witnesses; rather, the report of a single reliable and trustworthy expert would suffice.

Similarly, if both the offender and the injured party agree that the offense occurred and that the injured party's eyesight is impaired, but the offender maintains that the visual impairment existed prior to the offense while the injured party attributes it to the offense, the determination of this matter should be entrusted to experts (Sabzevārī, 1413 AH, Vol. 29, p. 269).

Loss of Hearing and the Possibility of Its Recovery

If the injured party claims to have lost hearing, expert assessment is required to determine whether hearing has actually been lost (al-Ḥurr al-'Āmilī, 1409

AH, Vol. 10, p. 460). Expert opinion is likewise required to determine whether the loss of hearing is reversible.

If experts determine that hearing can be restored, a period of one year should be allowed to elapse. If hearing returns during that period, *ḥukūmah* (*arsh*) becomes payable; if it does not return, the offender is liable for half of the full *diyah* (al-Ḥillī, n.d., Vol. 2, p. 275; al-Ḥillī, 1413 AH, Vol. 3, p. 685).

Conversely, if experts conclude that there is no reasonable possibility of recovering the injured party's hearing, *diyah* becomes due (Fāḍil al-Iṣfahānī, 1416 AH, Vol. 11, p. 409).

Loss of the Sense of Smell

Jurists have proposed various methods for determining the loss of the sense of smell. One method involves testing the person with strong odors at a moment when the person is unaware of the examination. Another method, particularly relevant in light of contemporary technological developments, is to consult specialists in the field (al-Jazīrī, al-Gharawī, & Māziḥ, 1419 AH, Vol. 5, p. 496).

Loss of the Sense of Taste

Where the sense of taste is lost to the extent that the injured party can no longer perceive flavors or tastes, *arsh* becomes payable (Makārim Shīrāzī, 1427 AH, Vol. 3, p. 416). Some jurists have regarded its method of proof as analogous to that used in other instances of sensory impairment (al-Ḥakīm, 1415 AH, Vol. 3, p. 321), including recourse to expert opinion for determining the relevant factual circumstance.

Loss of Speech

One disputed issue concerning the loss of bodily functions is the return of speech after its loss. Some jurists maintain that if speech is restored, no *diyah* is subsequently owed by the offender on this account. Others hold that the restoration of speech does not remove the offender's liability, because such restoration may be regarded as a new divine gift to the injured party.

A third position adopts a more differentiated approach. If experts determine from the outset that the loss of speech is not permanent but temporary, then once speech is restored, no *diyah* for the loss of speech is due. However, if experts determine that the loss is permanent but speech subsequently returns after a period of time, the *diyah* already imposed is not refunded (al-Ṣaymarī, 1420 AH, Vol. 4, p. 451).

Loss of Reason

In determining the loss of reason and its possible recovery, recourse should be made to expert opinion. With respect to the restoration of reason, some jurists have drawn a distinction based on expert assessment. If experts determine that reason was not actually lost in the first place, and that the individual merely

experienced unconsciousness or a temporary state of impaired awareness caused by the blow and subsequently recovered, the *diyah* must be returned.

If, however, experts determine that reason was genuinely lost and subsequently restored after a period of time, such restoration is regarded as a new divine gift, and the *diyah* is therefore not returned (Tabrīzī, 1428 AH, p. 248).

Loss of the Capacity for Sexual Intercourse

With regard to the loss of the capacity for sexual intercourse, ‘Allāmah al-Ḥillī holds that if experts testify that the injury has resulted in the loss of the capacity for sexual intercourse, the statement of the injured party, together with his or her oath, may be accepted (al-Ḥillī, 1420 AH, Vol. 5, p. 582). Given that the authority of expert opinion in determining factual matters is grounded in the established practice of rational persons and that such opinion may constitute independent evidence (Sādeqī, 1399 SH, p. 42), there is no compelling reason to require the injured party to add an oath. Accordingly, where a trustworthy specialist, particularly in light of contemporary medical and technological advances, confirms the loss of the capacity for sexual intercourse, there is no need for an additional oath by the injured party.

Loss of Lactation

If an injury is inflicted upon a pregnant woman and she subsequently loses the ability to breastfeed, an expert should be consulted to determine whether the loss of lactation resulted from the injury. Some jurists have maintained that if experts conclude that the loss of lactation was caused by the injury, *ḥukūmah* (*arsh*) becomes payable. Likewise, if experts determine that the loss of lactation may have resulted from the injury, compensation may also be established, because when lactation ceases at a time when breastfeeding would ordinarily be expected, the cessation appears presumptively attributable to the injury (al-Ḥillī, 1420 AH, Vol. 5, p. 596).

However, if experts conclude that the inability to breastfeed is unrelated to the injury, no liability arises for the offender on this account. Similarly, if milk is present but cannot be discharged and experts determine that the failure of lactation is attributable to the injury, *arsh* becomes payable (al-Najafī, 1404 AH, Vol. 43, p. 263).

Failure of Hair to Regrow

If an offender commits an act that causes hair loss, the applicable *diyah* differs depending on whether the hair subsequently regrows. Determining this matter requires recourse to experts (al-Ḥillī, n.d., Vol. 2, p. 271).

Shahīd al-Thānī regards experts as the proper authority for determining whether the hair will regrow (Shahīd al-Thānī, 1412 AH, Vol. 2, p. 431). A

similar position is reported by the author of *al-Riyāḍ* (al-Ṭabāṭabā'ī, n.d., Vol. 16, p. 429).

Some jurists have held that, in such cases, one should wait for up to one year to determine whether the hair will regrow. However, if the injured party demands *diyah* before the completion of one year, and experts determine that the hair will not regrow, the *diyah* should be paid to the injured party (al-Ḥusaynī al-ʿĀmilī, 1419 AH, Vol. 10, p. 379).

Under Article 580 of Iran's Islamic Penal Code, the determination of whether hair will regrow is entrusted to a trustworthy expert. This provision appears to indicate that the judge is required to follow the expert's opinion. Accordingly, in this factual matter, expert opinion is not merely an evidentiary indication (*amārah*), but rather constitutes independent evidence.

Loss or Retention of a Tooth

If an offender strikes another person in the mouth and causes a tooth to become loose, experts should be consulted to determine whether the tooth will fall out within one year or become stable and remain in place. Accordingly, a one-year waiting period should be observed. If the tooth falls out, *diyah* becomes payable; if it does not, no *diyah* is due on account of its loss (al-Ṭūsī, 1387 AH, Vol. 7, p. 139; al-Ṭabāṭabā'ī, 1409 AH, Vol. 3, p. 447).

If the injury was intentional and the tooth falls out, and experts determine that there is no reasonable prospect of its regrowth, *qisās* may be imposed (al-Ṭabāṭabā'ī, n.d., Vol. 2, p. 527; Shahīd al-Thānī, 1412 AH, Vol. 2, p. 413).

Determination of the Type of Injury

Injuries (*jirāḥāt*) vary according to their extent and depth, and the corresponding amounts of *diyah* differ accordingly. In many cases, determining the precise type of injury and, consequently, the applicable *diyah* is a difficult and specialized matter that must be established by experts.

One jurist expressly states that experts are the proper authority for distinguishing a *muwaḍḍihah* injury—an injury that exposes the bone—from other types of wounds, as well as for determining other forms of injury (Sabzevārī, 1413 AH, Vol. 29, p. 249).

Islamic jurisprudence and Iranian law recognize numerous categories of injuries, including those specified in Article 709 of the Islamic Penal Code. Determining which category a particular injury falls within requires recourse to an expert.

Determination of the Causal Extension of an Injury

Determining whether an injury has spread, extended, or resulted in a subsequent consequence (*sarāyah*) is entrusted to experts in a number of circumstances.

Determining Extension in Cases of *Qīṣāṣ* for Bodily Injury

One of the conditions for imposing *qīṣāṣ* for bodily injury is that the retaliatory injury must not extend to death or to a more serious injury. Determining whether *qīṣāṣ* for a particular bodily injury would result in death or a more serious injury therefore requires consultation with experts (al-Najafī, 1404 AH, Vol. 42, p. 410; Mar'ashī Najafī, n.d., Vol. 3, p. 89).

Fāḍil al-Iṣfahānī discusses this issue in relation to *qīṣāṣ* for an injury inflicted upon the scapular bone (*ʿaẓm al-katif*) (Fāḍil al-Iṣfahānī, 1416 AH, Vol. 11, p. 199).

Determining Which Injury Caused the Subsequent Harm

If two or more persons inflict injuries upon an individual, and one of those injuries subsequently extends and causes the injured party's death, the identification of the injury that caused the fatal outcome must be established by experts (Sabzevārī, 1413 AH, Vol. 29, p. 295).

The practical significance of this determination is that, in an unintentional offense, the injury that caused the subsequent fatality is subsumed within the *diyyah* for death, making the responsible offender liable for the *diyyah* of the deceased. Those whose injuries did not contribute to the death are separately liable for the *diyyah* corresponding to the bodily organ or injury involved. This rule is reflected in Article 539(b) of Iran's Islamic Penal Code.

Factual Determination of the Amount of *Diyyah* and *Arsh*

The factual determination of *diyyah* and *arsh* may likewise require expert opinion.

Factual Determination of *Diyyah*

In determining the factual amount of *diyyah*, recourse should be made to an expert. It is clear that the legal determination of the rules governing *diyyah* falls within the competence of jurists and religious authorities and, in the present legal system, the legislature. The factual determination, however, is established through expert assessment.

For example, an expert may determine which injuries occurred as a result of the offense and which bodily functions were lost. On the basis of the amounts of *diyyah* established for each injury or loss under Islamic law and applicable legislation, the corresponding total amount can then be determined.

Some jurists have emphasized that, once an injury has occurred and its status has been established with respect to recovery or non-recovery—a matter requiring specialized knowledge—the judge should consult experts before issuing a ruling concerning *diyyah* (al-Ṭūsī, 1400 AH, p. 778; Ibn Idrīs al-Ḥillī, 1410 AH, Vol. 3, p. 412; al-Muḥaqqiq al-Ḥillī, 1412 AH, Vol. 3, p. 457).

Factual Determination of *Arsh*

Likewise, where the amount or legal basis of *arsh* has already been established by the religious authority, its factual determination may be entrusted to an expert.

For example, loss of the sense of taste may give rise to *arsh*. Suppose that the amount of *arsh* has been determined by the competent religious authority—and, under the current legal system, by the legislature. Determining the factual issue, namely whether the sense of taste has actually been lost and, if so, to what extent, requires consultation with an expert possessing specialized knowledge in the field.

Determining Whether a Bodily Organ Is Principal or Accessory

One of the factual issues that affects the amount of *diyah* and *arsh*, and in some cases even the possibility of imposing *qiṣāṣ*, is whether a bodily organ is principal or accessory.

Where there is uncertainty as to whether an organ is principal or accessory, an expert should be consulted (Lankarānī, 1418 AH, p. 173). Paragraph 2 of Article 617 and Article 640 of Iran's Islamic Penal Code refer the determination of an accessory organ to an expert.

The legislature has thus assigned this factual determination to the expert. Accordingly, the judge is required to follow the expert's assessment, and expert opinion functions as evidence rather than merely an indication.

Determining the Required Characteristics of Camels for *Diyah*

One of the forms of *diyah* prescribed in Islamic jurisprudence is the payment of one hundred camels for *diyah al-naḥs* (compensation for the loss of life). Such camels must satisfy certain conditions concerning age and health and must not be defective.

Determining whether the camels satisfy these conditions is a matter for experts ('Allāmah al-Ḥillī, n.d., Vol. 2, p. 268).

In contemporary Iranian practice, however, this issue no longer has a direct practical application because the Head of Iran's Judiciary issues annual directives specifying the monetary amount of full *diyah*. Nevertheless, expert assessments remain relevant to the preparation of such directives and to the determination of the applicable amount of *diyah*.

Determining Fetal Viability and Fetal Impairment

Determining whether a fetus is alive or deceased at the time of an injury is a matter for expert assessment (Khomeini, n.d., Vol. 2, p. 598).

Likewise, if a blow is inflicted upon a pregnant woman and the fetus is subsequently born with a physical or developmental impairment, determining whether the impairment resulted from the injury falls within the competence of

an expert (Sabzevārī, 1413 AH, Vol. 29, p. 326).

Article 721 of Iran's Islamic Penal Code likewise indicates that determining whether material expelled from the body of a woman constitutes a human fetus or not is a matter to be established through expert examination.

Determining Whether the Injured Party Was Alive or Dead at the Time of the Offense

Determining whether the injured party was alive at the time the offense occurred has significant legal consequences. If it is established that the person had already died before the injury was inflicted, only the legal consequences associated with an offense against a deceased person apply. If, however, it is established that the person was alive at the time of the offense, *qiṣāṣ* or *diyah al-naḥs*, as applicable, may become due.

Determining whether the injured party was alive or deceased at the time of the offense is therefore entrusted to experts and persons possessing specialized knowledge (Sabzevārī, 1413 AH, Vol. 29, p. 334).

Attribution and Proof of the Offense

As noted above, expert assessment may be required either for determining the external factual instance of the subject matter, as discussed in the preceding sections, or for establishing the attribution and proof of the offense.

The latter category is addressed in several subsections. First, the attribution of the offense to the perpetrator will be examined. This will then be followed by a discussion of proof, particularly the scientific proof of criminal offenses.

Attribution of the Offense

Under Article 492 of Iran's Islamic Penal Code, a fundamental condition for imposing criminal liability on the perpetrator of a bodily offense, whether as the direct perpetrator (*mubāshir*) or the causal agent (*musabbib*), is that the conduct be legally and factually attributable to that person. Accordingly, where an injury or other criminal consequence cannot be attributed to the conduct of the alleged perpetrator, that person cannot be sentenced to *qiṣāṣ* or ordered to pay *diyah*. Some legal scholars have treated attribution as synonymous with causal relationship (*rābiṭah-ye sababiyyat*) (Āqā'ī-Niyā, 1392 SH, p. 61), and such equivalence may also be inferred from the formulations used by other scholars (Mīr-Muḥammad Ṣādiqī, 1392 SH, p. 42). Other researchers, however, have identified two distinct meanings for attribution: first, causation, and second, imputation or attribution in the legal sense (Ḥājī Dehābādī, 1393 SH, p. 113). They adopt the second meaning on the grounds that the concept of causation is already reflected in the participation of individuals in the commission of an offense; attribution, therefore, must denote something distinct, namely the legal imputation of the offense to a particular person (Ḥājī Dehābādī, 1396 SH, p. 223).

Pursuant to Article 526 of the 2013 Islamic Penal Code, the person to whom the criminal injury is attributable bears liability for it. This approach demonstrates that, from the perspective of legal responsibility and civil liability arising from a bodily offense, the distinction between direct perpetration and causation is not in itself decisive. What matters is whether the offense can be attributed to the perpetrator, regardless of whether that person acted directly or caused the result through another mechanism.

Given the central importance of attribution in bodily offenses, an important question arises: who is competent to determine whether a criminal injury is attributable to a particular person? Three possible approaches have been proposed, as discussed below.

Custom (‘*urf*’) as the Standard for Determining Attribution

Some jurists regard customary attribution of the injury to the alleged perpetrator as one of the fundamental conditions for establishing liability toward the injured party (*majni ‘alayh*) (Mar‘ashī, n.d., Vol. 1, p. 53; Mīr ‘Abd al-Fattāḥ Marāghī, 1417 AH, Vol. 2, p. 435). The late Sabzevārī likewise maintains that causation (*tasbīb*) is a customary factual matter, and that customary understanding should therefore be consulted in determining it (Sabzevārī, 1413 AH, Vol. 21, pp. 353–354).

Numerous legal opinions (*istiftā’āt*) issued by religious authorities likewise indicate that the relevant criterion is recourse to customary understanding (‘*urf*’) (see *Ganjīneh-ye Istiftā’āt-e Qadā’ī*, Qom, Questions 9110 and 8424). The predominance of ‘*urf*’ is also reflected in the writings of legal scholars (Kātūziyān, 1378 SH, Vol. 1, p. 475, no. 221; Sayyid Abū al-Qāsim Naqībī, 1386 SH, p. 83; Zirā‘at, 1378 SH, p. 274).

According to this view, unless the customary attribution of the relevant conduct or result to a particular person has been established, no liability—whether on the basis of direct perpetration or causation—can be imposed upon that person.

Expert Opinion as the Standard for Determining Attribution

The second approach regards the expert as the authority competent to determine attribution. The principal argument for this position is that both customary judgment and expert assessment constitute means of reaching the underlying reality. Since expert opinion is more precise, it should be preferred to customary judgment, which does not possess the same degree of technical accuracy (‘Alīdūst, 1384 SH, p. 274).

In certain legal opinions, some religious authorities have expressly regarded an expert assessment as authoritative when it gives rise to judicial knowledge. The statements of some other authorities likewise imply that, where expert

opinion and customary judgment conflict, expert opinion should take precedence (see *Ganjīneh-ye Istiftā'āt-e Qaḍā'ī*, Qom, Question 8424).

The Judge as the Authority for Attribution, with Recourse to 'Urf

A third approach assigns the authority to determine attribution to the judge. One scholar argues that, because adjudicating disputes and rendering judgments are judicial functions, the judge must ultimately determine whether the relevant factual circumstances have occurred in the external world (Ḥājī Dehābādī, 1392 SH, p. 114).

He further maintains, particularly in cases involving participation in homicide, that the judge can rely upon customary understanding in determining attribution. In his view, the judge must necessarily take customary judgment into consideration when determining whether the death is attributable to the conduct of all the participants (Ḥājī Dehābādī, 1394 SH, pp. 115–117).

Evaluation of the Views and the Preferred Position

The present study agrees with the proponents of the third view, namely that the judge is ultimately the authority competent to determine attribution, because the power and responsibility to render judgment belong to the judge, who must determine to whom the criminal injury is legally attributable.

The fundamental question, however, concerns which source the judge should prioritize when expert opinion conflicts with customary understanding. Put differently, what should serve as the judge's reference point in determining attribution?

According to the third approach, the judge should generally refer to 'urf in matters of attribution in bodily offenses. However, the generality of this proposition is open to criticism. The judge is indeed the final authority for determining attribution, but the basis of the judge's determination varies according to the nature of the issue. In some cases, the judge's determination should be informed by the opinion of an expert, such as a forensic physician; in other cases, customary understanding should prevail.

The reason is that, in certain cases, the disagreement between 'urf and the expert concerns the determination of causation and the causal relationship, that is, a matter related primarily to the material element of the offense. In such circumstances, because expert assessment is more precise and because both 'urf and expert opinion function as means of access to the factual reality, expert opinion should take precedence over customary judgment.

By contrast, in cases in which the disagreement concerns the mental or subjective element of the offense, customary understanding should govern.

This position is supported by the practice of relying on forensic medical expertise. Suppose, for example, that a forensic physician explains to the court

or to members of the public that a blow with a wooden stick produced only a superficial injury to the head, or that a stab wound was not sufficiently deep to have caused death. In such circumstances, customary judgment may change in light of the expert explanation, and those who initially attributed the death to the injury may acknowledge that their original assessment was mistaken. Accordingly, the prevailing practice whereby judges refer questions concerning the cause of death to forensic medicine and rely on the resulting expert opinion in their judgments is defensible.

By contrast, in some cases the disagreement between *urf* and expert opinion regarding attribution concerns matters beyond causation and the material element of the offense, particularly the mental element.

For example, suppose that A places poison in B's tea and B drinks it and dies. A forensic medical examination may establish that the immediate cause of death was the poison present in B's stomach. However, determining whether the homicide is legally attributable to A or B is a matter for customary judgment. *Urf* would consider the homicide attributable to A if B was unaware that the tea contained poison; but if B knowingly consumed the poison, the attribution may be directed to B himself.

In other words, where the direct actor lacks the requisite mental element because of ignorance, customary understanding may not regard that person as legally liable; where, however, the direct actor possessed the necessary knowledge and awareness, liability may attach to that person. The same reasoning applies in other circumstances in which the causal agent is considered legally stronger than the direct actor, such as duress, coercion, and the involvement of a minor lacking discernment.

Proof of the Offense

The proof of an offense, in essence, involves establishing the causal and attributive relationship between the perpetrator and the criminal result. In determining whether an offense has been established, the judge must consider all legally recognized forms of evidence, including testimony, confession, oath, and *qasāmah* in cases involving bodily offenses, as well as evidentiary indications, circumstances, and other factual inferences, including expert opinion. The judge must evaluate this evidentiary material as a whole, reach a conclusion, and then render judgment. Depending on the circumstances, the resulting judgment may establish either the commission of the offense or the absence of sufficient proof.

As has been established elsewhere, there is no sufficiently established *sīrat al-ʿuqalāʾ* supporting the proposition that customary practice itself determines criminal proof; rather, in this context, rational persons regard the judge's knowledge and assessment as authoritative (Şādeqī, 1399 SH, p. 48).

Accordingly, expert opinion may function as an evidentiary indication (*amārah*) leading to the factual basis of the judge's judicial knowledge, rather than necessarily constituting independent proof in every case.

This position is expressly reinforced by Article 211 of Iran's Islamic Penal Code, which recognizes that, in the context of proving a criminal offense, expert opinion may serve as an *amārah* or evidentiary indication contributing to the formation of the judge's knowledge.

Scientific Proof of Criminal Offenses

One of the issues that has gained increasing attention in contemporary criminal procedure is the scientific proof of criminal offenses. Scientific police and forensic investigation, as specialized forms of expert assessment, can assist judges in establishing criminal liability, including in cases involving bodily offenses. In its broad sense, criminal investigation and the scientific detection of crime comprise a set of measures undertaken to investigate, examine, and analyze material evidence in order to transform such findings into judicial indications or material and physical evidence. Some of these measures are purely investigative, whereas others are scientific in nature and require the application of the natural sciences—including physics, chemistry, medicine, and pharmacy—to detect the offense, establish the accusation, and identify the responsible person (Anṣārī, 1380 SH, p. 73).

Through a careful examination of the crime scene, forensic investigators may assist the judge in identifying the perpetrator (Gardner, 1385 SH, pp. 88, 437). Following the initial examination of the scene, additional measures must be undertaken, including comprehensive documentation through various forms of note-taking, photography, videography, and the preparation of sketches of the location where the offense occurred. The final stage consists of reconstructing the crime scene on the basis of the findings obtained from the scene itself, bloodstain analysis, reports, autopsy results, and laboratory analyses (Bell, 1389 SH, pp. 198–202).

It is therefore evident that the scientific investigation of criminal offenses, particularly bodily offenses, involves the participation of various specialists, including forensic physicians, professional photographers, fingerprint specialists, firearms experts, laboratory specialists, and crime-scene investigators (Sotūdeh, 1392 SH, p. 153).

Given the legal basis for the authority of expert evidence, however, expert assessment in the context of criminal proof does not constitute independent evidence in itself. Rather, it functions as an evidentiary indication (*amārah*) and a means of contributing to the formation of judicial knowledge. In other words, all procedures and stages of the scientific investigation of a crime must be carefully reviewed and evaluated by the judge. If, in conjunction with other

indications, circumstances, and evidence, these findings lead to judicial knowledge, the judge may rely upon them in rendering a judgment. This principle is expressly recognized in the proviso to Article 211 of Iran's Islamic Penal Code.

The scientific proof of criminal offenses through expert assessment has likewise been addressed in legal opinions (*istiftā'āt*) submitted to leading religious authorities. These authorities have generally regarded scientific and expert findings as legally probative when they result in judicial knowledge, treating them as a means or evidentiary indication leading to the judge's knowledge (see *Gaṇjīneh-ye Istiftā'āt-e Qaḍā'ī*, Qom, Questions 66 and 109).

One jurist has also expressly maintained that, where a DNA test gives rise to judicial knowledge, it may take precedence over confession and testimony (Muḥsinī Qandahārī, 1424 AH, Vol. 2, p. 40). It therefore follows that scientific methods of proving an offense may serve as a means of establishing judicial knowledge, while expert opinion functions as an *amārah* that, together with other circumstances and evidence, can provide the factual basis for the judge's knowledge and subsequent judgment.

Jurisprudential Doubts (*Shubuhāt Ḥukmiyyah*): Determination of *Arsh*

The scope of expert assessment based on the established practice of rational persons (*sīrat al-ʿuqalā'*) does not extend to jurisprudential or legal doubts (*shubuhāt ḥukmiyyah*). In such matters, the established rational practice is to consult specialists in legal rulings—namely, jurists (*fuqahā'*) and religious authorities—rather than technical experts in criminal matters, such as forensic physicians.

Within the field of bodily offenses, this issue particularly arises in connection with the legal determination of *arsh*. One matter that a number of jurists have addressed through reference to experts is the determination of the amount of *arsh*.

The concept of *arsh* also appears in civil law in connection with the discovery of defects in contractual transactions. If, for example, one party to a transaction delivers defective property to the other party, the latter may claim *arsh*. In that context, *arsh* refers to the difference between the value of the defective property and that of the same property in sound condition. Jurists have regarded experts as the authority competent to determine this difference (Daylamī, 1404 AH, p. 175; Ibn Ḥamzah, 1408 AH, p. 256; Fayḍ Kāshānī, n.d., Vol. 3, p. 71; Ḥusaynī al-ʿĀmilī, 1419 AH, Vol. 14, p. 424; Iṣfahānī, 1422 AH, p. 355; Kāshif al-Ghiṭā', 1366 AH, Vol. 3, p. 230; Khvānsārī, 1405 AH, Vol. 3, p. 20).

Given the juristic consensus concerning this matter in civil law, Article 427 of the Iranian Civil Code entrusts the determination of the value of defective and non-defective property to experts. Where, in the case of a contractual defect

(*khiyār al-‘ayb*), the purchaser does not rescind the contract but accepts the defective property and claims *arsh*, the amount is determined in accordance with Article 427 by having one or more experts determine the actual value of the property in its sound condition and its actual value in its defective condition (Imāmī, n.d., Vol. 1, p. 504).

An important distinction must nevertheless be made. The determination of *arsh* in the context of a defect in civil transactions is a factual matter and therefore falls within the competence of experts. As noted above, the factual determination of *arsh* in bodily offenses may likewise be entrusted to experts. The issue under consideration here, however, concerns the legal or normative determination of *arsh* in bodily offenses. Accordingly, the two issues should not be conflated.

The statements of jurists regarding the legal determination of *arsh* in bodily offenses are not uniform, and two principal approaches can be identified.

According to the first view, the legal determination of *arsh* is left to the judge or competent religious authority, although its factual determination remains within the competence of experts (Qaṭṭān al-Ḥillī, 1424 AH, Vol. 2, p. 593).

The second view entrusts the determination of *arsh* in bodily offenses to experts. One jurist explains that *arsh* in this context consists in assessing the value of the relevant bodily organ or function before and after the injury, thereby compensating for the resulting impairment and loss. On this view, experts are the appropriate authority for determining its amount (Mughniyyah, 1421 AH, Vol. 6, p. 331).

To reach a sound conclusion on this issue, it is first necessary to clarify the legal nature of *arsh*. Two principal positions have been advanced concerning its nature.

The first is the dominant and traditional juristic position, according to which the amount of *arsh* has not been specifically determined by the Sharī‘ah. The second view, advanced by some scholars, holds that *arsh* applies in cases where the prescribed amount of *diyah* has not been transmitted or established.

Before evaluating these two positions, it is appropriate to outline the principal methods proposed for calculating *arsh*. Since, according to the dominant jurisprudential view, the amount of *arsh* has not been specifically fixed by revelation or legislation, several methods have been proposed:

a) The Method of Treating the Injured Person as a Slave (‘*Abdān-gārī*)

According to this method, in determining *arsh*, the injured person should hypothetically be treated as a free person who is valued as though he were a slave, and both his sound and defective conditions should be assessed. The ratio between the difference in value and the value of the sound condition is then calculated, and the corresponding proportion of the *diyah al-naḥs* is assigned as

arsh (‘Allāmah al-Hillī, 1413 AH, Vol. 3, p. 669).

b) Judicial Determination after Consulting Two Just Experts

According to this approach, the judge determines the amount of *arsh* after obtaining the assessments of two qualified and upright experts (al-Khū‘ī, 1410 AH, Vol. 42, pp. 262, 330–331).

c) Judicial Determination after Consulting Experts

This approach was advanced by Ayatollah al-‘Uzmā Mūsawī Ardabīlī. According to this view, the judge determines *arsh* after obtaining the opinion of relevant experts (see *Gaṇjīneh-ye Istiftā’āt-e Qaḍā’ī*, Question 186).

d) Settlement and Mutual Agreement

Some jurists, including the late Khvānsārī, Imam Khomeini, and Ṣāfi Gulpāygānī, have maintained that *arsh* should be determined through settlement and mutual agreement between the parties (Khvānsārī, 1405 AH, Vol. 6, p. 232; *Gaṇjīneh-ye Istiftā’āt-e Qaḍā’ī*, Questions 11029 and 5860; Hājī Dehābādī, 1384 SH, pp. 235–241; idem, 1389 SH, pp. 446–447).

It appears that the Iranian legislature has adopted the third approach, namely determination through expert assessment. Although certain provisions—such as Articles 392 (regarding the joining of the lips), 407 (tooth fracture), 408 (removal of the root of a fractured tooth), 413 (deviation of the neck), 417 (jaw impairment), and 420 (severing a hand without the fingers)—assign the determination of the applicable financial compensation to the religiously competent authority, Article 449 of the Islamic Penal Code expressly requires the court to consult an expert in determining *arsh*.

Since determining the precise type and extent of bodily injury, wound, or impairment is a specialized matter, courts accordingly rely on medical experts as their advisory arm. Once the nature and extent of the injury have been established through expert assessment, the court applies the relevant statutory provisions and determines the corresponding amount of compensation.

Determination of Legal Concepts

To complete the foregoing discussion, it is necessary to examine whether the determination of legal concepts falls within the competence of an expert. More specifically, the question is whether, in identifying concepts relevant to legal issues in general—and criminal matters in particular, especially concepts associated with bodily offenses—recourse may be made to an expert, or whether another authority, such as customary understanding (‘urf), should be consulted.

For example, insanity and mental disorders constitute one of the grounds excluding criminal liability under Article 149 of Iran’s Islamic Penal Code. The question of what is meant by “mental disorders” therefore falls within the scope of the present discussion. The general public’s customary understanding of mental disorders may differ from a precise expert or medical assessment.

Consequently, the definitions adopted by these two authorities may affect the breadth or narrowness of the concept of mental disorder and, consequently, the scope of its effect as a ground excluding criminal liability.

It should be emphasized, however, that the present discussion does not concern the application of factual instances to an already established legal concept. The issue of identifying which external factual instances fall within the concept—namely, determining, after establishing the meaning of “mental disorder,” which concrete conditions qualify as such—is beyond the scope of this discussion. As noted above, where the identification of external factual instances involves technical or complex matters, the established practice of rational persons (*sīrat al-‘uqalā*) is to consult qualified experts. In such cases, expert opinion may function as independent evidence.

For the purpose of determining the proper authority for interpreting legal concepts, it is therefore appropriate to classify such concepts into two categories: customary concepts and religious-legal concepts.

Customary Concepts

With respect to customary concepts, it is evident that the proper authority for determining their meaning is customary understanding (*‘urf*). One scholar maintains that among the firmly established and universally accepted functions of *‘urf* is its authority in interpreting the individual terms and expressions employed in religious evidence and legal documents. Likewise, *‘urf* constitutes the competent and reliable authority for interpreting complete sentences and compound syntactical constructions.

According to this view, reliance on *‘urf* in interpretation presupposes three conditions:

- a) the intention of the legislator is intelligible to us;
- b) such understanding constitutes valid and authoritative evidence; and
- c) Islamic law has not adopted a special instrument for communicating its intended meanings (‘Alīdūst, 1388 SH, p. 214).

By contrast, some scholars regard the established understanding of the religious community (*irtikāz al-mutatasharri‘ah*) as the appropriate authority for determining the meaning of certain concepts (Āmulī, n.d., Vol. 2, p. 272). Others have discussed the role of identifying the constituent elements of certain subject matters as an alternative to reliance on customary understanding (Ja‘farī Langarūdī, 1380 SH, Vol. 2, pp. 1360–1361).

In response, however, it may be argued that both the established understanding of the religious community ultimately arises from customary understanding, and the identification and enumeration of the elements constituting a concept likewise depend on recourse to *‘urf* (see ‘Alīdūst, *ibid.*, pp. 216–222). Accordingly, where the issue concerns the meaning of a

customary legal concept, the primary interpretive authority should be customary understanding rather than technical expert opinion.

Religious-Legal Concepts

The second category consists of concepts that Islamic law employs with a specific technical meaning and which, in the terminology of legal theorists (*uṣūliyyūn*), possess a “Shar‘ī reality” (*ḥaqīqah shar‘iyyah*).

In such cases, determining the meaning of the concept requires reference to its original source, namely the religious evidence and legal texts. This task falls within the competence of specialists in Islamic jurisprudence—namely, jurists (*fuqahā’*) and recognized religious authorities (*marāji’*).

For example, terms such as *ṣalāh* (prayer), *ṣawm* (fasting), and *zakāh* (almsgiving) possess established religious-legal meanings. Likewise, in the field of bodily offenses, it may be maintained that terms such as *qisās* and *diyah* possess a specific Shar‘ī meaning. Accordingly, determining their precise conceptual content, scope, and legal boundaries requires recourse to Islamic jurisprudence and legislation grounded in Islamic jurisprudence, rather than to technical experts whose expertise concerns the factual rather than the normative dimension of the matter.

Conclusion

The findings of this study regarding the scope of recourse to expert opinion in criminal matters, particularly bodily offenses, may be summarized as follows:

1) Determination of the external factual instance of the subject matter constitutes one of the clearest areas in which recourse to expert opinion is warranted. Islamic jurists, and consequently Iran’s Islamic Penal Code, have addressed this issue in numerous cases, including the determination of the loss or impairment of bodily functions—such as the senses of smell, taste, hearing, and sight, as well as speech and reason—the classification of injuries, the determination of whether an injury has spread or extended, and the identification of principal and accessory bodily organs.

2) In the factual determination of *diyah* and *arsh*, reliance on expert opinion is necessary, since the relevant questions concern specialized factual matters that require technical knowledge.

3) According to the preferred view adopted in this study, the judge is ultimately responsible for determining attribution. In making this determination, however, the judge should have recourse to both customary understanding (*‘urf*) and expert opinion, depending on the nature of the issue. It is possible for both *‘urf* and expert opinion to attribute the criminal injury to the same person or persons. In such a case, the judge may render judgment on that basis.

Where *‘urf* and expert opinion differ, however, the appropriate evidentiary

basis depends on the nature of the disagreement. If the disagreement concerns the determination of causal relationship and the material element of the offense, expert opinion should take precedence because of its greater technical precision. By contrast, if the disagreement concerns a matter beyond causation—for example, the mental or subjective element of the offense—the judge should determine attribution in accordance with customary understanding.

4) The meaning of customary legal concepts should be determined by *‘urf*, whereas the interpretation and determination of religious-legal concepts should be entrusted to specialists in the field, namely Islamic jurists (*fuqahā*) and recognized religious authorities (*marāji*).

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