Forensic Evidence in Proving Crimes: Exploring the Legal Frameworks of *Sharīʿah*

Bukti Forensik Bagi Membuktikan Jenayah: Menerokai Rangka Kerja Guaman *Sharīʿah*

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Abstract

Forensic evidence is an evolving science in the field of criminal investigation and prosecutions. It has been widely used in the administration of justice in the courts and the Western legal system, particularly in common law. To accommodate this new method of evidence in Islamic law, this article firstly, conceptualizes forensic evidence in Islamic law. Secondly, explores legal frameworks for its adoption in Islamic law.

Keywords: Forensic Evidence, legal framework, Criminal Investigation, *Sharīʿah.*

Abstrak

Bukti forensik adalah sains yang sentiasa berkembang dalam bidang siasatan jenayah dan pendakwaan. Ia telah digunakan secara meluas dalam pentadbiran keadilan di mahkamah dan sistem undang-undang Barat, terutamanya dalam undang-undang *common (common law)*. Untuk menampung kaedah pembuktian baru ini dalam undang-

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undang Islam, artikel ini, pertamanya, konseptualisasikan bukti forensik dalam undang-undang Islam. Kedua, ia menerokai rangka kerja undang-undang untuk penerimaannya dalam undang-undang Islam.

Kata Kunci: Bukti Forensik, Rangka Kerja Guaman, Siasatan Jenayah, Sharīʿah.

Introduction

Broadly speaking, forensic evidence refers to evidence obtained by scientific methods such as ballistics, blood test, and DNA test or other technical procedures such as tire marks etc. Technically, It "signifies an opinion adduced by a forensic scientist either about the evidential worth of a trace evidence (known as physical evidence in law) or other matters in connection with a case, which is likely to be outside the experience or knowledge of the judge or the jury (including the prosecution or lawyers)"[1]. For instance, "in a civil suit for damages, the cause for product liability cannot be affirmatively disposed of without the aid of scientific opinion issued by the relevant expert(s). Likewise, in the case of murder, the prosecution supports its case with a multitude of scientific evidences in the form of scientific evidences which are far beyond the reach of ordinary examiners."[2] Aside from its use to determine the liability or otherwise of the defendant, forensic evidence has also been assigned other robust roles in the administration of justice in the West[3]. For example, the opinion by a forensic psychologist (psychiatrist) is sought to determine the personality type of the accused in order to consider his plea for mitigating the sentence against him,[4] or to examine his mental state in order to prove the truth of his defence of provocation.[5]

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[1] Christopher Allen, *Sourcebook on Evidence* (London: Cavendish Publishing Ltd., 1996), 387.

[2] Sayed Sikandar Shah Haneef, "Forensic Evidence: A Comparative Analysis of the General Position in Common Law and *Sharīʿah*", *Journal of Islamic Studies*, Vol. 4, No. 2 (Summer 2007), 199.

[3] Ibid.

[4] Lowery v. The Queen was a case where Lowery and King were convicted of the sadistic and otherwise motiveless murder of a girl aged 15. During the trial, each tried

What forensic evidence is? What significance it carries in implementing justice and what are the legal frameworks for its adoption in *Sharīʿah* are questions addressed in this article.

THE DEFINITION OF FORENSIC EVIDENCE

The term forensic evidence consists of two words i.e. forensic and evidence. The word forensic comes from the Latin word forensics, meaning "of or before the forum". In the times of ancient Rome, a criminal charge meant presenting the case before a group of public individuals in the forum. Both the person accused of the crime and the accuser would give testimonies based on their sides of the story. The individual with the best argument and delivery would determine the outcome of the case. Anyone could listen to the great debates of the day and watch government in action. This origin is the source of the two modern usages of

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to shift the responsibility on the other maintaining that it was the other who had the more aggressive personality and he himself had no choice but to comply with wishes of the other. On appeal, the psychiatrist witness, after using two tests of personality on each one of them, concluded that both men had psychopathic personality (suffering from some kind of personality disorder/aggressiveness). But this feature in Lowery was more severe, thus making him more aggressive and impulsive than King, henceforth to play a dominant position in the circumstances. For citation see: Christopher Allen, 397-398.

[5] In the case of R V. Turner, the accused confused to the killing of his lover but said he did it out of provocation and explosive release of bling rage. Because after the deceased's revelation about her illicit relations with another two men when the petitioner was in the jail, he was taken by surprise and lost control over his temper. Upon testing the defendant, the psychiatrist concluded: first the defendant in terms of mental make-up, was a placid one (as opposed to quick tempered) thus had never shown any evidence of mental illness and did not require any psychiatric treatment; secondly, he had a deeper emotional relationship with deceased which was likely to have caused the sort of provocation that he alleges; and lastly, after he had killed her he behaved like someone suffering from profound grief. Therefore, the defense of provocation succeeded in mitigating the sentence against him. For citation: see ibid., 401-404.

the word forensic – as a form of legal evidence and as a category of public presentation.[6]

According to Terence F. Kiely, "The word forensic means the processes used in the forensic science at issue through which evidences are generated. For instance, the manner in which DNA is experimented, tested, and subjected to population analyses. The methodologies of hair, fibre and fingerprint examinations are the other examples of the subject. The "evidence" part of forensic evidence refers to a different set of procedures involved to the litigation systems, separate from the processes of any forensic science for the proffer of facts in criminal cases."[7]

Terence says, "Forensic evidence refers to facts or opinions proffered in a criminal or civil case that have been generated and supported by the use of one, usually by more than one, of the body of forensic sciences."[8]

The above definition of Terence demonstrates two essential characteristics of forensic evidence. Firstly, it emphasises that forensic evidence must have an origin in science. Secondly, this scientific evidence must have application to justice.

According to current practice, opinion or testimony given to the courts either by scientists or other technical bodies (skilled in doing so) is regarded as forensic evidence. For example, the testimony of the police members trained in firearms, fingerprints, photographic experts, psychiatrists, etc. is called forensic evidence although they are not scientists. As Justice Breyer held this to be the case in the case of *Kumho Tire co. v.*

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[6] See: Jay A. Siegel, *Forensic Science: The Basics*, (Boca Raton: Taylor & Francis, 2007), p. 5.

[7] Terence F. Kiely, *Forensic Evidence: Science and the Criminal Law* (New York: CRC Press, 2001), p. 29.

[8] Ibid., p. 26; See also: Sayed Sikandar Shah Haneef, "Forensic Evidence: A Comparative Analysis of the General Position in Common Law and *Sharīʿah*", *Journal of Islamic Studies*, Vol. 4, No. 2 (Summer 2007), p. 200.

Carmichael[9]: "… whether the specific expert testimony focuses upon specialized observations, includes the technical opinions provided by people of special training".[10] Forensic evidence is also categorised under expert evidence in some Western writings.

In short, forensic evidence is evidence provided by scientists or other technical bodies to prove or disprove a fact before the court.

THE TYPES OF FORENSIC EVIDENCE

Forensic evidence, depending on its scientific and technical origin, is derived from two scientific and other technical bodies. First, forensic biology whose work subsumes the following scientific analyses: (a) forensic anthropology analysis experts who analyse skeleton remains;[11] (b) forensic entomology analysis experts who study injects to know the time and manners of death;[12] (c) DNA analysis experts who analyse DNA material which is found in human blood, semen, hair pulp, saliva and tissues for identifying criminals;[13] (d) blood stain patterns experts who analyse blood to determine its sources;[14] (e) hair analysis experts who examine a hair sample to determine its kind and category with the object and com-

[9] *Kumho Tire Co. v. Carmichael,* 526 U. S. 137 (1999).

[10] In this case, the plaintiff expert concluded that the death of his client which was caused by the explosion of the tire was due to the defective tire. See: Terence, *Forensic Evidence: Science and the Criminal Law,* p.16; Haneef, *Forensic evidence: A Comparative Analysis of the General Position in Common law and Sharīʿh*, p. 200.

[11] Martin Evison, "Forensic Anthropology and Human Identification from the skeleton" in *Handbook of Forensic Science*, edited by Jim Fraser and Robin Williams (UK: William Publishing, 2009), p. 84.

[12] See: Jay A. Siegel, *Forensic Science: The Basics*, p. 292; see also: Terence, *Forensic Evidence: Science and the Criminal Law,* p. 320.

[13] See: Terence, Ibid.

[14] Andrew R,W. Jackson & Julie M. Jackson, *Forensic Science* (Harlow, England: Pearson Prentice Hall, 2nd edn. 2008), p 116.

pare it with a recovered sample from the crime scene;[15] (f) botanical experts who analyse and compare botanical trace material struck in the body, clothes, shoes or equipment of the accused.[16] Secondly, forensic chemistry involving the work of forensic chemists who examine drugs, tiny samples such as ink, lipstick, gunshot residue, identify alcohol in the body, fire causes and poisons.[17]

Likewise, forensic opinion is derived from other technical bodies whose work encompasses analysing other linkable evidence against the accused such as fingerprints analysis,[18] fibres analysis,[19] soil analysis,[20] footwear impression analysis,[21] tire analysis,[22] psychiatry analysis[23] and etc. Examples of these types are detailed below.

THE SIGNIFICANCE OF FORENSIC EVIDENCE

In modern day prosecution, forensic evidence is an indispensable part of the criminal justice system. Sharma[24] maintains that the absence of forensic evidence not only let dangerous criminals go scot-free but a

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[15] Terence, Ibid. p. 73.

[16] See: J.H. Philips and J.K. Bowen, *Forensic Science and the Expert Witness* (Sydney: The Law Book Company Limited, 1989), p. 20.

[17] Ibid. p. 25-31.

[18] For detail see: Jay Siegel, *Forensic Science: The Basics,* pp. 147-168; see also: Andrew Jackson & Julie Jackson, *Forensic Science*, pp. 86-101.

[19] For detail see: Andrew Jackson, Ibid., pp. 49-68.

[20] For detail see: Ibid. pp. 77-74.

[21] Ibid. pp. 102-104.

[22] Jay Siegel, *Forensic Science: The Basics*, pp. 169-178.

[23] Lenore E. A. Walker & David L. Shapiro, *Introduction to Forensic: Clinical and Social Psychological Perspectives* (New York: Kluwer Academy/ Plenum Publishers, 2004), p. 12.

[24] Dr. B. R. Sharma, The Former President of Indian Academy of Forensic Science.

huge amount of public money is also wasted. Providing statistics for the year 1998 in India, he sadly laments that a large number of trials, in heinous crimes ultimately end in acquittals. The official figure (1998) for the acquittal is 93% whereas unofficially the figure is above 96%. He finds that these frequent acquittals also embolden the criminals, escalate crime, and multiply criminals.

In order to appreciate the importance of forensic evidence, let us see as to what needs to be proven before the court:

Proving Facts before the Courts

There are three types of facts that need to be proved before any court: facts in issue, relevant facts, and collateral facts. According to Haneef,[25] forensic evidence is essential in proving the facts contested before the courts.

Fact in Issue:

This refers to those facts which the plaintiff (or the prosecutor) must prove in order to succeed in the claim together with those facts which the defendant (or the accused) must prove in order to succeed in his/her defence.[26] For example, in a criminal trial in which the accused pleads not guilty, the facts include: the identity of the accused, his commission of the *actus reus* and the existence of any knowledge or intent on his part, *mens rea*.[27]

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[26] Adrian Keane, *The Modern Law of Evidence* (Guildford: A.K. Professional Book Ltd., 1996), p. 161; see also: Haneef, *Forensic Evidence: A Rethinking About its Use and Evidential Weight in Islamic Jurisprudence, Journal of Islam in Asia*, (Kuala Lumpur: International Islamic University Malaysia), Vol. 2, No. 1, July 2005.), pp. 117-118.

[27] Keane, Adrian Keane, *The Modern Law of Evidence*, p. 6-7; see also: Haneef, *Forensic Evidence: A Rethinking About its Use and Evidential Weigh tin Islamic Jurisprudence,* p. 121.

Relevant Fact:

It refers to those facts from which the existence or non-existence of facts in issue may be inferred.[28] For example, X is accused of shooting his wife. The fact in issue is whether X has done it. If Y as an eyewitness who saw the shooting can come and give testimony, the fact in issue will be proven. However, in most cases this mode of direct evidence will not be forthcoming. More often than not, the only available evidence will be in the form of some tell-tale clues, which can establish some facts relevant to the fact in issue. For instance, the evidence of a gunsmith that on the day before the shooting, X bought gun from him, the evidence of a policeman that after the shooting, he found that the gun was buried in X's garden, and the evidence of a forensic expert that the gun in question bore X's fingerprints. Evidence of relevant is called circumstantial evidence in law.[29]

Collateral Facts*:*

They are either those facts that affect the credibility of a witness such as his eyesight defect that may be proved by testimony of an oculist or other facts that need to be proved as a condition precedent to the admissibility of some other items of evidence, such as the witness's lack of bias towards any one of the pairs.[30]

Relevance of Forensic Evidence

To prove the above facts, especially the first and second types, there are several reasons which make it imperative to refer to forensic evidences, the most important among them are:

Social Change*:* The society is undergoing drastic social change at a very rapid pace. The sizeable industrial complexes have sprung up. The transport facilities have been revolutionised. There is a growing shift from a rural to an urban society. These changes have made the old

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[28] Keane, Ibid; Haneef, Ibid.

[29] Keane, Ibid. pp. 7-8; Haneef, Ibid.

[30] Keane, Ibid. p. 8; Haneef, Ibid.

techniques of criminal investigation obsolete. Hence, other methods and techniques have to fulfil the vacuum.[31]

Anonymity: The quick means of transportation and the high density of population in cities have facilitated the escape from punishment after the commission of a crime. A criminal can hide himself in a corner of a city or move away to the thousands of miles away in a few hours after committing the crime at a particular place. No body, at the new place, would know or try to know who he/she is or where he/she has come from. He/she, thus, often escapes apprehension and prosecution.[32]

Identify Substance or Materials: In many cases, the scientific examination of physical evidence provides an identification of a substance or material.[33] The substance and materials found can be strong means to find a suspect. For instance, identifying a fuel or gasoline which is used to start a fire or gunshot residue on the hands of an accused suspected of firing a weapon in a shooting case can be some best examples of this type.

Identify Criminals: Identification of the individuals is important for the proper implementation of justice in the legal system. Biological examinations of human remains found in a crime scene can help an investigator identify the individual. Likewise, the investigator can find the criminals by analysing fingerprints taken from the individuals.[34]

Technical Knowledge: The technical knowledge of an average person has increased tremendously in recent years. The criminal is using science. The crime techniques are getting refined. The investigating of-

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[31] B.R. Sharma, *Forensic Science in Criminal Investigation and Trials* (Delhi: Universal Law Publishing Co. Pvt. Ltd.), p. 7

[32] Ibid.

[33] R.E. Gaenssle, *Introduction to Forensic Science and Criminalistics*, (New York: McGraw-Hill, 2008), 9.

[34] Ibid. 8.

ficer, therefore, needs scientific methods to combat the modern scientific criminal.[35]

Wide Field: The field of activities of the criminal is widening at a terrific rate. Previously, the criminals were usually local, now we find that a local or international criminal is a common phenomenon. Smuggling, drug trafficking, financial frauds, and forgeries offer fertile and ever expending fields. International terrorism in recent times has acquired global proportions and the gadgetry often utilized by the terrorist is usually mind-boggling to the common investigator. Thus, the investigating officers have to be facilitated with such scientific and technological tools which would help them capture both local and international criminals.[36]

Investigative Link: Recently, national databases of DNA, fingerprint and bullet image have made forensic science much more helpful during the investigative phase. Generally, to identify the person or weapon, a newly submitted DNA profile, fingerprint, bullet or cartridge case is searched against the known databases.[37] Emphasising it, Sharma[38] has asked: what are the other alternatives and how do they stand in the test of their ultimate authenticity? The alternatives to the scientific methods as we know are eyewitnesses, confessions and approvers. However, there arise several questions. Does the eyewitness account have an inherent weakness? Do the observation power, weak memory, low descriptive skill, emotional inputs and sub-conscious rationalisation of the persons affect the evidence tremendously? Is an eyewitness free of bias and influence of others? Undoubtedly, such queries have put eyewitness, confession and other old methods in question which have many of modern researchers to consider forensic evidence as an indispensable means in the dissemination of justice.

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[35] Sharma, *Forensic Science in Criminal Investigation and Trials*, p. 8.

[36] Ibid. 9.

[37] R.E. Gaensslen, *Introduction to Forensic Science and Criminalistics*, p. 9.

[38] Sharma, op. cit, p. 9.

Corpus delicite- Elements of Crime: In law, *corpus delicti* refers to the body or elements of the crime. The elements are the things that the prosecutor is obligated to prove "beyond a reasonable doubt" to gain a conviction. Some of the analyses done in forensic laboratories serve primarily to establish elements of a crime. For example, in illegal drug possession case, the laboratory must establish that the white powder seized is cocaine, or that those funny-looking cigarettes contain *Cannabis sativa*. In a potential "drunk-driving" case, the laboratory has to show that the person charged had a blood alcohol content above the legally allowed limit. Identifying the semen is present on a vaginal swab from an alleged sexual assault victim corroborates a crucial element of a sexual assault, or rape, charge, namely penetration. Proving these elements of crimes is required for successful prosecution; prosecutors cannot convict someone without proving all the elements of the crime.[39]

THE LEGAL FRAMEWORKS OF FORENSIC EVIDENCE IN SHARĪ'AH

Forensic evidence can be adopted under the principle of *ray' al-khabīr* (expert opinion) in Islamic law of evidence. What is *ray' al-khabīr* in Islamic law? And to what extant forensic evidence is similar to *ray' al-khabīr*? The word *ray'* means opinion and *khabīr* is derived from *khibrah* which means knowledge, experience, skill, acquaintance with and expertise in some field.[40] According to al-Jalīl ʿAbd Allāh, *al-*

[39] Ibid.

[40] See: Ibn Manẓūr, Muḥammad Ibn Mukrim, *Lisān al-ʿArab* (Bayrūt: Dār Ṣādir, Vol. 4, 1980), 227; Al-Ẓubaydī, Muḥammad Murtaḍā al-Ḥusaynī, *Tāj al-ʿArūs min Jawāhir al-Qāmus*, (Bayrūt: Dār Maktabat al-Ḥayāt, Vol. 3, 1985), 167; Al-Fairūẓ Ābādī, *Al-Qāmus al-Muḥīṭ* (Bayrūt: Al-Muwassasah al-Risālah, 2nd edn.Vol. 2, 1987), 17-18; Al-Rāẓī, Muḥammad ibn Abī Bakar ibn Abd al-Qādir, *Mukhtār Al-Ṣaḥḥāḥ* (Bayrūt: Dār al-Qalam, 1975), 168; Aḥmad Riḍā, *Muʿjam al-Mutun al-Lughah* (Bayrūt: Dār Maktabat al-Ḥayāt, Vol. 2, 1959), 217; Majmaʿu al-Lughah al-ʿArabiyyah, *Al-Muʿjam al-Wasīṭ* (Cairo: Dār ʿImrān, 3rd. edn. Vol. 1, 1985), 222-223; Al-Imām al-Jurjānī, ʿAlī ibn Muḥammad, *Al-Taʿrīfāt* (Cairo: Dār al-Rashād, 1991), 109.

khibrah is defined as "a means of discovering some reasons or its limit through scientific information".[41] According to another interpretation, *al-khabīr* has been defined to mean "any person who has special skill and is called to give opinion in any matter under inquiry which requires some special art or science".[42]

Thus, *ray' al-khabīr* or expert evidence is "the testimony of an expert in a particular field"[43] or is "an opinion given by someone who possesses expertise in a particular field".[44] In other words, "an expert opinion, evidence or testimony may be said as evidence given orally or by other manners sanctioned by a judge[45] by any number of experts in a particular field, notwithstanding his sex or belief.[46]

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[41] See: Al-Jalīl ʿAbd Allāh, *Qānūn al-Ithbāt wa mā ʿAlaihi al-ʿAmal fi Sudān* (Al-Khartūm: Dār al-Islāmī, 1984), 395.

[42] See: Aḥmad Fatḥī Bahansī, *Naẓariyāt al-Ithbāt fi al-Fiqhi al-Jināyi al-Islāmī* (Beirūt: Dār al-Shurūq, 5th edn.1989), 205.

[43] See: Ibn Qayyim al-Jawjiyyah, *Al-Ṭuruq al-Ḥukmiyyah* (Cairo: Matbaʿat al-Madanī, 1977), p. 188.

[44] See: Aḥmad Fatḥī, *Naẓariyāt al-Ithbāt fi al-Fiqh al-Jinā'yī al-Islāmī*, p. 205.

[45] See: Muḥammad Wahbah al-Zuḥaylī, *Al-Fiqh al-Islāmi wa* Adillatuhu, (Dimashq: Dār al-Fikr, 4th edn. Vol. 8, 1997), 6288; Muḥammad al-Zuḥaylī, *Wasā'il al-Ithbāt fī al-Sharīʿah al-Islāmiyyah* (Dimashq: Maktabah Dār-Al- Bayān, 2nd edn. Vol. 2, 1994), 594; ʿAbd al-Nāṣir Muḥammad Sannūr, *Al-Ithbāt bi-al Khibrah bayna al-Qaḍā' al-Islāmī wa al-Qānūn al-Duwalī wa Taṭbiqātuhā al-Muʿāṣirah* ('Amman: Dār al-Nafā'is, 2005), 39.

[46] This additional information of the definition is a reinstatement by Muhammad Ismail Hajji Muhammad Yunus based on *Ibn Qayyim* and Fathi's definitions of *ray' al-khabīr* mentioned above, in which, he observes: (a) an expert relays his evidence by way of oral evidence. This is the inference obtained from *Ibn Qayyim's* definition which used the term "testimony" therein. In Fatḥi's definition, the manner of deduction is not limited to oral only; (b) both definitions are silent on the number of witnesses for an opinion to be given; (c) Fatḥi's definition renders a non-Muslim competent to be an expert in *sharīʿah* court cases; (d) an expert is someone who tenders evidence based on his expertise on a particular field or issue. See: Mohamad Ismayil Muhammad Yunus, *The Role of Expert Opinion (Ray' al-Khabīr) in Islamic Law of Evidence: A*

The concept of *ray' al-khabīr* given by both classical and modern jurists denotes that conceptually there is similarity between *ray' al-khabīr* and forensic evidence. This is because forensic evidence is the opinion of a scientist or an expert which is generated in order to prove or disprove a case before the court. Similarly, *ray' al-khabīr* is the opinion of an expert who has expertise in a certain field.

However, one may find differences between *ray' al-khabīr* of classical *fiqh* and forensic evidence of modern times in terms of their scopes. The scopes of *al khabīr* of classical *fiqh* were mainly as *muqawwim* (rectifier of prices of the goods), *al muzakkī* (examiner of the witness), *al mutarjim* (translator of the languages), *al qasīm* (expert distributor), *khabīr al khuṭūṭ* (handwriting expert), *al-khabīr fi al-ṭibb* (expert in medicine). However, the fields of forensic expert are wider now which include all the above experts as well as many other modern scientific and technological experts such as forensic anthropology expert, forensic entomology expert, forensic botanical expert etc.

Another difference between classical concept of *ray' al-khabīr* and modern concept of forensic evidence may be found in terms of uses of scientific analyses and technologies. In the classical time, the *khabīr* (experts) did not do modern scientific analysis as well as did not use technological equipment in providing their expertise. However, the *khabīr* of forensic evidence today does scientific analyses and uses technologies. In fact, this point has made a clear distinction between *ray' al-khabīr* of classical *fiqh* and forensic evidence of today. It means *al-khabīr* of classical *fiqh* though used his/her experiences, knowledge and scientific understanding in generating the opinion but did not use modern scientific analysis and technologies in generating the evidence, however, the forensic expert today use his/her experiences, knowledge through science and technology. The admissibility or legality of *ra'y al-khabīr* is

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Comparative Study (Unpublished Master's thesis, International Islamic University Malaysia, 1993), 6-7.

derived from the *Qur'ān*, Sunnah (the Prophetic traditions), *ʿAmal Saḥābah* (practice of the companions), and juristic opinions.

Legal Framework of Forensic Evidence from the Qur'ān

Allah (s.w.t.) says: "*So ask the followers of the reminders if you do not know*" (16:43). In this verse, Allāh (s.w.t.) has commended people in general to ask a*hal al-zikr* (the followers of the reminders) if they do not have knowledge about a thing. The famous commentators of the Qur'ān like *al-Qurṭubī,*[47] *al-Shawkānī,*[48] *Abū Saʿūd*[49] have maintained the view that "the followers of the reminders" means the persons who have knowledge in a particular field.[50] Judges, lawyers and jurists generally do not possess the knowledge of sciences and technicalities. Thus, according to the above *Qur'ānic* verse, if a case comes to them, which involves scientific or technicalities, it is obligatory on them to approach one with knowledge or expertise on this matter such as scientists and the technicians who have sufficient knowledge in this regard. In another verse, Allāh (s.w.t.) says:

When there comes to them some matter touching (public) safety or fear, they divulge it. If they had only referred it to the Messenger, or to those charged with authority among them, the proper investigators would

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[47] Al-Qurṭubī, Abu ʿAbd Allāh Muḥammad ibn Aḥmad al-Anṣārī, *Al-Jamiʿu li Ahkām al-Qur'ān* , (Beirūt: Dār Iḥyā al-Turāth al-ʿArabī, Vol. 10, 1996,), p. 72.

[48] Al-Shwakānī, Muḥammad ibn ʿAlī, *Fatḥu al-Qaḍīr,* (Beirūt: Dār-al-Fikr, Vol. 3, n.d.), p. 164.

[49] Abū Saʿūd, Muḥammad ibn Muḥammad al-ʿImādī, *Irshād al-ʿAqli al-Salīm ilā Mazāyā al-Qur'ān al-Karīm* known as *Tafsīr Abū Saʿūd,* (Beyrūt: Dār Iḥyā al-Turāth al-ʿArabī, Vol. 5, n.d.), p. 116.

[50] In fact, the commentators of the Qur'ān are divided over the meaning of the word '*Ahal al-Zikr*' in the verse. The commentators like *al-Qurṭubī*, *al-Shawkānī,* and *Abū Saʿūd* have preferred this meaning. See: Al-Gazzalī, Abū Hāmid Muḥammad ibn Muḥammad, *Al-Muṣṭaṣfā*, (Beirūt: Dār-al Kutub al-ʿIlmiyyah, 1st edn. 1413-H-), p. 263; Sannūr, *Al-Ithbāt bi al-Khibrah bayna al-Qaḍā' al-Islāmī wa al-Qānūn al-Duwalī wa Taṭbīqātuhā al-Muʿāṣirah*, pp. 46-47.

have tested it from them (direct). Were it not for the Grace and Mercy of Allah unto you, all but a few of you would have fallen into the clutches of Satan (4:83).

The above verse asks believers that if they come to know any matter about public safety and fear, they should refer it to the Messenger (s.a.w.) and those who are proper investigator or experts among them.[51] The management of public safety is not a simple matter that could be understood by everyone. Rather, it requires experts who have expertise on the issue. Similarly, this verse implies that the scientific tools and methods used by the criminals nowadays may not be easily understood by the judges, lawyers, and juries as they are not from these disciplines. It is, therefore, obligatory for them to seek the opinions of the relevant experts.

Yūsuf's (peace be upon him) story in the Qur'an also serves as a source of information about the relevance of expert in a particular field of knowledge and wisdom. For instance, he struggled to escape from the grip of a woman overpowered by lust. As a result, his shirt was torn from the back.[52] On that occasion, a wise man belonging to the woman's kinsfolk (*wa shshidah shāhidun min ʿahlihā)* ("*and a person from among her kinsfolk bore testimony*") said that the shirt's being torn from the back was a sign of the truthfulness of Yūsuf's claim.[53]

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[51] Al-Nīsābūrī, Niẓām al-Dīn al-Ḥasan ibn Muḥammad ibn Ḥusayin, *Tafsīr al-gharā'ib al-Qur'ān wa Raghā'ib al-Furqān* (Beirūt: Dār al-Kutub al-ʿIlmiyyah, 1st edn. vol 2,1996), 456; Al-Farrā', Abū Ẓakariyā Yaḥyā ibn Ẓiyād, *Maʿānī al-Qur'ān* (n.d.: Dār al-Surūr, n.d. vol 2, n.d.), 279; Al-Ẓamakhsharī, Maḥmūd Ibnʿ Umar Ibn Muḥammad, *Tafsīr al-Kashshāf ʿAn Ḥaqā'iqi Ghawamiḍi al-Tanzīl wa ʿUyuwni al-'Aqāwyl fī Wujūhi al-Ta'wīl*, (Beirūt: Dār-al Kutub al-ʿIlmiyyah,1st edn. vol 1, 1995), 530; Ibn ʿAdil al-Dimashqī al-Ḥanbalī, *Al-Lubāb fi ʿUlūm al-Kitāb*, (Beirūt: Dār al-Kutub al-ʿIlmiyyah, 1st edn. Vol. 5, 1999), 522.

[52] Yūsuf: 2-28.

[53] Al-Qurṭubī, *al-Jāmi' li Aḥkām al-Qur'ān* (Beirūt: Dār Iḥyā al-Turāt al-ʿArabī, 1996), 9: 172-173.

There are many views which define the meaning of the word *shāhid* in the above verse. Many of the jurists including ʿIkramah, Mujāhid, Abū Jaʿfar al-Naḥḥās al-Asbah were of the view that the word *shāhid* in that verse was referring to a man or could possibly be a youth but definitely not an old man or a baby in the cradle.[54] They also said that the *shāhid* was a noble and wise man who had attracted al-ʿAzīz to consult him. Al-Qurṭubī agreed with this view and added that if the *shāhid* was a baby then his statement did not require any other evidence to corroborate it.[55] This is held to constitute an authority in favour of the admissibility of proving crimes by opinion of a skilled person,[56] a good example of whom in our time is a forensic expert. In this incident, the person in question was one of the great inner knowledge regarding the occurrence of the incident of that description in that manner. His skill was a precursor of a forensic anthropologist of today.[57]

In another verse, Allāh (s.w.t.) says: "*None can tell the truth like the one who is acquainted with all things*" (35:14). The commentators of the Qur'ān explain the verse that no one can inform you like the one who is aware about things. There is none except Allah (s.w.t.) who is more aware about his creations, their sayings, and actions. He is aware about the facts of things and their realities.[58] ʿAbd al-Nāṣir Muḥammad Sannūr

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[54] Al-Qurṭubī, *Al-Jāmiʿ li Aḥkām al-Qur'ān* (Cairo: Dār al-Kitāb al-ʿArabī, v. 9, 1967), p. 114.

[55] Ibid. See also: al-Zuhaylī, Wahbah, *al-Tafsīr al-Munīr fi al-ʿAqidah wa al-Sharīʿah wa al-Manhaj*, (Damascus: Dār al-Fikr, 1st edn., v. 12, 1991), p. 249; Zulfakar Ramlee, *The Role of Qarinah (Circumstantial Evidence) in Islamic Law of Evidence: A Study of the Law in Malaysia With Reference to the Rules and Principles of English Law*, p. 49.

[56] ʿAiman Muḥammad ʿAlī Maḥmūd Ḥatmal, *Shahādat Ahl al-Khibrah wa Aḥkāmuhā: Dirāsah Fiqhiyyah Muqāranah* (ʿUmān: Dār al-Ḥāmid, 2008), 63.

[57] Sayed Sikandar Shah Haneef, *Forensic Evidence: A Rethinking about its Use and Evidential Weight in Islamic Jurisprudence, Journal of Islam in Asia*, (Kuala Lumpur: International Islamic University Malaysia), Vol. 2, No. 1, July 2005.), p. 126.

[58] Al-ʿAlūsī, Abū al-Faḍal Maḥmūd, *Rūḥu al-Maʿānī fi Tafsīr al-Qur'ān al-ʿaẓīm wa al-Sabʿī al-Mathānī,* (Bayrūt: Dār Iḥyā al-Turāth al-ʿArabī, n.d. Vol. 22, n.d.), 183; Al-

based on the verse (35:14) notes that "no one can give you information about the realities and the facts of things like the one who has knowledge and expertise in the particular fields".[59] This can be true, for instance, for a forensic pathologist today, who can inform the time, the cause, and manner of deaths by examining the death bodies surrounding or doing post-mortem of the bodies.

Legal Framework of Forensic Evidence from the Sunnah

The Sunnah of the Prophet (s.a.w.) has also recognised the expert's evidence. It has been related on the authority of ʿĀ´ishah that one day the Prophet (s.a.w.) came to her with extreme happiness and said: "O ʿĀ´ishah, do not you see that Mujazzaz al-Mudlajī came and saw Usāmah and Zayd lying together and covered with a sheet in a position that their heads were covered but their legs were not covered, and said, 'These legs are from one another.'[60]

It has been reported that people in Madīnah were talking about Usāma's lineage as he was black in colour whereas his father Zayd was white. It was annoying the Prophet (s.a.w.) as Usāmah was his adopted son. Upon hearing Mujazzaz al-Mudlajī's testimony that Usāma is from Zayd, the report says, the Prophet (s.a.w.) became extremely happy and the brightness of his happiness reflected on his face. This is because Mujazzaz al-Mudlajī was known as an expert of lineage and his testimony

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Baghawī, Abū Muḥammad al-Ḥussain ibn Masʿūd al-Farrā', *Tafsīr al-Baghawī known as Maʿālim al-Tanzīl* (Bayrūt: Dār-al Kutub al-ʿIlmiyyah, Vol. 1, 1st edn., 1993), p. 490; Al-Qurṭubī, *al-Jāmiʿ li Aḥkām al-Qurʾān*, Vol. 14, p. 215; Al-Zamakhsharī, Maḥmūd ibnʿUmar, *Tafsīr al-Kashshāf ʿan Ḥaqāʿiqi Ghawamiḍ al-Tanzīl wa ʿUyuwn al-ʿAqāwīl fī Wujūhi al-Taʿwīl*, (Bayrūt: Dār-al Kutub al-ʿIlmiyyah,1st edn. Vol.3, 1995), 587; Al-Shawkānī, *Fatḥu al-Qadīr*, (n.d.), Vol. 4, p. 343.

[59] ʿAbd al-Nāṣir Muḥammad Sannūr, *Al-Ithbāt bi-al Khibrah bayna al-Qaḍāʾ al-Islāmī wa al-Qānūn al-Duwalī wa Taṭbiqātuhā al-Muʿāṣirah*, p. 49.

[60] Al-Bukhārī, Abū ʿAbd Allāh Muḥammad Ibn Ismāʿīl, *Al-Jāmiʿal-Ṣaḥiḥ* (Bayrūt: Dār al-Maʿārif, Vol. 3, 2010), p. 1365, Chapter: Manāqib Zayd ibn Ḥāritha, Hadīth no. 3525; Muslim ibn Ḥajjaj al-Qushayrī, *Ṣaḥiḥ Muslim*, , (Bayirūt :Dar al-Maʿrifah, Vol. 2, 2012), Book: Al-Raḍāʿi, Chapter: ʿIlḥāq al-Qāʿif al-Walad, Ḥadīth no. 1459, p. 1082.

would remove the people's suspicion and accusation about his adopted son, Usama ibn Zayd.[61]

The happiness of the Prophet (s.a.w.) on the hearing of Mujazzaz al-Mudlajī's opinion on the lineage of Usāmah ibn Zayd shows that the Prophet (s.a.w.) recognized the opinion of Mujazzaz al-Mudlajī on the Zayd lineage as the former was known as an expert of lineage. It proves the admissibility of an expert's opinion on establishing paternity. This *ḥadīth* confirms that expert's opinion can be taken as evidence to disprove a fact (crime) in issue. If the Prophet (s.a.w.) accepted the opinion of the expert of lineage on disputed paternity, why not the opinions of today's forensic scientists who by doing a DNA or a blood test can ascertain accurately the real parents of a disputed child? To show significance of this *ḥadīth* on the forensic expert opinion, Haneef writes:

If the Prophet (s.a.w.) could become positively sure about paternity of Usāmah based on the opinion by an expert on lineage who depended for his finding solely on comparison between resembling bodily features (as that was the level of human technical knowledge in the field), today we have better scientific tools to adjudicate on such issues.[62]

When the first adultery case came to the Prophet (s.a.w.), he scrutinised the matter. He asked his Companions to check the adulterer's conditions and mental ability. The *ḥadīth* is as follows:

Sulaymān ibn Buraydah reported on the authority of his father that Māʿiz ibn Mālik came to Allah's Apostle (s.a.w.) and said to him: "Messenger of Allah, purify me", whereupon he said: "Woe be upon you, go back, ask forgiveness of Allah and turn to Him in repentance". He (the narrator) said that he went back not far, then came and said: "Allah's Messenger, purify me". Whereupon Allah's Messenger (s.a.w.) said: "Woe be upon you, go back and ask forgiveness of Allah and turn to Him

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[61] See: Ibn Qayyim al-Jawziyyah, *Jāmiʿu al-Fiqh*, (Al-Manṣūrah: Dār al-Wafā, Vol. 4, 2000), 570.

[62] Haneef, *Forensic Evidence: A Rethinking about its Use and Evidential Weight in Islamic Jurisprudence*, p. 123.

in repentance". He (the narrator) said that he went back not far, when he came and said: "Allah's Messenger, purify me". Allah's Apostle (s.a.w.) said as he had said before. When it was the fourth time, Allah's Messenger (s.a.w.) said: "From what am I to purify you"? He said: From adultery, Allah's Messenger (s.a.w.) asked if he had been mad. He was informed that he was not mad. He said: Has he drunk wine? A person stood up and smelt his breath but noticed no smell of wine. Thereupon Allah's Messenger (s.a.w.) said: "Have you committed adultery"? He said: "Yes". He made pronouncement about him and he was stoned to death.[63]

It is understood by the above *ḥadīth* that the Prophet (s.a.w.) wanted to teach us to seek an expert's opinion on technical issues before implementing *ḥudūd* and *qiṣāaṣ*. The issue was that Māʿiz ibn Mālik was a Muslim and he knew the punishment of this confession. Usually, being aware of this punishment, it was not normal for him or someone else to confess to such an offence! Thus, before giving his final decision to stone him to death, the Prophet (s.a.w.) needed to make sure whether he is mentally fit. For this, as the *ḥadīth* narrates, the Prophet (s.a.w.) sought the help of two experts among his companions to check Māʿiz ibn Mālik, whether he has drunk or suffered from any mental problem?[64] This is what forensic evidence is doing today. For instance, a trained police officer by a breathalyser can detect whether a person drank wine or not. In addition, a forensic psychiatrist can identify the state of someone's mind during an accident and its aftermath. No doubt, this *ḥadīth* of the Prophet (s.a.w.) affirms the admissibility of forensic expert's opinion in proving crimes.

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[63] Mālik Ibn Anas, *Al-Muwaṭṭa'* (Beirūt: Dār Iḥyā al-Turāth al-Islāmiyyah,1967), p. 242.

[64] Khālid Muḥammad Shaʿbān, *Masʿūliyāt al-Ṭibb al-Sharʿī: Dirāsah al-Muqāranah bayna al-Fiqh al-Islāmī wa al-Qānūn al-Waḍʿī,* (Al-Iskandariyah: Dār al-Fikr al-Jāmiʿī, 1st edn. 2008), 15.

It is reported that the Prophet (s.a.w.) said: "Whoever practices medicine but has no skill in it, he is accountable".[65]

This *ḥadīth* implies that a practitioner needs to be proficient and skilled in the field he is practicing.[66] From this *ḥadīth* it is also deduced by the jurists that, if a person is skilled, he is not liable provided he/she is not negligent. This serves as another authority to support the reliability on the opinion and practical experience of a skilled person.[67] According to a report, the Prophet (s.a.w.) also depended on *qarīnah*[68] or trace evidence, to determine the victorious assassin for killing Abū Jahl, for the purpose of awarding him his coat of mail. This incident happened when two sons of ʿUfrā' claimed that they together killed Abū Jahl. The Prophet (s.a.w.) asked them whether they have cleansed their swords. Their answer was in the negative. When the Prophet (s.a.w.) looked at their swords, he found that one of the swords still contained blood stain. He decided that the owner of the stained sword was the rightful claimant, and Abū Jahl's coat of mail was given to him.[69] This *ḥadīth* shows that the Prophet (s.a.w.) decided on the basis of blood stain on the swords of two son's of ʿUfrā' and in fact, this *ḥadīth* indicates that the blood stain

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[65] Muḥammad ibn Faraj, *ʿUqdiyat Rasūl Allah* (Al-Azhar: n.p., n.d.), p. 471.

[66] Muhammad Ismayil Muhammad Yunus, *The Role of Expert Opinion in Islamic Law of Evidence: A Comparative Study*, p. 10.

[67] Haneef, *Forensic Evidence: A Rethinking about its Use and Evidential Weight in Islamic Jurisprudence*, p. 126.

[68] Zulfakar Ramlee, *The Role of Qarīnah –Circumstantial Evidence- In Islamic Law of Evidence: A Study of The Law in Malaysia with Reference to The Rules and Principles of English Law,* A thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy, Glasgow Caledonian University, Glasgo, 1997.

[69] Al-Bukhārī, *Al-Jāmiʿal-Ṣaḥiḥ* (Bayrūt: Dār al-Fikr, Vol. 7, 1991), p. 345, Hadīth no. 3960; Al-Bayhaqī, Abū Bakr Aḥmad ibn al-Ḥusayn, *Al-Sunan al-Kubrā* (Beirūt: Dār al-Fikr, n.d.), Vol. 6, p. 305; see also: Ibn Qayyim al-Jawziyyah, *Al-Ṭuruq al-Ḥukmiyyah fi Siyāsah al-Sharʿiyyah*, Ed. by Muhammad Jamīl al-Gazālī (Cairo: Dār al-Madanī, 1977), p. 13; ʹAiman Muḥammad ʿAlī Maḥmūd Ḥatmal, *Shahādat Ahl al-Khibrah wa Aḥkāmuhā: Dirāsah Fiqhiyyah Muqāranah*, p. 65.

can be considered as an evidence in deciding as to who is the killer. Ibn Qayyim mentions: "The blood stain was a marvellous witness". [70]

Legal Bases of Forensic Evidence from the Practices of the Companions

The legal bases of forensic evidence can also be traced to precedents from the companions. The following reports are some examples:

Caliph ʿUmar [71] convicted a person on the basis of the odour of wine emitted from his mouth which can be detected today by a breathalyser.[72] The report reads:

Imām Mālik narrates from Ibn Shihāb that al-Sā'ib ibn Yazīd informed him that ʿUmar ibn al-Khaṭṭāb came out to them. He said, "I have found the smell of wine on so-and-so, and he claimed that it was the drink of boiled fruit juice, and I am inquiring about what he drank. If it intoxicates, I will flog him." ʿUmar then flogged him with the complete *ḥadd*.[73]

Imām Mālik has recorded that someone who stole something for which cutting off the hand was due and then what he stole was found with him and he returned it to its owner, "His hand was cut off." In this regard, he adds:

Someone's observation--"How can his hand be cut off when the goods have been taken from him and returned to their owner?"—is not justified because His case is similar to that of wine drinker. When the

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[70] *Al-Ṭuruq*, p. 9.

[71] Mālik ibn Anas, *Al-Muwaṭṭa'* (Bayrūt: Dār Iḥyā al-Turāth al-Islāmiyyah, 1967), p. 242; Muslim ibn Ḥajjaj al-Qushayrī, *Ṣaḥiḥ Muslim Bi Sharḥi al-Nawawī* (Bayrūt: Dār al-Fikr, 3rd edn. Vol. 11, 1978), 216.

[72] See: Haneef, *Forensic Evidence: A Comparative Analysis,* p. 208.

[73] Mālik ibn Anas, *Al-Muwaṭṭa'*, p. 242.

smell of the wine is found in his breath and he is not intoxicated, he is flogged with the *ḥadd.*"[74]

Mālik then concludes:

The *ḥadd* is imposed for drinking wine even if it does not make the man intoxicated. That is because he drank it to become intoxicated. It is the same as cutting off the hand of the thief for theft when it is taken from him, even if he has not profited from it and it was returned to its owner. When he stole it, he stole it to take it away.[75]

One of the famous companions of Prophet (s.a.w.), ʿAbd Allāh ibn Masʿūd favoured execution of punishment on the basis of the smell of wine. He said:

I was in Hims (Syria) when someone asked me to recite the Qur'an to them. So I recited Sūrah Yūsuf to them. Someone else among the people said: By Allāh, this is not how it has been sent down. I said: Woe upon you! By Allah, I recited it to the Messenger of Allah (s.a.w.) and he said to me: You have (recited) it well. I was talking with him (the man who objected to my recitation) that I sensed the smell of wine from him. So I said to him. Do you drink wine and belie the Book (of Allāh)? You would not depart till I would whip you. So I lashed him according to the prescribed punishment (for the offence of drinking wine).[76]

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[74] Ibid.

[75] Ibid.

[76] Muslim ibn al-Ḥajjāj al-Qushayrī al-Naysābūrī, *Ṣaḥiḥ Muslim*, The Book of Prayers (Kitāb Al-Ṣalāt): 1753. A similar *ḥadīth* has been reported by Bukhārī on the authority of ʿAlqamah who said: While we were in the city of Hims (in Syria), Ibn Mas'ud recited Sūrah Yūsuf. A man said to him, "It was not revealed in this way." Then Ibn Mas'ud said, "I recited it in this way before Allah's Apostle and he confirmed my recitation by saying, "Well done!"' Ibn Mas'ud sensed the smell of wine from the man's mouth, so he said to him, "Are not you ashamed of telling a lie about Allah's Book and (along with this) you drink alcoholic liquors too?" Then he lashed him according to the law. See: Al-Bukhārī, Abū ʿAbd Allāh Muḥammad ibn Ismāʿīl, *Al-Jāmiʿal-Ṣaḥiḥ*, Chapter: Virtues of the Qur'ān: 523.

A more insightful instance in this regard is ʿUmar's admission of wise finding of Caliph ʿAlī in a case whose facts are as follows:

During ʿUmar's time there was a woman who was strongly fond of a man and attempted in various ways to seduce him but failed. Then she tried to implicate him by accusing him of committing fornication with her. She took an egg and poured its yolk between her thighs and upon her cloth. Thereafter, she went to ʿUmar crying and said this man tried to make sexual intercourse with me and this is the sign of his offence. ʿUmar asked some women. They said to him "There is semen on her clothes and thighs." So, ʿUmar intended to punish him. On this, the young man said, "O Amīr al-Mu'minīn, don't hurry, I have not committed any offence. She had made device. Then ʿUmar asked ʿAlī about that. ʿAli saw her cloths and body and ordered to bring hot water. Then he threw that water on her clothes and thighs and they subsequently turned into solid water. On smelling it, he found it egg white not semen.[77]

Khālid Muḥammad Shaʿbān argues that this incident proves the role of expert's opinion in proving the innocence of the young man from the crime of adultery. Similarly this incident is also considered as the first laboratory test done to identify the criminals in the history of Islam. This is what forensic scientists are doing today in laboratories.[78]

Haneef, a modern writer of Islamic law emphasises that even this single decision suffices to serve as a good historical precedent for provid-

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[77] See: Ibn Qayyim al-Jawjiyyah, *al-Ṭuruq al-Ḥukmiyyah fi al-Siyāsah al-Sharīʿah,* ed. Muḥammad Jamīl Ghazālī, p. 70; ʿAbd al-Nāṣir Muḥammad Sannūr, *Al-Ithbāt bi al-Khibrah bayna al-Qaḍā' al-Islāmī wa al-Qānūn al-Dawlī wa Taṭbīqātuhā al-Muʿāṣirah*, p. 57; ʿAyman Muḥammad ʿAlī Maḥmūd Ḥatmal, *Shahādat Ahl al-Khibrah wa Aḥkāmuhā: Dirāsah Fiqhiyyah Muqāranah,* p. 67; Khālid Muḥammad Shaʿbān, *Masʿūliyat al-Ṭibb al-Sharʿī* (Al-Iskandariyah: Dār al-Fikr al-Jāmiʿyī, 2008), p. 14; Anwarullah, *Islamic Law of Evidence* (Islamabad: *Sharīʿah* Academy, International Islamic University, 2007), p. 71; Haneef, *Forensic Evidence: A Comparative Analysis Between Common Law and Sharīʿah,* p. 207.

[78] Khālid Muḥammad Shaʿbān, *Masʿūliyat al-Ṭibb al-Sharʿī* , p. 14.

ing us with an undisputed legal framework for the accommodation of forensic evidence into the Islamic judicial system.[79]

Caliph ‘Umar practically introduced the testimony of experts in suits involving questions of technique. Experts of the particular science or art in question were called to give testimony in the court. For instance, Hatiyyah wrote against Zabarqān ibn Badr a satirical couplet, in which, however, the point of satire was not apparent. Zabarqān lodged a complaint in the court of ‘Umar. It was a case of a poetical technique, and poetical terminology and terms of expression which are different from those of common speech. ‘Umar, therefore, invited Ḥassān ibn Thābit, a poet of great distinction and eminence, to give evidence, and delivered judgment in accordance with his expert opinion. Similarly, experts of physiognomy were called as witness in cases of disputed heredity.[80]

In a case Caliph ʿUmar ibn Khaṭṭāb asked ʿAlī ibn Abī Tālib to provide a scientific explanation of the matter. In fact, Ali’s scientific opinion on the matter resolved the problem. The case was as follows:

A black man complained to Caliph ʿUmar, “I am black and my wife is black. But my wife gave birth to a red child.” His wife said to Umar, “I swear by Allah that I have not committed illicit sexual intercourse (with anybody) and this is actually the son of this husband.” ‘Umar invited ‘Alī to look in to the matter. ʿAlī said to the man, “Will you give me the true information if I ask you anything?” He said, “Yes”. Then ‘Alī said to him, “Have you met your wife when she was in menses.” He said, “Yes”. Hearing this, ‘Alī exclaimed with joy and said, when human sperm mixes with blood, it gives birth to a red child, so don’t deny your son. You have done wrong with yourself.[81]

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[79] Haneef, *Forensic Evidence: A Comparative Analysis between Common Law and Sharīʿah,* p. 208.

[80] Al-Nuʿmānī, Shiblī, *ʿUmar The Great* (English Translation of Al-Fārūq by Jaʿfar ʿAlī Khān), p. 74.

[81] Al-Sarakhsī, Muḥammad ibn Aḥmad ibn. Abī Sahl, *Kitāb al-Mabsūt* (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, v. 9, 2009), p. 206.

ʿUsmān ibn ʿAffān, the third Caliph used to seek help from experts before giving the final decisions for the issues referred to him. For instance, in the *Muwaṭṭa´* of Imām Mālik there is a report on the authority of ʿAbd Allāh ibn Abī Bakr who relates from his father who narrates from ´Amarah bint ʿAbd al-Rahmān who said that in the period of ʿUthmān a thief stole some fruits. The case came to the Caliph ʿUthmān, in which he ordered an expert to fix the value of the stolen property. After the value was fixed by experts, which were twelve dirhams, the Caliph ʿUthmān ordered to cut off the thief's hand.[82]

Undoubtedly, the laboratorial examination and the medical check-up have their origin in the precedents from the *Sharīʿah*. Therefore, for instance, the opinion of experts on fingerprints for the purpose of identification of the accused in a theft or murder case is a *Qarīnah* to connect the accused with the crime, provided it is not contradicted by other *Qarīnah* and proofs.[83]

The opinion of experts on the identification of the accused in a similar situation through the footprint is also a *Qarīnah* provided it is not contradicted by other evidences. However, based on the authorities as cited above, the expert opinion or medical examination on blood, urine, and semen is strong *Qarīnah* in sexual offences subject to non-contradiction by other evidences.[84]

The Legal Bases of Forensic Evidence from the Jurist's Views

The jurists from the four schools of Islamic law are of the opinion that when a judge faces any difficulty in some scientific, technical, or

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[82] See: Ibn Qayyum al-Jawjiyyah, *al-Ṭuruq al-Ḥukmiyyah fi al-Siyāsah al-Sharīʿah,* ed. Muḥammad Jamīl Ghāzī, p. 206.

[83] Dabūr Anwar Muḥammad, *Al-Qarīnah wa Dawruhā fi al-Fiqh al Jinā´ī al-Islāmī*, pp. 214-216; Mohamad Ismayil Muhamad Yunus, *The Role of Expert Opinion (Ray' al-Khabīr) in Islamic Law of Evidence: A Comparative Study*, p. 20.

[84] See: Dabūr, pp. 210-216.

professional matter, it is obligatory for him/her to seek the opinion of the expert to determine the fact in issue.[85] Imām Sarakhsī states:

If an Imām faces difficulty about the value of the stolen property he should seek opinions of the experts. But if the experts differ in fixing its value, for instance, some fixes it ten dirhams and other fixes it less than that, the punishment of *ḥadd* will not be implemented on the person accused because the *ḥadd* is implemented when the *niṣāb* (the prescribed limit) of the stolen property is completed and it is not completed when there are differences among the experts about its value.[86]

A number of issues deliberated by Muslim jurists and judges also support forensic sciences. For example, to determine the virginity or otherwise of a woman, the Muslim jurists required the wet nurse's opinion. In this regard the Ḥanafī jurist, al-Ḥussām al-Shāhid, mentions: "if there is any flaw (*ʿayb*) which requires women's opinion, the judge will consult with women as the experts and will accept their opinions."[87] Similarly, to decide the presence of sickness, the Muslim jurists required opinion from the doctors. Imām al Khaṣṣāf says:

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[85] ʿAlā al-Dīn ʿAlī ibn Khalīl, al Ṭarāblasī, *Muʿīn al-Ḥukkām fī mā Yataraddad Bayna al Khaṣmayn min al Aḥkām*, (Miṣr: Maṭbaʿah Muṣṭafā al-Bāb al-Ḥalabī, 2nd edn., 1973), p. 130; Muḥammad b. Aḥmad b. Abi Sahl Abū Bakr al-Sarakhsī, *Kitāb al-Mabsūt* (Beirūt: Dār al-Kutub al-ʿIlmiyyah, Vol. 9, 2009), p. 178; Burhān al-Dīn Abū al-Wafā Ibrāhīm, *Tabṣīrāt al-Ḥukkām fī ʹUṣūl al-ʹAqḍiyah Wa Manāhij al-Aḥkām*, (Bairūt: Dār al Kutub al-ʿIlmiyah, 1st edn., v. 1, 1995), p. 247; Abū Isḥāq al Shirāzī, *Al-Muhadhdhab fi Fiqh al-Imām al Shāfiʿī* (Dimashq: Dār al Qalam, 1st edn., v. 3, 1996), p. 554; Ibn Qayyim al-Zawziyah, *Al-Ṭuruq al-Ḥukmiyyah fi al-Siyāsah al-Sharʿiyyah,* (Bairūt: Dār al-Arqām, 199), p. 147.

[86] Al-Sarakhsī, *Kitāb al-Mabsūt*, p. 178; see also: Khālid Muḥammad Shaʿbān, *Masʾūliyat al-Ṭibb al-Sharʿī*, p. 16; Anwarullah, *Islamic Law of Evidence*, p. 71.

[87] ʿUmar ibn ʿAbd al-ʿAzīz al-Ḥussām al Shahīd, *Sharḥu Adab al Qāḍī lī al Khaṣṣāf,* (Bairūt: Dār al-Kutub al-ʿIlmiyah, 1994), p. 461.

If the flaw is unknown and which will be known only by the doctors such as wrench spleen, liver, then the judge will take the opinions of the doctors. For this, the opinion of one doctor is sufficient.[88]

The Mālikī jurist, Ibn Farḥun remarks: "To decide the amount of compensation for injuries the opinion of doctors and who have knowledge in the injuries should be taken."[89]

Ibn Qayyim, from the Ḥanbalī school of Islamic law, writes:

The opinion of one doctor is sufficient in serious hurts if two are not available. Similarly, the testimony of one veterinarian is sufficient in case of the disease of an animal.[90]

To allow the return of consumer goods due to latent defects found, the Muslim jurists also have sought the aid of specialists in the field.[91]

The opinion of the experts was also given great importance by latter Muslim jurists, especially during the Ottoman Caliphate. They relied upon it on *ḥudūd* crimes such as adultery, theft, drinking wine, murder, damage, and all civil matters. In this regard, the *Majallat Aḥkām al-ʿAdliyyah* explicitly stated: "The reports of the skilled persons are ac-

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[88] Al Ḥussām al-Shāhid, *Sharḥu Adab al Qāḍī li al Khassāf,* p. 460.

[89] Ibn Farḥūn al-Mālikī, *Tabṣīrāt al-Ḥukkām*, v. 2, p. 311.

[90] See: Ibn Qayyim al-Jawjiyyah, *al-Ṭuruq al-Ḥukmiyyah fi al-Siyāsah al-Sharīʿah*, p. 84.

[91] See: Al Ṭarablasī, *Muʿīn al-Ḥukkām Fīmā Yataraddad Bayna al-Khaṣmayn Min al-Aḥkām*, p. 130; p. 178; Ibn Farḥun, *Tabṣirat al-Ḥukkām fī ʼUṣul al-ʼAqḍiyah Wa Manahīj al-Aḥkām*, p. 247; Al-Shirāzī, *Al-Muhadhdhab fi Fiqh al-Imām al Shāfiʿī,* p. 554; Ibn al Qayyim al-Jawziyah, *Al-Ṭuruq al-Ḥukmiyyah fi al-Siyāsah al-Sharʿiyyah,* p. 147; Muḥammad al-Zuḥaylī, *Al-Ithbāt fi al-Sharīʿah al-Islāmiyyah* (Damascus: Dār al-Makātib, 1998), pp. 142-145; Haneef, *Forensic Evidence: A Rethinking about its Evidential Weight*, p. 124.

ceptable as authentic testimony even if they did not use the word *shahādah* (testimony)."[92]

Aḥmad al-Ḥuṣary, a modern jurist of the Ḥanbalī School, strongly mentions:

If four women gives testimony that they have witnessed a woman involved in *ẓinā* while several experts women had given their testimony that the accused was still virgin, then *ḥadd* punishment will not be implemented neither on the woman who is accused of *ẓinā* nor on the women who claimed that they had witnessed the act of *ẓinā*.[93]

CONCLUSION

Forensic evidence is a piece of evidence derived with the help of scientific and technological methods and tools used by scientists or other technical bodies to prove or disprove a case before the courts. The legal experts the world over have agreed to the reliability of the forensic evidence to prove or disprove the legally disputed matter or issue. In modern day prosecution, forensic evidence has become an indispensible part of the administration of justice. This supremacy of forensic evidence in litigation system arises due to many reasons such as social change, the increase of technical knowledge of criminals, wide field of crime activities, some elements of crimes such as cocaine, blood-alcohol, semen etc. which cannot be proved without the aid of science and technology. There does not seem to be any conflict between the principles of *Sharī'ah* and forensic evidence. The Qur'an, the Prophetic traditions, judgments of the Companions, views of *fuqahā'* and Islamic legal experts confirm the validity of forensic evidence in Islamic law.

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[92] *Majallat Aḥkām al-'Adliyyah*, section; 1689.

[93] Aḥmad al-Ḥuṣary, *'Ilm al-Qaḍā'* (Egypt: Maktabah al-Azhar, n.d.), p. 350.