

The Nature of the Oath of Negation of Knowledge and the Feasibility of their Conflict with the Principle of Non-existence in Imami Jurisprudence and Criminal Law of Iran

Oath, along with other evidence to prove criminal claims, is listed in Article 160 of the Islamic Penal Code approved in 1392. Although oath is one of the weakest evidences, it proves important matters such as retribution and blood money since 1392. On the one hand, addressing the oath of denial of knowledge due to the scarcity of legal sources and also the many differences that exist among jurists regarding this matter, and on the other hand, the double importance of the evidentiary power of oaths, and especially the oath of denial of knowledge, in important punishments such as retribution, of which Article 326 of the Islamic Penal Code approved in 1392 is a clear example, necessitates the existence of this research. Regarding the oath of denial of knowledge, some questions are also raised. Among them, can the oath of denial of knowledge be decisive in a claim? And is the nature of the oath of denial of knowledge to be null and void and refutable to the other party? And questions like these, which can be useful in this research, with appropriate answers to the extent possible, in order to clarify the existing ambiguities. The principle of non-existence is widely considered and used among jurists and fundamentalists and can be implemented in almost all branches of jurisprudence, although it is not explicitly stated in the substantive laws, but it is one of the general principles governing substantive law that is widely used. Regarding the combination of the principle of non-existence and the oath of negation of knowledge, ambiguities and questions are also raised. Among these questions is how, when according to the famous rule that says: "The negation of the negated is sufficient", should an oath also be taken? Also, is there no principle of non-existence and no reason should be given for existence? So, why should an oath be taken sometimes for non-existence? The answer to these questions, which are the starting point of the differences regarding the oath of denial of knowledge and the principle of nothingness, and other questions, by stating the definitions and nature of these two, can to some extent inform the minds involved in this issue and enlighten these matters. In any case, considering that no research has specifically addressed Article 326 of the Islamic Penal Code approved in 1392, and even in criminal matters, the oath of denial of knowledge and the principle of nothingness have not been examined and explained together, the authors have therefore tried to address the subject of this research as a new matter, considering the existing doubts, and by citing library resources with tools such as description and analysis, in a documented and reasoned manner, describe their nature and assess the possibility of their conflict.

The oath of denial of knowledge is one of the types of oaths and evidence to prove a claim. The legislator has explicitly stated it in the Iranian criminal system once, in Article 326 of the Islamic Penal Code approved in 1392. This type of oath, depending on the issue it is directly related to, can be a denial of knowledge or a denial of the main claim or both, and is considered a kind of conclusive evidence and also, given that it can be rejected, it is considered a kind of false oath. The oath of denial of knowledge, like other evidence to prove a criminal claim, is capable of conflict and the possibility of proving its opposite is possible, according to Article 212 of the Islamic Penal Code approved in 1392. The principle of non-existence is also an independent principle that can sometimes be placed in the position of verbal principles and sometimes in the position of practical principles. Also, this principle has a great deal of scope in jurisprudential books and especially in the general principles governing laws; But like the principle of innocence, which is clearly defined in the Iranian Constitution, it is not defined in Iranian laws. It is worth noting that according to the rule: "The principle is evidence, in the absence of evidence", if there is solid evidence, the principle of non-existence will not be applied; therefore, the condition for adhering to the principle of non-existence is to examine and search among the evidence of *ijtihad* and despair of finding a ruling and a way to resolve the confusion. This also applies to the oath of denial of knowledge, and as long as other evidence, such as confession and testimony, exists, there is no room for taking an oath, and especially an oath of denial of knowledge. As stated above, according to the rule: "The proof is against the one who claims and the right is against the one who denies", the convergence of the first part of this rule, based on the principle of non-existence, and its second part, based on the oath of denial, is noteworthy;

However, the oath of denial of knowledge and the principle of nothingness are, in fact, two separate matters and, contrary to the prevailing differences and perceptions, they do not contradict each other in practice; because the oath of denial of knowledge is taken when there is knowledge of the existence of something, but the principle of nothingness is taken when there is doubt about the existence or non-existence of something. Also, the oath of denial of knowledge is an exceptional matter and must be limited to the aforementioned cases, but the principle of nothingness is very broad.