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Examining the Conflict Between Judicial Presumptions

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ABSTRACT

Judicial presumption in the Iranian legal system is recognized as one of the most important instruments for proving claims and as an effective means of preventing judicial uncertainty in situations where conclusive evidence is absent or insufficient. Its flexibility, rational character, and reliance on a careful analysis of the circumstances and conditions of the case have enabled judicial presumptions to play a prominent role in generating confidence and forming the judge's inner conviction, and in many instances to be invoked even as an independent form of evidence. An examination of jurisprudential, legal, and rational foundations indicates that whenever a judicial presumption gives rise to knowledge or sufficient assurance, it enjoys probative validity and may, like other recognized forms of evidence, play a decisive role in judicial proceedings. Given the persuasive nature of judicial presumptions, their evidentiary value depends on the degree of influence they exert on the judge's mind. Accordingly, in cases involving a conflict between two or more judicial presumptions, the principal criterion of preference is the degree of probative force, technical strength, logical coherence, and consistency of each presumption with the circumstantial evidence and factual realities of the case. This criterion is accepted both in the principles of Islamic jurisprudence and in the practice of rational agents. The findings of this study demonstrate that whenever one presumption possesses greater persuasive capacity, it should prevail over weaker presumptions.

Keywords: *judicial presumption; inner conviction; judicial knowledge*

Introduction

Judicial presumptions occupy a highly significant position in the Iranian legal system within the process of proving claims and discovering the truth, and in many cases they compensate for the gap resulting from the absence of conclusive evidence or the lack of access thereto. A judicial presumption is founded upon the judge's observation, analysis, and inference drawn from the specific circumstances of each case. This characteristic has led judicial presumptions not only to enjoy a high degree of flexibility and efficiency, but also, in many complex disputes, to perform the function of persuasive evidence. According to jurisprudential teachings, rational principles, and the practice of rational agents, whenever a judicial presumption gives rise to knowledge or inner assurance, it enjoys probative validity.

Despite this importance, one of the most complex issues arising in the field of judicial presumptions is the conflict between judicial presumptions themselves, a situation in which two or more different presumptions present

contradictory results or incompatible appearances to the judge. The diversity of the sources from which presumptions are formed—ranging from on-site inspections and local inquiries to expert opinions, material indicia, the conduct of the litigating parties, and even ancillary circumstances—has rendered the occurrence of conflict among them in complex disputes a natural and unavoidable matter. Moreover, the legislator has not provided an explicit rule for resolving such conflicts, a circumstance that has further accentuated the role of the judge in evaluating, analyzing, and preferring judicial presumptions.

The necessity of addressing this issue arises from the fact that judicial presumptions possess a persuasive nature, and their value is directly dependent on the extent of their influence in convincing the judge's conscience. Accordingly, when presumptions with differing degrees of probative force or heterogeneous argumentative foundations are presented before the judge, determining the criteria for preference or reconciliation among them becomes a fundamental issue. In the principles of jurisprudence, reason has likewise recognized criteria such as the strength of probative indication, coherence with other indicia, customary support, and consistency with the factual realities of the case as the basis for identifying the stronger presumption. Conversely, if two presumptions are equal in terms of persuasive power, neither is preferable over the other, and the rule of mutual cancellation applies; consequently, the judge must resort to other forms of evidence.

The present article, adopting an analytical approach, seeks to elucidate the theoretical foundations, criteria of preference, and methods for resolving conflicts among judicial presumptions, and endeavors, by relying on jurisprudential and legal sources, to present a coherent framework for the practical application of such presumptions in judicial decision-making. The ultimate objective of this research is to contribute to the enhancement of judicial security, the coherence of judicial practice, and the strengthening of the role of judicial presumptions in the process of discovering the truth.

Judicial Presumption

Judicial presumptions consist of those circumstances which, in the view of the judge, constitute evidence of a particular matter; that is, circumstances from which the judge attains certainty regarding an unknown fact and which ordinarily indicate the correctness of the assertions of one of the litigating parties. If the circumstances do not create such a state for the judge, they do not acquire the character of a judicial presumption. Accordingly, judicial presumptions are not established by statute but are left to the discretion of the adjudicator and the judge, who, through certain indicia, seeks by way of inference to decide upon the reality of the claimed matter. For example, if a creditor, without fraud or coercion, returns the debt instrument to the debtor, this act may, in the judge's view, constitute evidence of discharge. In jurisprudential terminology, judicial presumptions are referred to as *ẓāhir al-ḥāl* (apparent state), and *ẓāhir al-ḥāl* does not belong to the category of specific presumptions that are legally authoritative in Islamic law. Rather, it is among non-authoritative presumptions, and until the apparent state—namely, the indicia and surrounding circumstances—gives rise to certainty or at least assurance in the judge's mind, it is not binding. Pursuant to Article 1324 of the Civil Code, presumptions that are left to the discretion of the judge consist of circumstances specific to the case and are admissible only where the claim is provable by witness testimony or where they serve to supplement other evidence.

This article was enacted at a time when the use of testimony as evidence was subject to limitations, and the majority of civil claims were not provable by testimony; consequently, judicial presumptions, under the same provision, did not enjoy substantial probative force. Today, however, with those limitations on testimony removed

and with the conditions for witnesses becoming more stringent—such that testimony has probative value in nearly all disputes—a transformation has likewise occurred in the use of judicial presumptions. The judge may now rely on judicial presumptions in many instances to issue a judgment without the need to seek additional evidence or to treat the presumption merely as a supplement to another proof (1).

As is evident from the definition of judicial presumption, its most salient feature lies in its being entrusted to the judgment of the judge and the adjudicator. Indicia and presumptions are relied upon as the basis for issuing a judgment only when they generate an inner belief in the judge. In judicial presumptions, the judge enjoys freedom, and no rigid rule confines him; he may take into account all scientific, social, and customary indicia that bear upon the subject matter. Nevertheless, it must be noted that this discretion is not so extensive as to be devoid of any limitation; rather, the judge must always employ lawful and legitimate inference that satisfies his conscience. Accordingly, judicial presumptions are not limited in number and cannot be numerically restricted. Likewise, unlike legal presumptions—which the judge is unconditionally bound to accept—in judicial presumptions, if the judge, based on the circumstances of the case, does not attain inner conviction, there is no obligation to follow the presumption (2).

Examining the Foundations of the Legitimacy and Probative Authority of Judicial Presumptions

The legitimacy and probative authority of judicial presumptions may be grounded on three principal bases: transmitted Qurʾanic evidence, the tradition of the Infallibles (peace be upon them), and rational reasoning. These foundations not only justify the acceptance of judicial presumptions within the framework of Sharia and law, but also highlight their capacity to realize the ultimate purpose of adjudication, namely the discovery of truth and the establishment of justice. Some of the evidences supporting the probative authority of judicial presumptions are briefly set out below.

Qurʾanic Evidence:

From certain verses of the Qurʾan it may be inferred that where circumstantial indicia conclusively indicate a matter, they are admissible. Among the most important of these verses is the verse concerning the brothers of Prophet Joseph: “And they brought his shirt stained with false blood. He said: ‘Rather, your souls have enticed you to something; so patience is beautiful, and God is the One sought for help concerning what you describe’” (Qurʾan 12:18). This verse refers to the incident of Prophet Joseph when his brothers cast him into the well, removed his shirt, stained it with blood, and brought it to their father, Prophet Jacob, claiming that a wolf had devoured him. As soon as Prophet Jacob saw the intact shirt, he grasped the truth and declared that they were lying, stating that their carnal desires had adorned this act for them and implicitly questioning the absence of any marks of a wolf’s teeth or claws on the garment. Prophet Jacob’s inference from the soundness of Joseph’s shirt to the falsity of his sons’ claim may serve as evidence for the probative authority of indicia and presumptions that conclusively indicate their import, as many jurists have relied on this verse to argue for the authority of circumstantial evidence and presumptions (3).

Another instance concerns the tearing of Joseph’s shirt, where the Qurʾan states: “And a witness from her family testified: ‘If his shirt is torn from the front, then she has spoken the truth and he is of the liars; but if his shirt is torn from the back, then she has lied and he is of the truthful’” (Qurʾan 12:26–27). This verse refers to the accusation brought by Zulaykha against Prophet Joseph in the presence of the Aziz of Egypt. At that moment, a witness testified

that if Joseph's shirt had been torn from the back, the woman was lying and Joseph was truthful, whereas if it had been torn from the front, the opposite would be the case. The Aziz approved this carefully reasoned judgment, examined the shirt, and upon seeing that it was torn from the back, realized the truth. He then addressed his wife, stating that this was of the women's guile, and instructed Joseph to disregard the matter. This simple fact—the location of the tear on the shirt—altered the course of an innocent person's life and became evidence of his purity and proof of the accuser's disgrace, demonstrating the evidentiary value of clear circumstantial indicia (3).

In addition, verses such as "And if you judge, judge between them with justice; indeed, God loves those who act justly" (Qurʾan 5:42) and "Indeed, God commands you, when you judge between people, to judge with justice" (Qurʾan 4:58) explicitly instruct judges to adjudicate in accordance with justice and equity. From a legal and jurisprudential perspective, the probative authority of judicial presumptions in the Islamic judicial system may thus be substantiated by reference to the Qurʾan. Verses such as Qurʾan 12:18 and 12:26–27 illustrate that decisive indicia and presumptions can serve as a basis for discovering the truth and issuing judgments. In Islamic law, the aim of adjudication is the vindication of rights and the realization of justice, and judges, as executors of this system, are obliged to fulfill this exalted objective. The Qurʾanic emphasis on justice and equity assigns this duty to judges and supports reliance on effective means that facilitate its achievement.

From a jurisprudential standpoint, reliance on presumptions and scientific methods is compatible with these verses, since employing such tools is presumed to promote justice more effectively than refraining from their use. In matters of novel issues, according to jurisprudential principles, establishing the absence of opposition by the Lawgiver suffices for permissibility, without the need to prove explicit approval. In the present context, the use of judicial presumptions and scientific methods not only does not conflict with the objectives of Sharia—such as the vindication of rights, the establishment of order and security, and social advancement—but also contributes to their realization. Even if doubt were cast on this implication, the مجموع of the cited verses at least demonstrates that the use of decisive indicia and strong presumptions is neither reprehensible nor prohibited in the Qurʾanic view, but rather is accepted as a method of discovering the truth. Accordingly, reliance on these verses to legitimize the use of presumptions in adjudication possesses substantial legal and jurisprudential strength.

Narrative Evidence:

In the Prophetic tradition, numerous instances indicate the legitimacy of judicial presumptions, including judgments attributed to Imam ʿAli (peace be upon him). One such example from the time of the Prophet of Islam (peace be upon him) is reported as follows. ʿAbd al-Rahman ibn ʿAwf relates that during the Battle of Badr, two young men of the Ansar—Muʿadh ibn ʿAfraʾ and Muʿadh ibn ʿAmr—asked him to identify Abu Jahl among the polytheists so that they might kill him. After he identified him, the two youths attacked Abu Jahl and ultimately killed him. They then reported his death to the Prophet, who asked which of them had killed him. Each claimed responsibility. The Prophet asked whether they had cleaned their swords; they replied that they had not. He then carefully examined their swords and stated that both had participated in the killing, but that the honor of delivering the fatal blow belonged to Muʿadh ibn ʿAmr. From the blood on the swords, the Prophet inferred that both had struck Abu Jahl, yet because Muʿadh ibn ʿAmr's sword bore more blood along its length, it was concluded that his blow had been more decisive (4).

It appears that in this incident the Prophet employed an objective and observable presumption—the condition of the two swords—to uncover the truth. Assessing the amount and extent of blood on the swords served as a logical

indicium of each individual's degree of participation. This judgment was grounded in rational inference and examination of material evidence rather than mere claims or direct testimony. This point is significant insofar as it demonstrates that reliance on judicial presumptions in Sharia adjudication is legitimate and consistent with the tradition of the Infallibles. Particularly where direct evidence is unavailable, this approach enables the judge to rely on objective indicia and rational analysis to discover the truth and issue a just ruling. The legitimacy of this method is inferred both from the Prophet's conduct as an instance of Sunnah and from its rational character, and since it is not exclusive to the Infallible, it may serve as a model for other judges, provided that the indicia lead to assurance approaching certainty.

Rational Evidence:

One of the four sources of proof in Islamic jurisprudence is rational reasoning, through which many novel issues may be resolved. A considerable number of events cannot be proven by testimony, confession, or written instruments. If judges are not permitted to rely on indicia that signify and point to the truth, the rights of individuals will be jeopardized, whereas the Lawgiver emphatically seeks the preservation of rights and their delivery to their rightful holders. Adjudication based on indicia accords with the Lawgiver's objective of establishing justice in society, restoring rights to their owners, and eliminating corruption. In the contemporary legal system, judges should, to the greatest extent possible, rely on presumptions—particularly judicial presumptions—to reach the truth and render sound judgments. Such presumptions not only do not harm individuals in the course of proceedings, but also guide society toward a comprehensive and just legal system (5).

Characteristics of Judicial Presumptions

In this part, the characteristics of judicial presumptions—namely, being entrusted to the adjudicator's discretion, the absence of a statutory enumeration, their non-exhaustive nature, and their admissibility for reliance by the adjudicator—are explained in detail across four separate discussions.

1) Being Entrusted to the Adjudicator's Discretion:

In light of the definitions presented for judicial presumptions, it becomes clear that the most important characteristic of judicial presumptions is that they are entrusted to the opinion and assessment of the adjudicator or judge. Indicia or signs may serve as judicial presumptions supporting the issuance of a judgment only when they generate an inner belief in the judge, unlike a legal presumption which may be imposed on the adjudicator even if it does not convince the adjudicator's conscience. Accordingly, the adjudicator may take into consideration any circumstance that, in his view, assists in ascertaining the claimed matter and satisfies his conscience; precisely for this reason, judicial presumption is regarded among persuasive proofs. Some jurists maintain that although the circumstances, indicia, signs, and the degree of their influence in proving the claim are entrusted to the adjudicator's discretion, this discretion is not arbitrary. Therefore, if the indicia or signs referenced in the judgment—on the basis of which the adjudicator has deemed the claimed matter established—do not possess the relevant persuasive qualities in the view of a higher authority, the judgment may be subject to annulment or reversal (6).

2) Absence of Statutory Enumeration:

Since the parties in each dispute differ from those in another dispute, and their statements regarding their entitlement necessarily vary, it is not possible to attribute a general and universal characteristic to such statements that guide the adjudicator toward the truth. The expression “circumstances specific to the case” in Article 1324 of the Civil Code indicates that the validity of a judicial presumption is confined to the particular case in which the adjudicator encountered it and is not analogically transferable to other cases. Therefore, unlike legal presumptions, judicial presumptions do not require express statutory designation. Nevertheless, in certain instances, it is observed that the legislator has identified specific indicia or signs in particular contexts so that the adjudicator may, where additional indicia exist, determine the reality of the claimed matter (6).

3) Non-Exhaustive Nature:

Because a judicial presumption arises in any case where indicia guide the judge toward the truth, judicial presumptions cannot be confined to a few specific, enumerated instances. The signs that may, in the adjudicator’s view, constitute a judicial presumption supporting the truth of the claimed matter are not susceptible to counting; thus, the circumstances and the judge’s inference confer originality and independence upon judicial presumptions while making them dependent upon their specific subject matter. This very feature renders judicial presumptions non-exhaustive. Judicial practice may also contribute to the discovery of new presumptions, in that a form of customary predominance can be influential in the formation and validation of a judicial presumption. However, as noted, variable factors render each presumption original and case-dependent; therefore, a judicial presumption arising in one dispute is in no way admissible as a basis of reliance in another dispute, and its validity is personal to the case (2).

4) Admissibility for Reliance by the Adjudicator:

Judicial presumptions may be invoked not only by the litigating parties but also by the adjudicator himself, and this can be inferred from Articles 1321 and 1324 of the Civil Code. Article 1321, which provides that a presumption consists of circumstances which, by virtue of law or in the view of the judge, are recognized as evidence of a matter, places the judge’s recognition alongside the law’s recognition. Just as a legal presumption does not require invocation by the parties, a judicial presumption likewise does not require reliance by them. Article 1324 further provides that judicial presumptions are admissible where a claim is provable by witness testimony or where they complete other evidence. Here, “admissibility for reliance” refers to reliance by the adjudicator in the judgment, not reliance by the parties. Judicial presumptions differ inherently in terms of their appearance and the manner of reliance: some do not become salient unless invoked by the parties. For example, a merchant’s books, vis-à-vis a non-merchant, do not attract the adjudicator’s attention unless they are relied upon, and the adjudicator cannot, on his own initiative, proceed to examine them. By contrast, certain indicia form part of the circumstances of the dispute and fall within the adjudicator’s view and assessment, and the adjudicator, through measures and means such as on-site inspection or referral to an expert, draws inferences regarding the nature and particulars of the matter (2).

5) Indirect Nature:

A judicial presumption is an indirect proof. Because the judge must infer a conclusion from existing signs on the basis of probability, he does not always reach certainty. In other words, the signs relied upon do not, in themselves, directly indicate the reality; rather, it is the judge's inference from them that yields such a conclusion, and for this reason doubt and probability have a greater degree of penetration in this type of proof (7).

The Nature of Judicial Presumption

Judicial presumptions are not enumerated or specified in statutory law, and the adjudicator must, with attention to the particular circumstances of the case, derive a presumption in favor of one of the litigants. A judicial indicium consists of two elements: first, an established fact which the judge selects from among the facts of the dispute, and this constitutes the material element of the indicium; second, the judge's act of inference, by which he moves from the established fact to the fact he intends to prove, and this constitutes the immaterial (mental) element of the indicium. In judicial presumptions, the characteristics of the dispute and the conclusions the judge derives in each controversy are determinative, and nothing possesses an inherent general or typical character. Based on this feature, some have regarded the indication of a judicial presumption toward reality as stronger than that of a legal presumption (8).

Some scholars believe that the definition of presumption in Article 1321 of the Civil Code implies the involvement of reason and inference in presumptions, showing that what the legislator or judge encounters and possesses are "circumstances." These circumstances are not, in themselves, the object or goal, but rather provide the ground for reaching the desired reality; insight and experience must work together so that reason can move from the known to the unknown which is the object of proof. To achieve this goal, the mind engages in two intellectual efforts and, in practice, employs two logical tools: (1) induction and experience, and (2) deduction. In the first stage, the mind must induce, or benefit from the induction and experience of others; in the second stage, it strives to form a rule from what has been learned through experience and to apply it so as to reach a conclusion (7).

A further group maintains that induction plays a role in the emergence and stabilization of presumptions: experiments and results obtained from numerous cases, attention to the ordinary course of affairs and events, and the repetition and similarity of such occurrences are effective in generating and validating a rule and a proof. This is the point at which the legislator casts induction in the form of law; however, the judge does not move from the particular to the universal, but rather derives a particular ruling by reference to a universal. Thus, the adjudicator's operation is not induction but analogy. In this analogy, the presumption is the major premise and the case at hand is the minor premise (9).

It appears that, in induction, the judge or legislator moves from multiple particular instances (for example, repeated observation of a pattern) to a general rule. For instance, the legislator, upon observing that in most cases the possessor is the owner, lays down the rule that possession is evidence of ownership. In analogy, however, the judge begins with a general rule that already exists—whether derived from custom, experience, or law—and applies it to a particular case. For this reason it is said that a particular ruling is obtained by reference to a universal: the judge moves from the universal to the particular, not vice versa. That is, the judge, relying on a general rule or pattern derived from experience, custom, or logic, and matching it to the specific realities of the case, issues a determinate ruling for that dispute. This process forms the core of inference in judicial presumptions and transforms

it into a flexible and rational instrument for discovering the truth. The story of Prophet Jacob, who, upon seeing Joseph's blood-stained shirt and the absence of any tear, realized that Joseph's brothers were lying, illustrates reliance on experiential expectation: had a wolf attacked, the shirt would necessarily have been torn; since no such trace existed, the brothers' claim was false. Likewise, in the incident of the tearing of Joseph's shirt, the major premise (general rule) is that if the shirt is torn from the back, it indicates that the person was fleeing and being pursued (a rule grounded in customary understanding and experience); the minor premise (particular fact) is that Joseph's shirt was torn from the back; the conclusion (particular ruling) is that Joseph was fleeing and Zulaykha was pursuing him, therefore Joseph is innocent and Zulaykha is lying.

It appears that the nature of judicial presumption is a synthesis of these views: in judicial presumptions, induction, analogy, and—most importantly—the judge's inference all play roles. The nature of judicial presumption lies in its reasoning process, which both draws on induction (identifying ordinary patterns based on experience) and uses analogy (applying a general rule to a particular case). For example, in the incident of the bloodied swords at the Battle of Badr, the Prophet first, through experience, recognized that blood on a sword indicates participation (induction), and then, through analogical comparison of the extent of blood, concluded that Muʿadh ibn ʿAmr played the principal role. This combination transforms judicial presumption from a purely theoretical inference into an applied and practical method. Judicial presumption is a real evidentiary instrument with a dynamic and composite nature that highlights the judge's role in discovering the truth and represents an integration of factuality and rationality, consisting of a material component (the established fact) and a mental component (the judge's inference). This combination shows that judicial presumption is neither merely a mental supposition nor an independent objective reality, but rather a bridge between existing evidence and the conclusion sought by the judge. The result of this combination is its principal strength, because it enables the judge, in circumstances where direct proofs such as testimony or documents are insufficient, to approach the truth through reason and experience. The nature of judicial presumption is closer to real proofs such as documents and testimony than it is to a purely formal presumption, because it is rooted in tangible case-specific evidence. Its difference from direct proofs, however, is that it does not directly reveal the truth; rather, it reaches it through the judge's inference. Judicial presumption is therefore a necessary and intelligent tool in adjudication: its nature is dynamic, flexible, and judge-dependent, and its function is to fill the gap between available realities and ultimate truth in the service of justice.

Limits of the Validity of Judicial Presumption

Article 1324 of the Civil Code provides that presumptions left to the judge's discretion consist of circumstances specific to the case and are admissible only where the claim is provable by witness testimony or where they complete other evidence. From this provision it is inferred that judicial presumption is subject to limitations. These limits may be divided into three parts. First, judicial presumption consists of circumstances specific to a particular case, and a general rule cannot be extracted from it for application in other cases. Second, its admissibility extends only to situations where the claim is provable by witness testimony; however, following amendments to the Civil Code and the removal of evidentiary limitations on testimony, disagreement exists regarding this condition. Third, judicial presumption is applicable only where it supplements other evidence and, independently, lacks probative force—an issue which is likewise disputed (10).

The Origin of Judicial Presumptions

In the origin of judicial presumptions, custom and social practice play a role, in the sense that many judicial presumptions are grounded in the prevailing customs and social habits of the people, and the judge—under the law's general authorization—employs them to uncover matters, disputes, and surrounding circumstances across different areas. Predominance (i.e., what ordinarily prevails in practice) also plays a role in the origin of judicial presumptions. For example, if it is an accepted practice that construction materials are delivered at the workshop site, the judge may treat this as the prevailing basis for discovering the dominant factual pattern and, in a dispute over the place of delivery, conclude that the purchased materials were delivered at the building site. In this way, this kind of predominance—whose source in this example is custom—affects the formation and validity of a judicial presumption. As to the foundation and elements of a judicial presumption, it should be said that a judicial presumption has two elements: the first element (or pillar) of any judicial presumption is the existence of an indicium or sign and the particular circumstances of that very dispute; this may be called the material element of the judicial presumption. The second pillar is the act of inference performed by the judge, by which the judge moves from the established fact to the fact that is intended to be proven; this is the mental (immaterial) element of the judicial presumption (2).

Some jurists believe that every judicial presumption is, by its nature, composed of several indicia (11).

It appears that judicial presumption, as an instrument in the judge's hands, is shaped on the basis of flexibility and reliance on the adjudicator's inner conviction, and it does not require a multiplicity of indicia in its structure. Iranian civil law—especially Articles 1321 and 1324 of the Civil Code, which set the framework of judicial presumption—contains no explicit requirement that several indicia must exist. This legislative silence itself indicates that there was no intent to impose a requirement of multiple indicia, and that the default is the absence of such a requirement and the sufficiency of a single strong and reasonable indicium. Moreover, the primary criterion in assessing a judicial presumption is the judge's inner conviction, not the number of indicia; it is entirely possible that one firm indicium may lead the judge to certainty, whereas several weak indicia may fail to do so. Emphasizing multiplicity of indicia is not only absent from statutory texts, but it can also drive the judge toward an unjust inference contrary to reality, which conflicts with the spirit of justice and the purpose of judicial presumptions. Therefore, the structure of judicial presumption is based on the quality of inference from circumstances, not on the quantity of indicia, and there is no obligation of multiplicity of indicia.

Three bases have been proposed as the origin of judicial presumptions: (1) the adjudicators' conjectures, (2) custom and usage, and (3) surrounding circumstances and indicia.

1) Adjudicators' Conjectures

In lexical usage, *ẓann* (conjecture) is employed to mean probability, supposition, doubt, delusion, and guesswork, and is used in contrast to certainty. Some, however, use *ẓann* in a more precise sense and state that conjecture is a psychological state between certainty and an equal-sided doubt—that is, above doubt and below certainty. In addition, conjecture is of two types: (1) conjecture that develops into assurance and constitutes a manifestation of knowledge; and (2) conjecture that does not reach the level of assurance, and this conjecture has no probative authority except in particular cases with legal authorization (12).

In judicial life, discovering reality in the sense intended for solving unknowns is not the primary concern, because unknowns in judicial life are innumerable, and waiting for an unknown to be resolved would disrupt the cycle of life. Inevitably, in legal science and the art of judging, other paths must be sought to resolve unknowns. For this reason,

it has been proposed (in a well-known formulation) that in law, matters should be understood through "ordinary knowledge" (*ʿilm ʿādī*). By ordinary knowledge is meant a level of knowledge that, once most members of a community reach it, they do not allow the possibility of the contrary to enter their understanding, even though, rationally, a minority of scholars and educated persons may still consider a contrary possibility. From the theory of ordinary knowledge it can at least be understood that discovering reality in the sense pursued in the natural sciences is not what legal knowledge aims at. When the foundation of legal science is ordinary knowledge—as it is—then searching for reality where ordinary knowledge cannot be attained is futile. This view is supported by the fact that, on the basis of expediency, legal rules are created in the form of legal fictions and practical principles. In the traditional and idealized approach to proof, scientific thinking sought to make certainty and knowledge the central basis of proof and the source of the judge's peace of conscience, and conjecture was not treated as authoritative unless the law deemed it more important. Conjecture close to knowledge is, like certainty, treated as decisive, because excessive strictness beyond a reasonable limit disrupts the evidentiary system (2).

It seems that an acceptable conjecture must be close to ordinary knowledge—that is, something that, in the eyes of the general public, is logical, reliable, and confidence-inducing. Conjecture must be consistent with the circumstances of the dispute and other available evidence and must not contradict them; it must be strong and justified and grounded in firm indicia. A conjecture close to knowledge must personally convince the judge and bring the judge to the assurance that the ruling is just and consistent with reality. In practice, the judge assesses this conjecture by relying on experience, custom, and logic, and if it reaches the level of reasonable assurance, the judge treats it as the basis of the ruling.

2) Custom and Usage

Another basis that may be identified for judicial presumptions is custom and usage. In jurists' terminology, *ʿurf* (custom) is the continuous method of each society in speech or conduct, and for its realization it is not required that all members of society follow that method; it suffices that most of them do so, and to that extent custom is realized (12).

Custom has penetrated many legal texts and is considered one of the important sources of law. With respect to presumptions, the situation follows the same pattern: many presumptions are derived from customary practices that are prevalent among people, and the legislator has given them legal effect. Many judicial presumptions are based on the customs and social habits of the people, and the judge, under the law's general authorization, uses them to discover matters, disputes, and circumstances in various fields. In other words, within reasonable and permissible bounds, the judge draws upon prevailing practices—even where the law has not expressly mentioned or relied upon them—as recognized scientific and experiential rules to resolve the disputed issue, that is, to assist in identifying an unknown matter (9).

In Sharia as well, special attention has been given to custom, and in many cases what custom regards as appropriate has been endorsed. It is clear that the methods and indicia that are common among people and upon which they act are not inventions of Sharia; rather, they belong to customary practices prevalent among them. When proving their purposes, they rely on such indicia because, like knowledge, they are to some extent established and truth-revealing; the Sacred Law has likewise endorsed these presumptions (13).

Courts, by relying on Article 3 of the Civil Procedure Code, have the right to invoke presumptions grounded in predominance that exist in custom and usage even if they are not mentioned in statutory texts, and to make them

the basis of their work in resolving disputes. For example, the Supreme Court of our country has done so and has held that issuing a cheque is evidence of the drawer's indebtedness, thereby teaching others a sound lesson; indeed, adjudicators should attach substantial value to such judgments and should not pass over them lightly, because such rulings in judicial life are like pillars by which the path can be recognized (11).

3) Surrounding Circumstances and Indicia

Another basis that can be mentioned for judicial presumptions is the surrounding circumstances, that is, the indicia and signs. As indicated earlier, Article 1321 of the Civil Code states that a presumption consists of circumstances which, by virtue of law or in the judge's view, are recognized as evidence of a matter. From this it appears that the indicia—which are the origin and foundation of inference—are called "presumption." This apparent meaning has led most legal writers, in defining presumption, to rely on those very signs, indicia, and circumstances. The lexical meaning of *amārah* as "sign" has also supported this understanding. However, a group of writers believe that indicia and circumstances, by themselves, do not indicate the unknown reality and do not reveal a truth; rather, they are simple natural and social phenomena from which various interpretations may be drawn. It is the interpretation of these phenomena, their connection to reality, and the conclusions that the judge or legislator draws from them that are treated as a presumption indicating reality and that convince the conscience. Therefore, the focus should be on conclusions rather than on phenomena. For this reason, presumption is called an indirect proof and is not treated as equivalent to direct proof. Article 1321 of the Civil Code, despite its ambiguities, still contains the truth that the indication of circumstances arises from their connection to the judge's view and the legal rule and is not, like other proofs, inherently typical and direct (7).

It appears that, based on surrounding circumstances and indicia, the judge, while examining and attending to the signs and indicia present in the case file, reaches an inference and, on the basis of that inference, issues a ruling. Thus, the judge's understanding and inference from the existing circumstances is recognized as the basis of judicial presumption. In explaining this basis, reference may be made to verse 18 of Surah Yusuf, which concerns the story of Prophet Joseph at the time he was cast into the well and his shirt was removed, stained with blood, and brought to his father, Prophet Jacob, with the claim that a wolf had eaten Joseph. As soon as Jacob saw the intact shirt, he understood everything and stated that they were lying, that their carnal desires had adorned this act for them, and asked why there were no marks of the wolf's claws or teeth on it. Such understanding and inference that Jacob drew from the intactness of Joseph's shirt as an indicium and circumstance became the basis of a presumption, and on that basis he judged that Joseph's brothers were lying. It may therefore be inferred that such adjudication by Jacob may serve as a model and that indicia and presumptions should be recognized as the basis of judicial presumption and not neglected in practice. Likewise, in the incident of Zulaykha's accusation against Joseph in the presence of the Aziz of Egypt, the significance of judicial presumptions and the surrounding circumstances is also clear. Verses 26 and 27 of Surah Yusuf describe that event: Zulaykha claimed that Joseph had intended to commit fornication with her, and at that moment an infant in the gathering spoke and stated that if Joseph's shirt had been torn from the back, the woman was lying and Joseph was truthful, and if it had been torn from the front, the woman was truthful and Joseph was lying. The Sunnah and narrative evidence also support the legitimacy of judicial presumptions; judgments attributed to Imam ʿAli (peace be upon him) are examples of this. Moreover, as narrated from ʿAbd al-Rahman ibn ʿAwf, during the Battle of Badr two young men of the Ansar intended to kill Abu Jahl. After attacking and killing him, they went to the Prophet and reported his death. The

Prophet asked which of them had killed him. Seeking the honor of killing Abu Jahl, each claimed responsibility. The Prophet then relied on an observable indicium and a decisive presumption and, by examining the blood-stained portions of their swords, concluded that the one whose sword was bloodied along a greater length had played the greater role in the killing and that the killing should therefore be attributed to him. Thus, the Sunnah likewise confirms that benefiting from expert assessments and the circumstances of the case may assist the adjudicator in vindicating rights and reaching reality, which demonstrates the importance of judicial presumptions in the course of adjudication.

The Degree of the Judicial Presumption's Influence on Convincing the Judge

The judge's role in identifying the subject matter of the dispute and distinguishing the claimant from the defendant is of substantial importance and effect. The judge is obliged to examine the conditions and circumstances related to the case with precision and, in this process, must never proceed on the basis of mere guesswork, doubt, or speculation. Rather, by drawing upon the existing indicia and attending to the conditions governing the dispute, the judge must attain inner conviction and awareness, and then issue an appropriate decision on that basis. This matter is particularly salient because, with scientific and technological advances and the emergence of modern methods, the modes of bringing claims have also become more complex. Consequently, the need to use new tools and methods in proving claims is felt more strongly than ever. In this context, judicial presumption has a special place as an efficient instrument and, in practice, has come to be among the most frequently used and relied-upon bases in judicial decisions, such that it is difficult to find a judgment in which judicial presumptions or the case's indicia are not referenced. The question that arises here is what degree of psychological or inner state a judicial presumption must produce in the adjudicator and judge such that the judge may issue a ruling on its basis. Based on the theories presented by jurists on this matter, they may be divided into four categories.

The first group of jurists considers the validity of judicial presumption to rest on certainty and maintains that the adjudicator must arrive at certainty regarding the unknown matter through the circumstances of the dispute. The second group considers the probative authority of judicial presumption to be based on assurance amounting to ordinary knowledge (*ʿilm ʿādī*). The third group maintains that the validity of judicial presumption is grounded in relative assurance created in the adjudicator by an external sign or signs. The fourth group, though not explicitly, treats the validity of judicial presumption as grounded in conjecture (*ẓann*).

The issue that must be examined is whether judicial presumption yields certainty for the judge, or whether its consequence for the judge is conjecture. In any case, under what conditions and with what degree of inner conviction may a judgment be issued on the basis of judicial presumption? For the persuasive states of the mind, five levels may be envisaged, from the weakest to the strongest: illusion (0), doubt (50), conjecture (50–80), assurance or conjecture bordering on knowledge or ordinary knowledge (80–99), and certainty or definitive knowledge (100). The degree to which the judge's conscience is convinced by various indicia and circumstances differs and may lead to doubt, conjecture, or assurance. The judge does not derive knowledge from presumption, nor from other evidentiary means; what is produced for the judge is conjecture, which at times approaches certainty and at times approaches doubt. Whenever that conjecture moves toward certainty and becomes knowledge, it may be claimed that it has largely convinced the judge's conscience and that issuing a ruling on its basis is justified. However, if the judicial presumption yields only a very weak conjecture, issuing a ruling on its basis is not particularly

justified or rational. Mere conjecture and weak probability should not become the basis of a ruling, and people's rights should not be treated as playthings on the basis of such conjectures (7).

It appears that the degree of a judicial presumption's influence in convincing the judge may range from weak conjecture to assurance close to knowledge. If strong and well-supported, a judicial presumption can provide a high level of assurance sufficient for issuing a judgment. Attention should be paid to the point that one cannot insist on achieving absolute certainty as a condition for issuing a ruling; expecting full certainty from judicial presumptions is unrealistic. If the resolution of disputes always depended on the attainment of complete certainty, many disputes would never reach conclusion, and in practice such certainty is rarely achieved, which would excessively restrict adjudication. At the same time, weak conjecture should not serve as the basis of a decision, because the probability of error is high and it jeopardizes justice and threatens people's rights. As the nature of presumptions itself indicates, presumptions assist the judge, by reference to the circumstances of each case and through examination and analysis of all aspects, to reach a conjecture bordering on knowledge, enabling the judge—after satisfying his conscience—to issue a decision on that basis. This level of assurance is compatible both with reason and jurisprudence and is also better aligned with the practical needs of contemporary adjudication. The judge must, with due regard to the type of claim, the quality of the judicial presumption, and the circumstances of the case, measure and apply this inner conviction in a fair manner. This can facilitate the resolution of many disputes and serve as a practical pathway for decision-making.

Conclusion

Judicial presumptions occupy an influential position in the Iranian legal system within the process of proving claims and, particularly in circumstances where conclusive evidence is unavailable, play a fundamental role in the realization of judicial justice. An analysis of jurisprudential, customary, and legal foundations demonstrates that whenever a judicial presumption leads to assurance and the inner conviction of the judge, it enjoys valid probative authority and may, like other forms of evidence, serve as the basis of a judgment. Nevertheless, the diversity of sources from which judicial presumptions arise means that, in some cases, several different and sometimes conflicting presumptions may confront the judge. This situation necessitates a clear criterion for resolving conflicts and identifying the stronger presumption.

The findings of this study indicate that the primary criterion for preferring one judicial presumption over another is the degree of probative indication, persuasive strength, and coherence of the presumption with the realities of the case. This criterion is accepted in the principles of jurisprudence under the rule of giving precedence to the stronger proof, in the practice of rational agents, and in doctrinal legal analyses. Accordingly, whenever one presumption is supported by a more reliable technical foundation, greater consistency with existing indicia, or a higher capacity to generate assurance, it should prevail over other presumptions.

Conversely, if two presumptions are equal in terms of persuasive strength, level of assurance, and degree of probative indication, and no rational preference between them is possible, the rule of mutual cancellation applies, and neither presumption alone can serve as the basis of a judgment. In such cases, the judge must, in order to overcome the evidentiary impasse, resort to other forms of evidence or supplementary presumptions.

Overall, the results of this research show that resolving conflicts between judicial presumptions is an inherently rational and inferential process. By entrusting the identification of the stronger presumption to the judge, the legislator has emphasized the central role of inner conviction. Establishing clear criteria for evaluating the probative

force of presumptions and expanding the theoretical literature in this field can contribute to greater coherence in judicial practice, enhanced precision in judicial reasoning, and, ultimately, increased judicial security. By clarifying the principles and foundations of preference, this article has taken a step toward a scientific exposition of this issue and the strengthening of the theoretical underpinnings of judicial presumptions in Iranian law.

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References

1. Moqaddam Damad SM. Principles of Jurisprudence. Tehran: Center for Publishing Islamic Sciences; 2021.
2. Katouzian N. An Introduction to the Science of Law. Tehran: Sahami-e Enteshar Publishing Co.; 2006.
3. Makarem Shirazi N. Sample Commentary (Tafsir-e Nemuneh), Volume 9. Qom: Dar al-Kotob al-Islamiyah Publications; 1998.
4. Majlisi MB. Bihar al-Anwar, Volume 19. Beirut: Dar Ihya' al-Turath al-Arabi; 1983.
5. Dostipour M. The Origin and Legitimacy of Judicial Presumptions. Biannual Journal of Legal Knowledge and Research. 2013;First Period.
6. Shams A. Civil Procedure Code. Tehran: Dorak Publications; 2005.
7. Katouzian N. Civil Code in the Current Legal Order. Tehran: Mizan Publications; 2004.
8. Shaygan SA. Iranian Civil Law. Tehran: Author's Publications; 1943.
9. Nasseri F. Presumptions in Civil Law. University of Tehran: PhD Dissertation; 1965.
10. Dafteri M. Civil and Commercial Procedure Code. Tehran: Majd Scientific and Cultural Assembly; 1999.
11. Jafari Langroudi MJ. The Free Science of the Circulation of Proofs of Claim in Islamic Law. Journal of Law, Faculty of Law and Political Science. 2022(21).
12. Jafari Langroudi MJ. Legal Terminology. Tehran: Ganj-e Danesh Library Publications; 1999.
13. Sangalaji M. Judicial Procedure in Islam. Qazvin: Taha Publications; 1990.