




# A Reflection on the Evidentiary Value of Judicial Presumptions

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## Abstract

Judicial presumption is recognized as one of the tools for proving claims within the Iranian legal system and holds a special position in the process of adjudication. Based on various studies, in some legal disputes, access to conclusive evidence may be extremely difficult or even impossible. Consequently, in order to prevent the violation of individuals' rights, avoid judicial suspension, and fill this evidentiary gap to establish justice and fairness, the use of judicial presumptions is not only legitimate and authoritative but also essential, as it ensures judicial security. Judicial presumptions, due to their high degree of intelligence and flexibility, as well as their attention to the specific details of each case, allow for a thorough examination and analysis of all available evidence. By utilizing every tool at the judge's disposal for analysis and achieving precise conclusions, these presumptions enable the judge to reach a high level of certainty necessary for issuing a judicial ruling, making reliance upon them highly trustworthy. Relying on verses from the Qur'an, narrations, customary practice, and legal doctrines, it can be concluded that judicial presumptions—if they create sufficient certainty for the judge—may, under valid conditions, be independently used as evidence for proving claims, just like other means of proof. It can even be argued that the level of conviction derived from judicial presumptions is so strong that it transcends the status of mere presumption and becomes actual evidence. Therefore, the role of judicial presumption as evidence in achieving and enhancing judicial justice is undeniable.

**Keywords:** judicial presumption, conjecture, evidence.

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## 1. Introduction

The legal system of Iran, which is a synthesis of Islamic jurisprudence and codified legal principles, relies on a set of evidentiary tools to achieve justice and uncover the truth, collectively referred to as the means of proof. These means include confession, testimony, documents, oath, and presumption. The concept of presumption, as defined in Article 1321 of the Iranian Civil Code—“circumstances that, by law or in the opinion of the judge, are deemed indicative of a matter”—is worth examining from two perspectives: legal presumptions, which have a specific and mandatory scope, and judicial presumptions, which, due to their dependence on the judge's interpretation, encompass a broad and dynamic range. This distinction not only highlights the different applications of the two types of presumptions but also emphasizes the central role of the judge in interpreting and analyzing evidence.

Judicial presumption, unlike direct and conclusive evidence such as confession or documents, is based on circumstantial and indirect indicators. Thus, in situations where there is a lack of conclusive evidence, it serves as an effective tool for uncovering the truth and implementing justice. The roots of this concept can be traced to the tradition of Islamic jurisprudence, particularly in judgments based on circumstantial evidence as reflected in the Qur'an and the Prophetic tradition, as well as in legal rationality. Nevertheless, this flexibility and reliance on the judge give rise to fundamental questions regarding the validity and evidentiary weight of judicial presumptions: Can this tool independently serve as the basis for judicial rulings, or does it only function as complementary evidence alongside other proofs? This ambiguity, which stems from the inherent conjectural nature of presumption and the requirement for certainty in adjudication, has long been debated among jurists and legal scholars.

The significance of this issue becomes even more apparent in the modern judicial system, which is increasingly faced with the complexity of disputes and advancements in evidentiary tools. Judicial presumption not only enables judges to reason in the absence of conclusive evidence but also—by relying on custom, prevailing circumstances, and logical analysis—possesses the adaptability to align with social and technological developments. The purpose of this article is to examine whether judicial presumptions can function as valid evidence. To this end, the article first explores the jurisprudential and legal foundations of the legitimacy of judicial presumption, drawing on the Qur'an, tradition, and reason. It then analyzes its origin in custom, material indicators, and judicial reasoning, and finally investigates whether judicial presumption can transcend its conjectural nature and, as independent evidence, establish judicial certainty. This inquiry not only clarifies the boundaries of judicial presumption but also paves the way for future discussions on more objective criteria for judicial reasoning.

## 2. Examining the Foundations of the Legitimacy and Validity of Judicial Presumption

The legitimacy and probative force of judicial presumption can be founded on three main sources: scriptural evidence from the Qur'an, the traditions of the Infallibles (peace be upon them), and rational reasoning. These foundations not only justify the acceptance of presumptions within the framework of Islamic law and statutory regulations but also highlight their capacity to fulfill the ultimate goal of adjudication—namely, discovering the truth and establishing justice. Some of the Qur'anic justifications for the probative force of judicial presumptions are briefly outlined below:

### 2.1. Qur'anic Evidence:

Some verses of the Qur'an suggest that if circumstantial indicators provide conclusive evidence for a claim, they should be accepted. The most important of these verses include:

a. The Qur'an refers to the brothers of Prophet Joseph as follows: *“And they brought his shirt with false blood. He said, ‘Rather, your souls have enticed you to something. So patience is most fitting. And Allah is the one sought for help against what you describe.’”* (Yusuf 12:18).

This verse refers to the story of Prophet Joseph when his brothers cast him into a well and brought back his shirt stained with false blood to deceive their father, Prophet Jacob. Upon seeing the shirt intact, Jacob immediately discerned their deceit and said that their desires had misled them. He remarked that the absence of bite and claw marks on the shirt disproved their claim. Jacob's inference from the intact shirt to the falsity of the sons' claim demonstrates the probative value of conclusive circumstantial evidence. Many jurists have used this verse to support the evidentiary status of such presumptions (Makarem Shirazi, 1998).

**b.** Regarding the tearing of Joseph's shirt, the Qur'an states: *"And a witness from her family testified: 'If his shirt is torn from the front, then she is telling 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.'"* (Yusuf 12:26–27).

This verse relates to the incident in which Zulaykha accused Prophet Joseph in the presence of the Egyptian dignitary. A child from the household (as per the exegetical narrative) testified that if the shirt was torn from the front, Joseph was the aggressor; if from the back, he was fleeing, thus innocent. The dignitary, upon observing the torn shirt from the back, recognized the truth and said to his wife: "This is of the women's plot. Your plot is great indeed." He then instructed Joseph to remain silent.

This example illustrates how a simple piece of physical evidence—the direction of the torn shirt—could decisively determine guilt or innocence, shifting the course of someone's life. It shows that even a seemingly minor circumstantial detail can serve as credible evidence of truth or falsehood (Makarem Shirazi, 1998).

**c.** Some other verses emphasize the necessity of justice in judgment, such as: *"And if you judge, judge between them with justice. Indeed, Allah loves those who act justly."* (Al-Ma'idah 5:42), and *"When you judge between people, judge with justice."* (An-Nisa 4:58).

These verses explicitly instruct judges to issue rulings based on fairness and justice.

From both jurisprudential and legal perspectives, the probative authority of judicial presumptions in the Islamic legal system can be substantiated by verses from the Qur'an. Verses such as Yusuf 12:18 (Jacob's inference from Joseph's intact shirt) and verses 26–27 (judgment based on the location of the tear) illustrate that conclusive circumstantial evidence can serve as the foundation for discovering truth and issuing judicial rulings.

In Islamic legal thought, the objective of adjudication is to ensure justice and safeguard rights. Judges, as executors of this system, are bound to fulfill this noble goal. Verses like An-Nisa 4:58 and Al-Ma'idah 5:42 impose a clear obligation on judges to deliver rulings grounded in justice and truth.

It appears, from a jurisprudential standpoint, that reliance on presumptions and scientific methods is compatible with the aforementioned verses. The rationale is that utilizing such tools is presumed to promote justice more effectively than abstaining from them. In emerging legal matters, based on foundational jurisprudential principles, demonstrating that a new method or tool is not explicitly prohibited by Shari'a suffices for its permissibility; no explicit approval is necessary. This permissibility can be inferred through the silence or implicit indications of legal sources. In the present context, the use of judicial presumptions and scientific methods is not only non-conflicting with the aims of Shari'a—such as the protection of rights, establishment of order and security, and social advancement—but also conducive to realizing those objectives. This permissibility is inferred not merely from the absence of prohibitive texts, but from their implicit indication of the necessity of using legitimate tools for justice. Even if there is doubt in such interpretation, the collection of relevant verses at least indicates that using conclusive and strong circumstantial evidence is not condemned or prohibited in the Qur'anic view. On the contrary, it is considered an acceptable method for discovering the truth. Thus, invoking these verses to legitimize the use of judicial presumptions in legal decision-making is both jurisprudentially and legally robust.

## 2.2. Narrative (Hadith-Based) Evidence

In Islamic tradition, there are numerous instances that support the legitimacy of judicial presumptions. One such case, dating back to the time of the Prophet Muhammad (peace be upon him), can be cited from the judicial practice of Imam Ali (peace be upon him).

Abd al-Rahman ibn Awf narrates that during the Battle of Badr, two young men from the Ansar—Mu'adh ibn 'Afra and Mu'adh ibn 'Amr—asked him to identify Abu Jahl among the disbelievers so that they could kill him. After identifying him, the two youths attacked and ultimately killed Abu Jahl. They then went to the Prophet and reported the killing. The Prophet asked, "Which of you killed him?" Each of them claimed responsibility. The Prophet then asked if they had cleaned their swords, to which they replied no. The Prophet closely examined the swords and stated that although both participated in the act, the honor of delivering the fatal blow belonged to Mu'adh ibn 'Amr. The Prophet inferred from the amount and position of blood on the swords that both had been involved, but Mu'adh ibn 'Amr's sword had more extensive blood traces, indicating that his blow had penetrated deeper and caused the fatal injury (Majlesi, 1983).

It appears that the Prophet (peace be upon him) used a tangible and observable presumption—the condition of the two swords—as a means to ascertain the truth. The amount and extent of blood on the swords served as a logical clue indicating the level of each individual’s involvement in the killing. This judgment, based on rational analysis and material evidence rather than solely the parties’ claims or direct testimony, is significant. It demonstrates that this narration can be interpreted to support the view that the use of judicial presumptions in religious adjudication is both legitimate and aligned with the tradition of the Infallibles. This approach, particularly when direct evidence is unavailable, allows a judge to rely on tangible clues and logical analysis to uncover the truth and issue a fair ruling. The legitimacy of this method is grounded both in the actions of the Prophet—thereby qualifying as Sunnah—and its rational basis. Moreover, because it is not exclusive to the infallible, it may be emulated by other judges, provided the clues lead to a level of certainty approaching conviction.

### 2.3. *Rational Argument*

Among the four foundational sources in Islamic jurisprudence is rational argument (*dalil ‘aqli*), which is applicable to a broad range of newly emerging issues in jurisprudence. A considerable number of factual matters cannot be established through testimony, confession, or documentary evidence. If a judge is not permitted to rely on clues that reveal and support the truth, the rights of individuals will be violated, despite the fact that Shari’a strongly emphasizes the protection and restitution of people’s rights. Judging based on circumstantial evidence aligns with the objectives of Shari’a, namely, to establish justice within society, to ensure that rights are returned to their rightful owners, and to eliminate corruption.

In the contemporary legal system, the judge must, to the extent possible, make use of presumptions—particularly judicial presumptions—to uncover the truth and issue fair rulings. These presumptions not only do not harm the litigation process, but they also guide society toward a comprehensive and just legal system (Doustipour, 2013).

## 3. Features of Judicial Presumption

This section elaborates in detail on the defining features of judicial presumptions, which include: (1) delegation to the discretion of the judge, (2) absence of legal specification, (3) unlimited applicability, and (4) admissibility for judicial reference.

### 3.1. *Delegation to the Discretion of the Judge*

Based on the definitions provided for judicial presumptions, it becomes clear that their most important feature is their delegation to the judgment and discretion of the presiding judge. Clues or indications are deemed judicial presumptions only when they generate inner conviction in the judge, unlike legal presumptions, which are imposed even if the judge is not personally convinced. Therefore, the judge may consider any circumstance or condition that aids in verifying the claim and satisfies their judicial conscience. For this reason, judicial presumptions are categorized under persuasive evidence. Some legal scholars maintain that although the nature, strength, and evidentiary impact of clues are left to the judge’s discretion, this discretion is not arbitrary. Consequently, if the clues cited in the ruling fail to meet the necessary criteria in the eyes of a higher court, the decision may be subject to annulment or reversal (Shams, 2005).

### 3.2. *Absence of Legal Specification*

Since each dispute differs from another in terms of parties and the statements they make to establish their rights, such claims—although useful in guiding the judge toward the truth—cannot be given general or universal status. The interpretation of “circumstances” in Article 1324 of the Civil Code indicates that the validity of judicial presumption is confined to the specific case in which the judge encountered it and cannot be generalized. Therefore, unlike legal presumptions, judicial presumptions do not require explicit legal specification. However, in some instances, legislators have identified specific clues or signs to assist judges in determining the reality of a claim when other clues may also be present (Shams, 2005).

### 3.3. *Unlimited Applicability*

Because judicial presumptions arise in any context where clues guide the judge toward the truth, they cannot be restricted to a finite list of scenarios. The signs that may serve as judicial presumptions in the eyes of the judge are countless. Accordingly, the circumstances and the judge's inferences give judicial presumptions their authenticity, independence, and case-specific nature, making them inherently unlimited. Judicial practice can also play a role in identifying new presumptions by contributing to their development and recognition through common usage. However, as noted earlier, these variable factors confer a unique character to each presumption and tie it closely to the specific dispute at hand. Thus, a judicial presumption valid in one case cannot be cited in another and holds only personal authority (Katouzian, 2006).

### 3.4. *Admissibility for Judicial Reference*

Judicial presumptions can be cited not only by the parties to a case but also by the judge, as is clearly inferred from Articles 1321 and 1324 of the Civil Code. Article 1321 defines a presumption as a circumstance that, by law or in the opinion of the judge, is deemed indicative of a matter, placing the judge's recognition on par with legal recognition. Just as legal presumptions do not require citation by the parties, judicial presumptions also need not be cited by them. Article 1324 states that judicial presumptions are admissible when the case can be proven by witness testimony or to supplement other evidence. The term "admissibility" here refers to the judge's use of the presumption in the ruling, not the parties' citation of it.

Judicial presumptions vary in their visibility and citation: some require citation by the parties before they become relevant (e.g., a merchant's ledger against a non-merchant is not considered unless cited), while others are part of the factual context of the case and fall within the judge's domain of evaluation. The judge may use tools such as site inspection or expert testimony to interpret and assess these presumptions (Katouzian, 2006).

### 3.5. *Indirect Nature:*

A judicial presumption is an indirect form of evidence. Because the judge must reason from available signs and base conclusions on probabilities, such presumptions never result in absolute certainty. In other words, the signs used as the basis of inference do not directly indicate the factual reality; rather, it is the judge's interpretation of these signs that produces a conclusion. Therefore, judicial presumptions are inherently more susceptible to doubt and probability (Katouzian, 2004).

## 4. **The Nature of Judicial Presumption:**

Judicial presumptions are not enumerated or explicitly defined in the law. The judge must identify, based on the particular circumstances of the case, a presumption that supports one of the parties. A judicial clue or indicator contains two essential elements:

First, there is the proven fact that the judge selects from among the events of the case. This represents the material element of the clue.

Second, there is the act of inference performed by the judge, who moves from the established fact toward the fact he seeks to prove. This inference constitutes the mental element of the clue.

In judicial presumptions, the specific features of the case and the conclusions the judge draws from them are decisive. Nothing has a generic or universal character. Based on this, it has been argued that judicial presumptions carry stronger probative value than legal presumptions (Shayegan, 1943).

Some scholars believe that Article 1321 of the Iranian Civil Code implies the involvement of rational inference in judicial presumptions and shows that what the judge or the legislator encounters and relies upon are the circumstances—elements that are not ends in themselves but serve as tools for reaching the desired reality. In this process, reason and experience must work in tandem, so that reason can move from what is known toward the unknown fact that is to be proven. To achieve this, the mind engages in two intellectual processes using two logical tools: (1) induction and experience, and (2) deduction. In the first step, the mind must conduct induction or rely on the experience of others. In the second step, the mind attempts to form a rule from what has been experienced and apply that rule to achieve a conclusion (Katouzian, 2004).

Another group of scholars contends that induction plays a role in the emergence and establishment of presumptions. Experiments, repeated outcomes, and observation of regular patterns and the recurrence of similar events contribute to the formation and credibility of a general rule. This is the point at which the legislator transforms induction into a law. However, the judge does not move from particulars to a general rule; rather, he applies a general rule to a specific case. Therefore, the judge's act is not one of induction, but of analogy. In this analogy, the presumption serves as the major premise, and the specific case is the minor premise (Naseri, 1965).

It appears that in induction, the judge or legislator moves from multiple specific instances (e.g., repeated observation of a behavioral pattern) to a general rule. For example, the legislator, upon noticing that in most cases the possessor of a property is its owner, formulates the rule that possession is a sign of ownership.

However, in analogy, the judge begins with a general rule—drawn from custom, experience, or law—and applies it to a specific instance. Thus, the rule is used to derive a judgment for the particular case. The judge moves from the general to the specific, not vice versa. That is, the judge relies on a general principle derived from experience, custom, or logic and matches it to the facts of the case in order to issue a ruling. This process lies at the core of judicial inference and makes judicial presumption a flexible and rational tool for discovering the truth.

For instance, in the story of Prophet Jacob (peace be upon him), when he saw Joseph's blood-stained shirt without any tear marks, he inferred that his sons were lying. He relied on his experience that a wolf's attack would necessarily tear the shirt with its teeth, and since no such marks were present, he concluded the story was false. Or in the case of Joseph's torn shirt, the major premise was: if the shirt is torn from the back, it means the person was fleeing and being chased (a rule derived from custom and experience). The minor premise was: the shirt of Joseph was torn from the back. The conclusion was: Joseph was running away, and Zulaykha was chasing him; thus, Joseph was innocent, and Zulaykha was lying.

It can be concluded that the nature of judicial presumption is a synthesis of these theories—namely, it involves induction, analogy, and, most importantly, judicial inference. The essence of judicial presumption lies in its reasoning process, which draws both from the identification of ordinary patterns (induction) and the application of general rules to specific facts (analogy). For example, in the case of the bloodied swords after the Battle of Badr, the Prophet (peace be upon him) first used experience to infer that the presence of blood indicated participation (induction), and then used the amount of blood to reason that Mu'adh ibn 'Amr played the main role (analogy). This combination turns judicial presumption from a purely theoretical inference into a practical and applicable method.

Judicial presumption is a real, reasoning-based tool with a dynamic and composite nature that highlights the judge's role in uncovering the truth. It is a blend of fact and rationality, composed of both a material element (proven fact) and a mental element (judicial inference). This combination shows that judicial presumption is neither merely a mental hypothesis nor an objective reality; it is a bridge between available evidence and the final conclusion sought by the judge. This synthesis makes judicial presumption a unique tool that relies on both case-specific facts and the judge's analytical capacity. Its strength lies in enabling the judge to approach the truth through logic and experience when direct evidence such as testimony or documents is insufficient. The nature of judicial presumption, therefore, aligns more closely with actual evidence like documents and testimony than with legal presumptions, because it originates from tangible evidence in the case. Its difference lies in the fact that it does not directly indicate the truth but arrives at it through the judge's inference. Judicial presumption is thus a necessary and intelligent tool in the judicial system—dynamic, flexible, and judge-dependent—with the aim of bridging the gap between observable facts and final truth in the pursuit of justice. From a jurisprudential standpoint, its legitimacy is undeniable, as it is rooted in the Qur'an (e.g., the story of Joseph) and the Sunnah (e.g., the Prophet's judgment in the Battle of Badr), acknowledging that conclusive evidence is not always accessible and that judges must rely on reason and logic to fill evidentiary gaps.

## 5. The Scope of Validity of Judicial Presumption:

Article 1324 of the Iranian Civil Code states that presumptions left to the discretion of the judge consist of circumstances pertaining to the specific case and are admissible only if the claim can be proven by witness testimony or the presumption supplements other evidence. From this article, it can be inferred that judicial presumptions are subject to certain limitations. These limitations can be classified into three categories:



First, judicial presumption relates to circumstances specific to the particular case and cannot be generalized or applied to other cases.

Second, its validity is limited to cases that can be proven by witness testimony. However, this condition is debated, especially after revisions to the Civil Code removed certain restrictions on testimonial evidence.

Third, judicial presumption is applicable only when it supplements other evidence and does not independently possess probative force—a point that remains contentious (Daftari, 1999).

It appears that Article 1324 intends to convey that judicial presumptions (i.e., the circumstances referenced by the judge) cannot independently form the basis of a ruling. Rather, they must be used in one of the following two ways:

1. **The claim is provable through witness testimony:** That is, the subject matter of the case must be one that the law allows to be proven by testimonial evidence.
2. **To supplement other evidence:** That is, judicial presumptions should be used alongside other forms of proof—such as documents, confessions, or testimony—to assist the judge in reaching a conclusion.

### 5.1. *Validity of Judicial Presumption in a Specific Case:*

The validity of a judicial presumption is confined to the particular case at hand, meaning it cannot be applied to other cases. The phrase "circumstances specific to the case" implies that judicial presumptions are valid only in the instance the judge encountered them and are not generalizable like legal presumptions. The basis of judicial presumptions is the judge's inference, through which the judge moves from a known fact to an unknown one in a specific instance. In contrast, legal presumptions are based on statutory rules and have general applicability to all individuals who fall under their scope. For instance, possession is universally presumed to signify ownership (Daftari, 1999).

### 5.2. *Claims Provable by Witness Testimony:*

Article 1324 of the Iranian Civil Code states that judicial presumptions consist of circumstances particular to the case and are admissible if the claim is provable by witness testimony or if they supplement other forms of evidence. As previously mentioned, presumptions are inherently probabilistic and never reach the level of absolute certainty. Therefore, some legal systems view the expanded admissibility of judicial presumptions as potentially dangerous and restrict their use. For example, Article 1353 of the French Civil Code limits the probative force of judicial presumptions to cases where the claim can be proven through testimony. Moreover, the law encourages judges to exercise caution and allows only those clues that are strong, clear, and consistent to be admitted. Another concern underlying this restriction is the fear of expanding judicial discretion too far. Unlimited reliance on circumstantial clues increases judicial freedom in resolving disputes, which must be approached with caution (Katouzian, 2004).

### 5.3. *Supplementing Other Evidence*

Another condition set forth in Article 1324 of the Civil Code for judicial presumptions is their role in supplementing other evidence. This means that judicial presumption is to be used as a supplementary tool alongside other types of evidence—such as documents, confessions, or witness testimony—to assist the judge in reaching a conclusion (Madani, 2003).

It appears that at the time the Iranian Civil Code was enacted in 1928, the legal system accepted witness testimony only in a limited number of cases and under stringent conditions. In many legal disputes, witness testimony was either inadmissible or heavily restricted, so most claims were proven through written documents or more robust evidence. Article 1324, therefore, linked judicial presumptions to witness testimony or other evidence, as such presumptions alone were deemed insufficient to bear the burden of proof. In subsequent years—particularly after the enactment of the Civil Procedure Code in 2000—the restrictions on witness testimony were eased. Today, testimony is admissible in many civil cases, and empowering judges to rely more extensively on judicial presumptions allows for better administration of justice, especially in complex disputes or in the absence of direct evidence. If circumstantial clues are strong enough to leave no room for doubt, why should the judge not be permitted to rely on them? In the modern world, where new legal complexities emerge daily, judges can no longer rely solely on traditional forms of proof like documents or testimony. New evidentiary tools such as judicial presumptions derived

from video footage, photographs, or digital data can bridge this gap. Now that testimonial restrictions have been lifted and the evidentiary value of testimony is generally accepted, judicial presumptions should likewise benefit from this evolution and be capable of serving as independent grounds for rulings. However, certain essential conditions must be met when accepting judicial presumptions: they must be substantiated, not contradict other evidence in the case, and the judge must clearly state the reasons and rationale for relying on them in the ruling. Meeting these criteria mitigates the risk of arbitrary judgments and prevents misuse of presumptions by judges who might otherwise rely excessively on personal interpretation, leading to subjective or biased decisions.

## 6. The Origins of Judicial Presumptions

Judicial presumptions are often rooted in custom and social practice. Many judicial presumptions are based on societal norms and customs, and judges, with general legal authorization, use them to uncover facts and understand the circumstances of various legal matters. Prevalence or predominance also plays a role in forming judicial presumptions. For instance, if it is customary in the construction industry to deliver materials to the building site, the judge may infer—based on this dominant practice—that the purchased materials were delivered to the site. Thus, this kind of predominance, rooted in custom, plays a formative and legitimizing role in establishing judicial presumptions.

Regarding the basic structure of judicial presumptions, they consist of two main elements. The first component is the presence of a clue, sign, or particular circumstance of the case, which can be referred to as the material element of the judicial presumption. The second component is the act of inference by the judge, who uses the established fact to arrive at another fact that needs to be proven—this is the mental element (Katouzian, 2006).

Some legal scholars argue that every judicial presumption is inherently composed of multiple clues (Jafari Langroudi, 2022).

It appears, however, that judicial presumptions, as a tool in the hands of judges, are fundamentally based on flexibility and the internal conviction of the judge, and do not require multiple clues. The Iranian Civil Code—particularly in Articles 1321 and 1324, which define the framework of judicial presumptions—does not stipulate the necessity of multiple clues. The silence of the legislature indicates no intention to mandate a plurality of clues, and the presumption is that a single strong and reasonable clue suffices. Moreover, the main criterion in evaluating judicial presumptions is the judge's internal conviction, not the number of clues. A single strong presumption may bring the judge to a level of certainty, whereas several weaker ones may not. Not only is the requirement for multiple clues absent from the legal texts, but it could also lead judges toward unfair or unrealistic inferences, contrary to the spirit of justice and the very purpose of judicial presumption. Therefore, the structure of judicial presumption is based on the quality of inference from circumstances—not the quantity of clues—and no obligation exists for plurality.

Three foundational sources have been identified for judicial presumptions: (1) the judge's conjecture (*zann*), (2) custom and habit, and (3) specific circumstances and clues.

### 6.1. Judges' Conjecture (*Zann*)

Linguistically, *zann* means probability, assumption, doubt, illusion, or speculation, and it stands in contrast to certainty. However, some scholars have provided a more refined definition, explaining that *zann* is a mental state between absolute certainty and equal doubt—stronger than mere doubt but falling short of certainty. Additionally, *zann* is of two types:

1. That which leads to a sense of conviction and resembles knowledge.
2. That which does not lead to conviction and, except in special cases, is not legally authoritative (Jafari Langroudi, 1999).

In legal practice, the discovery of truth—as defined in the sciences—is not the objective. The unknowns in the legal world are vast, and waiting for complete resolution would bring the system to a halt. Therefore, law and legal reasoning must find other paths to address uncertainty. For this reason, Naraqi, the teacher of Shaykh Ansari, proposed that legal understanding must be achieved through *ordinary knowledge*—a level of understanding widely accepted by society, even if a minority of scholars or experts might logically dispute it. This theory of *ordinary knowledge* suggests that legal truth differs from scientific



truth. Given that the foundation of law is based on ordinary knowledge, attempting to pursue absolute truth where even this level of knowledge is unattainable is futile.

This viewpoint is further supported by the concept of legal presumptions and procedural principles developed for the sake of legal expediency. Traditionally, legal reasoning aimed to base proof on certainty and knowledge, which would satisfy the conscience of the judge. *Zann* was generally not acceptable unless explicitly endorsed by law. However, *zann* that approaches certainty is akin to knowledge, and being overly strict in requiring certainty could disrupt the evidentiary system (Katouzian, 2006).

It seems, therefore, that an acceptable form of *zann* must approximate ordinary knowledge—something that is regarded as rational, trustworthy, and reassuring by the general public. *Zann* must be compatible with the circumstances of the case and other available evidence, grounded in strong, credible clues, and lead the judge to personal conviction that their ruling is fair and reflective of the truth. In practice, the judge evaluates this *zann* through experience, custom, and logic. If it reaches a reasonable threshold of certainty, it may then serve as the basis for judgment.

## 6.2. Custom and Habit

Another recognized foundation for judicial presumptions is custom and habit. In jurisprudential terminology, *'urf* (custom) is defined as the consistent behavior of a community in speech or action. For a custom to be established, it is not necessary that every individual follow it—rather, it is sufficient that the majority adhere to such a practice (Jafari Langroudi, 1999).

Custom has significantly influenced many areas of legal literature and is regarded as one of the key sources of law. The same applies to presumptions, as many judicial presumptions are derived from common customs and practices prevalent among people and are validated by the legislator. Many judicial presumptions are grounded in social customs and habits, and the judge, under general legal authorization, utilizes them to discover facts, resolve disputes, and assess circumstances in various cases. In other words, the judge, within reasonable and permissible limits, draws upon prevailing customs—not explicitly cited in statutory texts—as established scientific or experiential principles to resolve disputed issues (Naseri, 1965).

Islamic law also accords special significance to custom, and in most cases, what is recognized by custom has been endorsed. Clearly, the procedures and presumptions that are widely practiced among people are not inventions of the Shari'a but rather customary norms that individuals rely upon in proving their claims. Since they are partially revealing and indicative—much like knowledge—they are often invoked. Islamic law has validated such presumptions (Sangelaji, 1990).

According to Article 3 of the Iranian Civil Procedure Code, courts have the authority to rely on presumptions rooted in custom and general practice, even if not explicitly mentioned in the legal texts, provided they are supported by prevailing usage. The Supreme Court of Iran has followed this approach, ruling that the issuance of a check constitutes evidence of the issuer's indebtedness. This interpretation has been upheld as sound judicial reasoning and should be highly valued by judges, as such rulings serve as foundational pillars guiding legal reasoning and judicial conduct (Jafari Langroudi, 2022).

## 6.3. Circumstances and Clues

Another foundation of judicial presumptions is the existence of particular circumstances or, more specifically, clues and indicators. As stated in Article 1321 of the Civil Code: "A presumption consists of circumstances which, by law or in the judge's view, are considered indicative of a fact." This formulation suggests that clues—the source and foundation of judicial inference—are what define a presumption. This interpretation has led many legal scholars to define presumptions in terms of signs, indicators, and specific circumstances. The literal meaning of the word *amārah* (presumption), which denotes a "sign," supports this interpretation. However, some scholars argue that clues and circumstances do not inherently indicate an unknown reality or truth. They are natural or social phenomena that are open to multiple interpretations, and it is the judge's or legislator's perception of these phenomena—and the conclusions drawn from them—that transforms them into presumptions capable of persuading the conscience. Thus, the emphasis should be placed on the inferred result rather than the phenomena themselves. For this reason, judicial presumption is called indirect evidence and is not considered equivalent in probative force to direct evidence. Despite its ambiguity, Article 1321 still conveys the idea that the evidentiary value of circumstances stems from their

connection to the judge's interpretation and legal authority, distinguishing them from general, direct forms of evidence (Katouzian, 2004).

It appears that, based on circumstances and clues, the judge examines the available indicators in the case and forms an inference upon which a ruling is issued. Therefore, the judge's understanding and inference from these circumstances constitute the basis of judicial presumption. In support of this foundation, reference can be made to verse 18 of Surah Yusuf, which recounts the story of Prophet Yusuf (Joseph). After being cast into a well, his shirt was bloodied and brought to his father, Prophet Ya'qub (Jacob), by his brothers, who falsely claimed that a wolf had devoured him. Upon seeing that the shirt was intact, Ya'qub immediately recognized their deceit and said, "Your souls have enticed you to something." He questioned why there were no bite or claw marks. This realization—based on the physical condition of the shirt—was an inference drawn from circumstantial evidence and formed the basis of judicial presumption, upon which Prophet Ya'qub judged that his sons were lying. This suggests that such a method of judgment is worthy of emulation and that clues and indicators must be acknowledged as a basis for judicial presumption and not neglected.

The case of Zulaykha's false accusation against Prophet Yusuf further highlights the evidentiary importance of clues and circumstances. Verses 26 and 27 of Surah Yusuf recount this incident. When Zulaykha accused Yusuf of attempting adultery, a nursing child in the room spoke and stated that if Yusuf's shirt was torn from the front, Zulaykha was truthful and Yusuf was guilty. But if it was torn from the back, she was lying and Yusuf was truthful. Thus, the shirt's condition served as a decisive clue.

The Sunnah and hadith literature also confirm the legitimacy of judicial presumptions. The judgments of Imam Ali (peace be upon him) are examples, and the incident reported by 'Abd al-Rahman ibn 'Awf from the Battle of Badr also illustrates this. In that event, two young men from the Ansar claimed to have killed Abu Jahl. Both wished to be credited with the killing. The Prophet (peace be upon him) used observable and conclusive indicators, examining the blood on their swords. Upon noting that one sword was more bloodied, he attributed the act to that individual.

This confirms that the use of expert judgment and consideration of case-specific circumstances can guide the judge in establishing truth and delivering justice. It underscores the critical role judicial presumptions play in the adjudication process.

## 7. The Impact of Judicial Presumption on the Judge's Conviction

The judge's role in identifying the subject matter of a dispute and distinguishing between the claimant and the respondent is of paramount importance and influence. The judge is obligated to examine the relevant conditions and circumstances of the case meticulously and must never act based on mere guesswork, doubt, or speculation. Rather, the judge should attain inner conviction and awareness by analyzing available clues and considering the circumstances surrounding the dispute, and then issue an appropriate judgment based on that assessment. This issue becomes particularly significant in light of advancements in science and technology and the emergence of novel methods, which have rendered legal proceedings increasingly complex. Consequently, there is a growing need to utilize new tools and methods in evidence assessment, among which judicial presumption holds a special status as an effective mechanism. In practice, judicial presumptions are among the most frequently cited elements in judicial decisions; it is rare to find a ruling that does not reference judicial presumptions or circumstantial evidence from the case.

The question that arises here is: what degree of psychological conviction must judicial presumption generate in the judge for it to be sufficient for issuing a ruling? Based on legal scholars' theories, opinions on this matter can be classified into four categories:

1. The first group of scholars considers judicial presumption valid only when it produces certainty and absolute conviction in the judge regarding the unknown matter in the case.
2. The second group considers judicial presumption valid when it leads to confidence equivalent to ordinary knowledge.
3. The third group believes judicial presumption is justified when it results in relative assurance derived from external indicators in the judge.
4. The fourth group, although implicitly, accepts judicial presumption as valid based on *ẓann* (conjecture or likelihood).

The issue requiring further examination is whether judicial presumption produces certainty (*yaqīn*) for the judge, or whether it merely gives rise to *ẓann* (probability). In any case, under what conditions and to what degree of inner conviction (*iṭmi'nān*)

can a judge validly issue a ruling based on judicial presumption? Five levels of mental persuasion can be conceptualized, ranked from weakest to strongest as follows:

- (1) Illusion (*wahm*)—0%,
- (2) Doubt (*shakk*)—50%,
- (3) Probability (*ẓann*)—50–80%,
- (4) Confidence or *ẓann* close to knowledge—80–99%,
- (5) Certainty (*yaqīn*) or actual knowledge—100%.

The judge's level of conviction, based on the clues and circumstances, may vary: it could lead to doubt, probability, or confidence. Judicial presumption does not provide certain knowledge, nor do other types of evidence necessarily do so. What it typically generates for the judge is *ẓann*—sometimes approaching certainty and sometimes bordering on doubt. If the resulting probability trends toward certainty and transforms into knowledge, it can be said to significantly satisfy the judge's conscience and justify issuing a ruling. However, if the presumption results in only weak probability, issuing a ruling on its basis would be unjustified and illogical. Mere speculation or weak likelihood should not serve as grounds for legal judgment, and people's rights should not be jeopardized on such a basis (Katouzian, 2004).

It seems that the degree of influence judicial presumption can have on judicial conviction may range from weak probability to strong confidence approaching certainty. If judicial presumption is robust and well-founded, it can support a high level of confidence sufficient for issuing a judgment. It must be emphasized that pursuing absolute certainty as a prerequisite for issuing judgments is unrealistic in the context of judicial presumptions. If we always insisted on achieving complete certainty in resolving legal disputes, many cases would remain unresolved, as such certainty is rarely attainable. This would overly restrict judicial rulings in practice. On the other hand, weak probabilities should not form the basis of a judgment, as the likelihood of error is high and poses a threat to justice and citizens' rights.

As the nature of presumptions indicates, they assist the judge in assessing the facts and conditions of each case and, through careful examination and analysis, allow the judge to reach a probability close to knowledge. This level of confidence aligns with both rational and jurisprudential principles and is better suited to the practical needs of modern legal proceedings. The judge must assess this level of conviction carefully and fairly based on the nature of the dispute, the quality of the presumption, and the context of the case. This approach will help resolve many disputes and guide judicial practice effectively.

## 8. Conclusion

Judicial presumption not only fills the void left by the absence of direct evidence but also empowers the judge to issue fair and Shari'a-compliant rulings through the generation of confidence. By integrating objective facts with rational inference, judicial presumption serves as an intelligent and indispensable tool for realizing judicial justice, whose legitimacy and effectiveness are incontrovertible from both jurisprudential and legal perspectives.

The flexibility of judicial presumption transforms it into a form of persuasive, rather than dogmatic, evidence that supports the judge in uncovering the truth. Although legal limitations may restrict its application in certain cases, the persuasive power of judicial presumption in fostering judicial confidence diminishes these constraints. It forms a bridge between observable facts and underlying truth.

Based on the conducted analysis, judicial presumption holds legal authority. Supported by scriptural sources (the Qur'an and Sunnah), rational reasoning, and functional characteristics, it is recognized as a valid and legitimate form of evidence within the Islamic legal system. Therefore, judicial presumption can not only be cited alongside other evidence but, due to its synthesis of objective fact and rational interpretation, it stands as a necessary instrument for achieving justice in the legal process—its legitimacy and efficacy being beyond dispute.

## Ethical Considerations

All procedures performed in this study were under the ethical standards.

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### **Conflict of Interest**

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