

Principal Review of Esteshab

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Abstract

We will discuss fourth element of practical elements that is Esteshab. The contents of the thesis are:

- Define Esteshab
- Organs of Esteshab
- Types of Esteshab
- Reasons of Esteshab
- Augment of Esteshab

Key words: Define Esteshab, Organs of Esteshab, Types of Esteshab, Reasons of Esteshab, Augment of Esteshab

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Introduction

As we know, in Islamic jurisprudence, it is augment to certain valid canon but doubt is not augment nowise. Legal verdicts are conferred from two sources that the first is Ijtihad and second is jurisprudence. If there is Ijtihad reason in problem, we can obtain certainty in that problem and confer the verdict. But if there is not Ijtihad reason, the doubt is emerged in this case, we can recourse to jurisprudence or practical reasons and obtain proposition verdict. The ulema cite practical elements as four parts like absolution, adoption, caution and Esteshab which each of them has special element.

Define Esteshab

Esteshab means to be following something and it is lexical mean of Esteshab. This is word of jurists who say one of the nullifiers of praying is Esteshab that means to accompany parts of illegal animal at prayer. In jurist and law, Esteshab means close to lexical mean. The shortest definition of it which is the strongest mean is pertaining to Sheikh Ansari who says: to retain something means to survive something as previous manner in other word, to decree of survival what had existed.

Pillars of Esteshab

The Ulema cited seven pillars for Esteshab which each of them shall be considered:

- 1- Previous Certain means we shall sure something which will be followed at past.
- 2- Subsequent doubt: it means we doubt to something which was certain.
- 3- Doubtful and Certain Unification: in other word, unification of subject, in order to reach n Esteshab, the certainty which shall believe in and doubtful which has been doubted, shall be unified.
- 4- Multiplicity of times for certain and doubt: since doubt and certain are two opposite adjectives which doubtful and certain belong to it, thus, their time shall be multiple to belong to antonyms adjectives.
- 5- Time proceed of certain to doubtful: in addition to multiplicity of time of certainty and doubtful, the time of certainty shall be preceded so that if the time of certain is successor, it is named as reverse Esteshab that its reason is doubtful.
- 6- Time Unification of Doubt and Certain: it means, we doubt and certain in present time, figure on something at past and doubt to t in present time.
- 7- Action of doubt and certain: it means certain and doubt are not sufficient and the certain and doubt shall be practical and final and they are not hypothetical to be considered.

Types of Esteshab

In relation to types of Esteshab, in regard to many of authorities, classification of Mirzaee Naeni is perfect classification which will be considered:

He classified Esteshab as three directions:

- a) From follower point of view: from this point of view, two classifications are important:
 - 1- Existence and lacking Esteshab
 - 2- Decree and subjective Esteshab
- b) From origin of subsequent doubt
 - 1- Esteshab because of doubt in doctrines
 - 2- Esteshab because of doubt in remover
 - 3- Esteshab because of doubt in removing existence

Existence and Lacking Esteshab

In existence Esteshab, it is doubtful the existence of something which was certain previously and it is regarded as existence. In lacking Esteshab, lacking of something which was certain at past and its existence was certified, is supposed as extinct. It seems that there is not difference between lacking and loss Esteshab, so that in lacking Esteshab, it is considered previous manner of something whereas, in lacking element, previous manner is not considered.

Decree and Subjective Esteshab

In decree Esteshab, it is doubtful decree of hypothesis which was certain previously. Decree Esteshab is two kinds, imposed decree is same as alimony of children to father and mother and it is doubtful that the decree was lost. At here, the decree shall be imperative. Another type is imposed same as someone was financial warrant of other and it is doubtful that his warrant is removed or not till the certain is not obtained, the previous decree is obtained. In subjective Esteshab, the subject is doubtful like Esteshab of absentee whereas, the life and death of absentee is doubtful, at last, existence and his life is certified.

Esteshab of Wisdom and Esteshab of Canon

In reason of Esteshab, decree of canon is positive between authorities. Whereas, in Esteshab of wisdom decree, there is difference between them. Some of them accepted decree of wisdom and some rejected it. Those rejected it believed that wisdom decree is not doubtful, it is existed or not certainly. Whereas, others are contrary with this idea and believed that subjects of decree weather are legal or mental are customary and sometimes, two things are different and it is not considered its difference.

Esteshab because of Doubt in Case and Ablative

Sheikh Ansari in one of the well-known descriptions believed that Esteshab in doubt is not reason but Esteshab in doubt of ablative is reason. Sometime, it is happened that Esteshab is not for survival that means it cannot be confirmed on existence of it. It is named as doubt in case which is survival. For example, authority of loss is emergent, that means sometime this power was made at past, we cannot confer its survival to present time, so that the last result is lost after moments. Now, if the Esteshab is not survival and the doubt is that did a factor lose it or not? Idiomatically, doubt in ablation (remover or loser) is named as doubt in ablation. It is as two types, first, doubt in the existence of ablation in deedla, there is ablation or not. In other word, Esteshab is not for survival but we cannot know that the factor of agent is ended to its aim, is not sufficient. In this case, since doubt is for this factor, it is named as ablation doubt and Esteshab is reason on it. In second case that means doubt on ablation is that the Esteshab is survival and we confidence that the ablation is but we cannot know that ablation of Esteshab is lost or not. For example, someone is creditor from other since demand is not survival, thus, there is no doubt. Now if we cannot that the creditor averted debtor or not, since ablation of avert was remover and its doubt. But sometime, avert of certainty is absolute, but we cannot know that it contained positive terms, as summary, in regard to Sheikh Ansari, Esteshab is not reason but it is ablation in reason weather doubt or ablation.

Doubt or Certain

In terms of Esteshab, it was pointed that time of Cretan and doubt shall be different, now what is problem if it is not true. We explain it with example of Base of Law Confer from Abouulhassan Mohammadi: Suppose that we ensure that the culprit of the case is criminal really and he committed crime which was attributed to him and its time was one previous year, which means time of certain is one previous year. Now, today, today, we doubt by obtaining reasons and clauses in accuracy of our belief, that means we doubt that the culprit committed crime one previous year and doubtful time was one previous year. The result of the doubt is that the previous certain is wavered, this doubt which was regressed and lose previous certain is named as current doubt so that doubt is transmitted to certain and its other name is certain pattern. In this case, we cannot Esteshab previous certain since there are not certain which is esteshab. Since this situation is not happened, the other way is that certain and doubts time is not similar. For example, sometime we certain that the culprit did not commit crime at previous year and is sinless and we doubt that he committed two past months, we Esteshab previous certain that means he is sinless.

Full and Partial Esteshab

Total is mental concept and it is true on different persons like human and partial is true for one person. Total Esteshab is conceptual Esteshab that has different persons but partial Esteshab is certain person like Esteshab of absent person is partial esteshab. In partial Esteshab, same person or its reason was certain at past and its survival is same as total Esteshab but it is considered. Total Esteshab is based on three types: (by narration of book named Lessons from Jurist Elements of Dr. Mohammadhossein Shahbazi): first type- total at past, certainly it exists in one person but we cannot know it is or not, as result, we cannot know that there is total or not. When we Esteshab totality, it is named as total Esteshab first type. For example, Hassan was on certain place at one past o'clock, we cannot know that is Hassan here or not? Sometime, we say that Hassan is there, it is partial Esteshab but if we say that Human is there, it is total Esteshab of first type. Legal example of total Esteshab of first type: transactional contract between two persons was concluded, we doubt that this contract is this for this year or dissolved. In this case, if survival of transactional contract is regarded as Esteshab, it is partial Esteshab but if we say that there is contract between two persons, since it is transactional contract, thus it is regarded as total Esteshab of first type. Total Esteshab of first type is reason. Total Esteshab of second type- at past, it was supposed that the person was fault and he/she is not existed and there is possibility for its survival. In this case, if we Esteshab instead of doubtful person, we confront to second type. The prominent example which is cited by scientists is that at past, animal was as emblem that means as ant and elephant, if the said animal is mosquito, it was not present now but if it is elephant, there is possibility of its survival. Sometime, it is said that the animal was at past and it exists now (regardless person and emblem) we confront to second type. Legal example is that the Esteshab is about powers. For example, there is authority in transaction contract and we cannot know that the

power is emergency or not. Sometime, it is cited that at past, there was power and it is now, we confront to total Esteshab of second type. There is difference about Esteshab but it seems that some of Ulema regard it as reason. Total Esteshab of third type- certainly, it is confronted with person and that person was lost but we cannot know that did another person replace with him or not? In this case, we cannot confer Esteshab since first person was lost absolutely and there is doubt about advent of second person. As result, we cannot Esteshab them as totality. It is legal example that there was transaction contract between two people at past year and after some moments, this contract was left over. Thus, we cannot recognize contract between people now so that this contract shall be due to first contract. Second contract was lost certainly and its totality was lost too and there is not previous certain and second transaction is doubtful and we cannot know that it was concluded or not. Then, there is not previous certain to it. Thus, we can say that reason for lacking reasonability of Esteshab is lacking previous certain which is first pier of Esteshab. First Reason: it is not doubt base of behavior and practical method of intellectual people is that when they doubt on base on previous certain. Second reason: decree of wisdom is as theoretical so that theoretical wisdom orders that there is requirement between knowledge to proving of something in previous time and its survival world (when doubt is about survival of thing).

Third reason: consensus - many of intellectuals emphasized upon reasonability of Esteshab. So that was narrated from owner of Mabadi that Esteshab is reason because the jurists have consensus so that when decree is obtained and then is being doubted, is something destructed it or not. Sheikh Ansari narrated consensus in Vasael books.

Fourth Reason: news- the major reason in proving Esteshab s news and it is leaned on news and if this news is unified, the news is reason, so that news is for Esteshab of the disabled and some of intellectual and narrative news are emphasized t.

Reasonability of Esteshab

In relation to this question will Esteshab be reason or not, there is difference between intellectuals can be classified in three clusters: first cluster of jurists believed that Esteshab is not reason. In their opinion, what is cited about Esteshab is instinct and mettle like birds that after making den, bring their seeds to same den and in fact, they Esteshab survival of their den. Second cluster regard Esteshab as reason, third cluster separated between different types of Esteshab. In their opinion, Esteshab is reason in some cases and t is not reason in other case. The best –known interpretations is related to Sheikh Ansari who says: Esteshab is not reason but Esteshab is remover of reason.

Conclusion

The result which is derived from discussion about Esteshab is that we consider bases of intellectuals or decree of wisdom and its application in human life is inevitable. So that if this pattern is absent, social system is distorted and it is impossible to transact. Necessity of social discipline is that when intellectual human confide in existing of something at past time and then, a problem caused doubt about it, he confided to his certain and regard reason its survival. Since, wisdom of intellectual person orders to it and what is ordered by wisdom, is ordered by canon.

References

1. Translate and description of Vasael of Sheikh Ansari- third volume- Ayatollah Sheikh Mohammad Masod Abbasi Zanjani
2. Jurist Elements of Allameh Mohammadreza Mozafar-Second Volume- Mohsen Ghoroyan- Ali Shirvani
3. Legal Encyclopedia of Dr. MohammadHafar Jafari Langroydi, First Volume
4. Lessons from Jurist Elements of Dr. Mohammadhossein Shahbazi
5. Bases of Confer of Islamic Law, Dr. Aboulhassan Mohammadi
6. Summary of Benefits of Elements, Moselm Golipur Gilani, Third Volume

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