

# **Reviewing legal changes regarding testimony**

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## **مراجعة التغييرات القانونية المتعلقة بالشهادة**

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**Abstract:-**

One of the most important necessities of human social life is the law. The law is one of the most objective and first criteria in judging civilizations and reflects the wise thinking of the people and their leaders and shows the principles on which they have based their standards of life. What gives special importance to legal systems and legislative institutions is, firstly, the regularity of that system and the basis of laws on general principles and foundations, and secondly, its flexibility, so that it can play a role against possible changes in social change in human life. In the evolution of laws, considering the dignity of Islamic jurisprudence, independence, self-confidence, honor and dignity, we should test the issues with the divine religion and find a way out of the problems from the text of the religion and find a jurisprudential solution. The purpose of changing the law can be considered in being privileged, being able to compete with the future and looking at providing and protecting the rights of individuals. Conflict of laws with jurisprudential rules and general rules based on the positive principles of tradition, consensus and reason, as well as ambiguity in laws, can be the reasons for the evolution of laws. In Islamic jurisprudence, what causes the validity of testimony is in fact subject to the existential and negative conditions of the witness; In other words, the conditions of the witness are so difficult that it is necessary to accept less testimony in practice. But if a testimony is obtained with all its conditions, it can be a definitive document of the sentence. In the evolution of the laws on testimony, it can be said that the legislator has moved from a situation in which the value of testimony was drastically reduced to a situation in which the validity of testimony has been restored and a position similar to that in jurisprudence. It is a testimony.

**key words:** Legal changes, chapter of testimony, Islamic jurisprudence, change of laws.

**المخلص:**

يُعد القانون من أهم ضروريات الحياة الاجتماعية للإنسان، فهو من أكثر المعايير موضوعية وله الأولوية في الحكم على الحضارات ويعكس التفكير الحكيم للناس وقادتهم ويظهر المبادئ التي استندوا إليها في بناء معايير حياتهم، وما يعطي أهمية خاصة للأنظمة القانونية والمؤسسات التشريعية، أولاً، انتظام ذلك النظام وأساس القوانين على المبادئ والأسس العامة، وثانياً، مرونته، إذ يمكنه أن يلعب دوراً ضد التغيرات المحتملة في التغيير الاجتماعي في الحياة البشرية في تطور القوانين، مع مراعاة كرامة الفقه الإسلامي، والاستقلالية، والثقة بالنفس، والشرف والكرامة، بصورة يجب معها أن نختبر قضايا الدين السماوي، ونجد مخرجاً للمشاكل في سياق الدين ومن خلال الحلول الفقهية لتلك المشاكل، لذلك يمكن اعتبار الغرض من تغيير القانون من حيث الإمتياز والقدرة على التنافس مع المستقبل والنظر في توفير حقوق الأفراد وحمايتهم. إن تنازع القوانين مع القواعد الفقهية والقواعد العامة المبنية على المبادئ الإيجابية للتقاليد والتوافق والعقل، وكذلك الغموض في القوانين، يمكن أن يكون أحد أسباب تطور القوانين في الفقه الإسلامي، لذلك فإن أسباب صحة الشهادة تخضع في الواقع للشروط الوجودية والسلبية للشاهد؛ وبعبارة أخرى، فإن ظروف الشاهد صعبة للغاية لدرجة أنه يتعين على المرء أن يقبل شهادة أقل في الممارسة العملية، ولكن إذا تم الحصول على شهادة بكل شروطها، فيمكن أن تكون وثيقة نهائية للقضية، وفي تطور قوانين الشهادة، يمكن القول إن المشرع انتقل من حالة تقلصت فيها قيمة الشهادة بشكل كبير إلى حالة أعيدت فيها صحة الشهادة إلى مكانة مماثلة لتلك الشهادة في الفقه.

**الكلمات المفتاحية:** التغييرات القانونية، باب الشهادة، الفقه الإسلامي، تغيير القوانين.

## Introduction and expression of the problem

Pursuant to Article 72 of the Constitution, Iran's laws and regulations must be based on the Ja'fari Esna-Ashari religion. The reason for this can be considered in the rule of law and firmness on general rules, which firstly has been proved according to the definite tradition of the Imams of the Infallible (a.s.) and the consensus of scholars and intellectual documents, and secondly, equipping jurists with the knowledge of principles to infer rulings before entering the realm of fatwas and issuing rulings. In addition, the establishment of reason among the main sources of jurisprudence gives special privilege to Imami jurisprudence, because reason causes jurisprudence to advance the skillfulness of human intellect and the findings of his knowledge and has the ability to manifest and refresh and novelty, which can be interpreted as dynamic jurisprudence. The importance and validity of reason in principles according to the rule of valet "We do not deny the ruling of al-'Aql al-Waql al-Shura'a) there is no denying that what has been mentioned will undoubtedly open the way for revision and transformation to jurisprudence and prompt jurisprudents to use all the subtleties of Islamic jurisprudence to open the paths that have not been taken first in the realm of jurisprudence and consequently in the realm of law. It should be noted that revision of jurisprudential rulings in the competence of expert jurisprudents and dominating jurisprudential principles is done through a jurisprudential method, so revision of jurisprudence should be considered as the source of the evolution of laws and considering the change in today's lifestyle, as this is predicted in Article 177 of the Constitution of the Islamic Republic of Iran as the mother's law by its own mechanism.

In the evolution of laws, considering the dignity of Islamic jurisprudence, independence, self-confidence, dignity, and dignity, issues should be tested with divine religion and find a way out of problems from the text of religion and with jurisprudential remedies. In addition, it should be noted that the third book of the third volume of civil rights with two articles from Article 1306 to 1320 was devoted to testimony, but with the changes of 1982 and then with the amendments of November 1991, the civil law was devoted to testimony. In the case of testimony, only eight articles remain. The

removal of Articles 1306, 1307, 1308, 1310 and 1311 from the Civil Code and contrary to the sharia of Article 1309 of the same law by the Council of Guardians has brought about a profound change in the discussion of testimony, and Article 1312 of the Civil Code was subject to the issue despite its prior articles and can no longer be discussed by removing the previous articles. To explain that the above articles, dated 1935, had doubled the claims, 1- claims that could not be substantiated by testimony, 2- claims that could be proved by testimony. In Islamic law, testimony is one of the most important proofs of a case that cannot be proved by testimony, and Article 1312 introduces claims that can be proved by testimony. Although testimony has been accepted as a reason in all legal systems of the world, its proving value in jurisprudence as an independent reason indicates its importance. Therefore, because the previous laws regarding testimony had not paid attention to sharia standards, articles 1306-1311 of the Civil Code were removed. Since articles 4, 72, 91 of the Constitution are home to the rule of sharia and the necessity of non-contravention of laws with sharia law, today testimony is considered as one of the most important means of proof in a way that the judge is obliged to influence it in order and can even place his certainty on the basis of unified testimony. Of course, there is disagreement between jurists and jurists in a way that famous jurists believe that the judge has full authority in referring to his knowledge and ensuring it in the proceedings, while some jurists (Dr. Katouzian, Dr. Abbas Zeraat) believe that the judge's authority in determining the value of testimony is not unlimited. In Islamic jurisprudence, what makes testimony valid is in fact subject to the existential and negative conditions of the witness, i.e., the conditions of the witness are so difficult and difficult that one must actually accept less testimony. However, if a testimony is fulfilled in all its circumstances, it can be a definitive documentary of the sentence. Today, testimony is valid for proving all financial claims with any amount, whereas it was already up to 500 Rials. However, with the testimony of comprehensive witnesses, the official document can also be invalidated.

Paying attention to the issue of testimony and legal developments towards it and the different views of jurists and jurists regarding its application in order to resolve claims (independent reason) is important to address the subject of research. The

necessity of research in analyzing the laws of testimony today is that the evolution of the laws regarding testimony (relative to its proven value in claims in old and new laws) causes an increasing process of granting credit to it as one. This is one of the proofs of the dispute, which has led to conflicting votes from the judicial courts and challenges to the rights of individuals in this regard, while sometimes leading to violations of other laws such as the registration law, which stabilizes property in the country. Therefore, if we can take a positive step in this regard, we have been very effective in investigating the unraveling of legal problems. In this research, we aim to analyze the legal developments in the field of testimony, explain its causes and examine the impact of relevant developments on the relevant laws (civil rights).

### **Theoretical Foundations and Research Background**

" testimony " from the root of " testify, attend, certification" means being present and from the root of " testify, attend, certification" means to inform and do so. If testimony is used without preposition, it means to be present, and if it is accompanied by the preposition "Ali", it means giving definitive news, and if it is accompanied by the preposition "baa", it means giving testimony (Johari, 1410:2/494). Testimony is the name of observation and means informing what has been seen (AbuJib, 1408:203). Jurists have sometimes provided innovative definitions of testimony according to rulings and works, and testimony is defined as this: testimony in the term of news is either a fact or a negation of an act that obliges someone against the other. Ibn Hamza considered testimony to prove the right to prove that it was in the interests of one person and against another person, or that it was in the interests of one person and without testifying against another person (Tusi, 1408:229). In Iranian law, there is no precise definition of testimony, however, lawyers have stated several definitions for testimony, some believe that testimony means news of tangible matters to one of the senses that if the news is rightly at its own expense and for the benefit of the other, they refer to it as a confession. In jurisprudence, they further condition that "evident to" should be from sights (misconceptions) or audibles (masturbates), such as marriage and apocalyptic, and murder and theft that are spectacular (Ja'fari Langroudi, 2003:7/397). Some other lawyers believe that testimony means the news of a person from something

for the benefit of one of the parties and to the expense of the other (Emami, 1998:6/189). Article 174 of the Islamic Penal Code defines testimony as follows: testimony is personal news other than litigation by the accused or any other matter before the judicial authority. Article 1258 of the Civil Code enumerates testimony as one of the five main proofs of the claim. In addition, in the provisions related to the criminal procedure and civil procedure, testimony is mentioned as one of the reasons for proving the right or the crime and its related arrangements. Iranian law is derived from Islamic jurisprudence, so in the formulation of the laws relating to testimony, in terms of gender and number of persons, it is acted in accordance with Islamic jurisprudence, and the testimony is valid if the witness meets the necessary conditions. It may be that some of these conditions are related to the power of reason and discernment, understanding and consciousness of the witness, for example, the condition of maturity and intellect, and some of these conditions are related to trusting the witness and ensuring the accuracy of his speech, for example, justice and trustworthiness, and others related to ensuring the testimony of the witness and his trustworthiness, for example being Shia and being a productive purification. Accordingly, in Article 1313 of the Civil Code, reason, maturity, faith, justice and productive purity are among the conditions of the witness.

In general, it seems that the legislator, contrary to criminal matters in legal matters, considered the presence of the witness in court as an obligation to testify, which is contrary to the well-known opinion of Imami jurists, and among the lawyers only Dr. Katouzian considered testimony as a general duty (Katouzian, 1999: 267. In his research titled Reflection on the Effect of Annulment of Regulations against the Law, Mr. Tough (2018) emphasizes that the effect of annulment of state regulations inconsistent with the law requires time management. Iran's legislator in Article 13 of the Law on the Organization of the Court approved in 2013 considers the effect of annulment of the regulations against the law from the time of issuance unless it is approved in order to respect the rights of the persons of this work.

And it is clear from here why the use of the title of "Naskh" for the canceled rules of custom or judicial opinion is not a common practice, and Islamic jurists also agree that among the evidences of

religious rulings, only the rulings of the book and tradition are manuscripts and do not refer to the elimination of the customary or intellectual ruling of " Naskh ". Of course, the implicit version of the law has nothing to do with the legislative authority and is one of the rules related to the interpretation of laws and their conflict resolution, so it is not valid by the belief in the implicit versions of the law. Mirzaei (2014) in research entitled Re-enactment of the law and its consequences point out that in the Iranian legal system, after the victory of the Islamic Revolution, some repetitive laws have been passed. The previously existed legal regulations have been re-enacted unchanged, and sometimes the passage of the law has been repeatedly changed and amended by the former regulations. Although the new law has added new provisions while amending the previous laws, most of its provisions are a repetition of the provisions of the previous law.

Without determining the enclosed and amended parts of the former law, the new law declares the invalidity of all laws inconsistent, such a situation has further led to the abandonment of most of the country's laws, causing conflicts between legal regulations and causing doubts about the validity of the laws.

#### Research Objectives:

The general purpose of this research is to analyze the legal developments in the case of testimony.

#### Special purposes of research:

- 1) Familiarity with the causes of legal developments regarding testimony and its analysis
- 2) Explaining and analyzing the impact of legal developments on testimony on the votes issued by the judicial courts

#### Research Questions:

- 1) What are the origins and reasons for the evolution of laws in Iran's legal system?
- 2) What was the reason for the legal developments of the testimony?
- 3) How effective are legal developments on testimony?

### Research assumptions:

- 1) It seems that jurisprudential revision is the source of the developments in laws due to conflict with jurisprudential rulings and general rules and proving principles (tradition, consensus and intellect).
- 2) It seems that the cause of legal changes is about the testimony of possible changes to social changes and the requirements of time in human life.
- 3) It seems that legal developments regarding testimony have been effective in restoring the proving value and its status as an independent reason in jurisprudence in a way that today, in almost all claims and extensively, jurisprudential testimony has been used.

### Research Methodology

In this research, the collection of materials is done by library method and through vector jack and with a content analysis approach based on the research structure. Therefore, in order to prepare the materials from the main sources (jurisprudential books such as narratives and other questions about testimony), (legal books- proof of litigation), the subject laws and articles related to the title of the research are used. The variables of this research can be mentioned words such as " testimony ", "evolution of testimony ", "legal developments", "the influence of the transformation of testimony ", which has principles such as Quran, narrative and legal writings. Library studies are an important part of data collection with the main tools of vector jacking in this research. In addition, jurisprudential software and valid web sites are referred for statistics of required resources in order to analyze the data after careful study and phishing.

### History and Origin of The Evolution of Laws in Iran

Re-enactment of laws in the rights of our country is not unprecedented, at the beginning of the foundation of the new justice system, several laws were introduced in the form of escaped, which they later entered into with the passage of a comprehensive law. However, in this law, the adjudication and elimination of the previous laws were not announced, so those miscellaneous and minor laws



remained in the side of the original law, but there was no need to enforce them in relation to the issue of testimony, which was the proof rules of testimony previously enshrined in the Law on testimony and the Emirates of 1929, with the drafting of the third volume of the Civil Code of 1935.

With the establishment of a new law system in the country, its firmness gradually increased and problems such as the re-enactment of laws spontaneously disappeared, but after the victory of the Islamic Revolution in 1979, the historical experience of repetitive legislation was revived and exceeded. Since the judicial system, like other social phenomena, is dynamic and changing, and part of the changes in the judicial system are subject to political and social changes in society, and another part is subject to the requirements of the society after the revolution, in a period of several years, efforts were made to establish a revolutionary judicial system with the idea of governing the rules of Islamic justice, and thus revision of the judicial system in the extent of procedures and rules of form was inevitable. However, irrespective of the Article Amendments to the Criminal Procedure Code, which occurred in 1982, there are no other serious changes in the judicial system, and there is no serious debate in the Law on the Determination of Appeals of Court Rulings and the manner in which they were adjudicated in 14/07/367 except for the emphasis on the limited cases of appealability of criminal court rulings.

### **The Causes of The Evolution of Laws in Iran**

By engraving in the collections of laws, it can be said that in our legal system after the victory of the Islamic Revolution, there were two main reasons for the re-enactment of the laws and still exists, sometimes the adoption of the majority of the former laws and regulations occurred at the heart of the new law with the claim of reform and transformation in the legal system, and sometimes the abandonment of the laws passed in the time before the revolution and the sense of legal vacuum caused by not being implemented. These laws have re-enacted the same rules.

### **The Evolution of Laws on testimony in Iran**

The conditions of the witness were envisaged in the Civil Code adopted in 1935 in Articles 1313 and 1935, and in 1982, Iran's

legislator introduced amendments in civil law to add in accordance with the law with Shiite jurisprudence and eliminate cases against sharia. In 1981 and 1991, by amending the Civil Code in order to harmonize with Islamic law regarding the value of testimony under Articles 1306-1311 of the Civil Code, which limited the scope of the impact of testimony on the proof of contracts and obligations, it once again obtained the testimony of its official. Prior to the amendment dated 8/10/1982 of the Civil Code approved by the Islamic Consultative Assembly, the value of witness testimony according to articles 1306 to 1312 of that law was very limited to proving civil claims and its value was based on the amount and subject of the lawsuit inspired by the French civil law and up to 500 Rials was able to prove and cite. However, considering the amendment and comments dated 29/11/1988 by the Jurists of the Guardian Council and the Amendment of Articles from the Civil Code adopted on 26/11/1991, the Islamic Consultative Assembly regarding the removal of articles 1306, 1991, In 1928, 1929, 1931 and 1932, as well as the non-declaration of Article 1309 of the Civil Code, there was a fundamental and fundamental change in relation to the importance of witness testimony in our legal system. In addition, the legal basis for testimony can be found in Articles 148 to 172 of the Criminal Procedure Code and Articles 229 to 247 of the Civil Procedure Code, which is worthy of much reflection. After the revolution, the legislator initially amended some articles of civil law on the issue of witness testimony and eliminated some of them, and after a while in 2000, with the passage of the new law on the procedures of public courts and the revolution in civil affairs, it increased the value of testimony in accordance with sharia standards.

#### Review and analysis of legal developments of testimony

#### Materials removed from the Civil Code of the testimony Section

Articles 1306, 1928, 1929 have been removed from the Civil Code of 14/11/1991 under the Amendments to Articles Act.

#### Witness maturity

Currently, in Iranian law, only Article 1313 of the Amended Civil Code on 5/11/1991 and Article 155 of the General and Revolutionary Courts Procedure Code in the matters of punishment approved on

18/09/2008, despite some differences, have expressed the necessary personal conditions in the witness. Thus, the article mentioned in the civil code, with a brief statement, requires five conditions in the witness: "In the witness of maturity, reason, justice, faith and purification are conditions", and in note 2 of this article, the testimony of a person who has a personal interest in a détente or who is a beggar is not penetrating this statement: "The testimony of a person who has the same benefit or benefit or right to claim and the testimony of those who make a begging their job is not accepted". Of course, this view is not exclusive to the owner of the jewel, and most Shiite jurists have considered puberty as a means of sexual maturity, which is normal and can be achieved through signs and external emirates (Pay attention, 2005: 1/2010). Article 1313 d.M. considers puberty a condition and decrees that "in the witness of puberty... Article 1314 of the 1314 B.M. provides that the child's testimony is conditional on the child reaching the age of fifteen and states: "The testimony of children who have not reached the age of 15 may only be communicated to further unless the law recognizes the testimony of such children as valid."

### **Expressing testimony by children**

Currently, in Iranian law, the only case that explicitly places a special value on the testimony of children is Article 239 of the Islamic Penal Code of 1996, which merely considers the testimony of the "trusted child" to be the cause of suspicion, thereby leading to the realization of the loath state in the crimes. Also, Article 1314 of the Civil Code approved in 1935 also considers hearing children's statements, both slashing and non-discrete, only for further information.

### **Testimony of relatives**

According to Iranian laws and regulations, there is no standard for determining the class and degree of relatives as an obstacle to testimony. Because in Article 413 of the Code of Procedure adopted in 1939, the legislator explicitly specified the limits of the class and the degree of impediment to testimony and stated: "Relative or causal relatives up to the third degree of the second floor" were not allowed to testify and were witnesses. However, in the present situation, due to the lack of *nass*, there is no criterion for determining

the class and degree of proximity that prevents and in some respects the injury of the witness.

Therefore, if the courts believe that the testimony is almost inadmissible, they will face a major problem, because either they must reject the testimony of all relatives of any degree and in any class, which is unreasonable and far from expedient, because in many cases, for example, the person is not related to third-class relatives in order to be biased and slanderous. In the testimony of Relatives, or in accordance with the former civil procedure law, the proximity to the third degree of the second floor prevents the testimony of Relatives, which according to Article 598 of the Civil Procedure Code of 2000, based on the adjudication of the law of 1318, due to the lack of legal advice, the application of Article 413 of this law will not have a legal and legal basis.

### **The proving value of testimony**

According to Articles 1306-131 of the Civil Code of 1935, the proving value of testimony in legal acts was limited, and in particular contracts and obligations worth more than 500 Rials could not be verified. These rulings were previously mandated by the Law on testimony and the Emirates act of 15 and 30 Of 1929. By amending articles 1306 and then the civil code in 1982 and 1991, the restrictions were lifted and the testimony found complete proof value. In Article 424 of the former Civil Procedure Code adopted in 1939, it was decreed: "Recognition of the degree of value and impact of the certificate is in the opinion of the court." It was under structured that the judge had absolute authority to determine the value of the certificate, and in any case, he could consider the certificate valid and issue a verdict based on it or deem it worthless and refrain from ordering its effect. Some jurists have absolutely emphasized the judge's authority to evaluate the certificate, and in contrast to some, while declaring doubts about the judge's absolute authority, they have detailed between the states of the summation of the conditions of the testimony and the absence of the conditions.

### **Conflict of witness testimony with official documents**

According to Article 1284 A.M., the definition of the document is as if "the document is any type of writing that can be cited as a claim or defense". For example, during the Safavid era, a special divan

was set up to set up documents and register transactions, and was responsible for proving marriage, divorce, and transactions (Jafari Langroudi, 1302:1282).

### **Supporting the safety of witnesses and informants**

A regulation consisting of 18 articles and 7 notes was approved by the Head of the Judiciary on 16/01/2016 and entered into force from the date of ratification. One of the most open organizational measures in this regulation is the establishment of a unit called "Supporting the Security of Witnesses and Informants" in each jurisdiction, which operates under the supervision of the head of the same field.

### **Sponsorships**

Among the financial support that can be obtained from witnesses should be the payment of commuting costs, the damages caused to him as a result of leaving the job, and the protection of his property, the first two of which are mentioned in both the Criminal Procedure Code and the Witness Charter. Irrespective of the provisions that respect personal property and the right of citizens 1, the Criminal Procedure Code provides for assignments in Article 215 regarding the financial protection of witnesses. Paying attention to the provisions of this article indicates the importance of financial support for witnesses in the legislator's view, as he has sought to compensate for the damages to witnesses in any case, so if the applicant is not able to compensate or the investigator is the applicant for the presence of a witness, compensation will be made through the credits approved by the judiciary. Nevertheless, the objection to this issue is that the legislator should have absolutely placed the costs associated with the discovery of the crime, including the costs of studying evidence, which is the obvious example of witness testimony, to the government and the judiciary, so the imposition of these costs on the plaintiff is far from legal logic. In this regard, Dar band "T" under Article 1 of the Executive Regulations for the Protection of Witnesses and Informed Persons approved in 2015 considers financial losses as any damage to property or financial rights. Although it is potentially possible for witnesses to do so, due to the tedious and long paperwork and administrative formalities, witnesses are practically past its goodness and give it a gift.

## Remote testimony

In Article 186 of the Islamic Penal Code and in Note 2 of Article 204 of the Criminal Procedure Code, the legislator has accepted a new form of testimony under the title of "remote testimony", considering that in Article 186 of the Islamic Penal Code and in Note 2 of Article 204 of the Criminal Procedure Code, a new form of testimony is divided into two types of electronic testimony and non-electronic written testimony at a general glance: Non-electronic written testimony, electronic written testimony and audio-visual testimony live or electronically recorded. The specific conditions for citing remote testimony to prove the occurrence of a crime on behalf of the accused or to prove the losses caused by the crime in criminal matters, as well as proof of the demands of the claims in lawsuits in respect of Article 186 of the GH and Note 2 of Article 204 of the CAC are as:

- the presence of a witness may be a surprise (Article 186 B.A.)
- the reason for the case is not exclusive to the testimony of witnesses and informants (Note 2, Article 204 of the D.A.K.)
- the conditions of the witness and the testimony shall be met as per the case (Article 186 B.C.)
- the authenticity of the attribution of remote testimony to the witness is confirmed (Article 186 B.C.)

## Discussion & Conclusion:

Testimony is the statements of persons outside of the claim who have seen or heard the disputed matter or have been personally informed of it, i.e. a person in favor of one of the invited persons and on the other's harm to announce the information and news of the occurrence of the incident, citing the testimony of witnesses is one of the reasons accepted to prove legal claims in all legal systems and accepting it as one of the reasons for proving the claim. The opinion of all legal regimes is that the difference between legal systems is solely related to matters that can be verified by testimony, as well as the recognition of the value of testimony and its degree of validity. In the Islamic Penal Code, in the definition of the prescribed testimony: testimony is the personal news other than the parties to the crime committed by the accused or any other matter before the judicial

authority (Article 174/D.M.A.) According to the attitude that arose after the revolution in the discussion of the proof value of legal and especially religious evidence, major changes have occurred in the civil law and the civil procedure law, including the results. Evident, these changes, manifested in the passage of the new Civil Procedure Code, are an extraordinary increase in the proven value of witness testimony in lawsuits. Testimony today is considered as one of the most important proofs. The legal evidence system is in decline and Testimony can play a more important role in discovering the truth than before. Forms of oral testimony, oral testimony before the judge allows him and the litigants to ask questions of the witness, something that tangibly helps to uncover the truth and in this way gives life proof, of course, because of the practical reasons the written testimony has also been accepted under the conditions and limitations, especially the new legislators are more favorable in this regard. One of the articles amended in the case of testimony, Article 1313, which governs the testimony of the witness, subsequently in 1991, the Guardian Council also called for amendments to the civil code, but this time the amendment was made through the creation of article 1313 and the incorporation of a note to it, and repeated article 1313 and its note. And the revolution was also envisaged in the criminal affairs adopted in 1999, as a result of the conditions of the witness in articles 1313 and 1314 BC and article 155 of the C.J.A.D.K. were expressed by the legislator. Considering that no authority is recognized for the judge in determining the final value of the testimony, but the judge is obliged to make an effect unless the knowledge is contrary to the fact of the testimony, therefore, the judge's discretion in determining the value of the certificate of Article 241 of the D.D.M. should not be interpreted in such a way as to require the absolute authority of the judge to finalize the value of the testimony. The course of legal developments (removal of articles 1306 to 1308, 1310 and 1311 GH) also confirms this. The testimony of relatives, if there are other conditions of testimony, is accepted and the testimony of relatives cannot be ruled out for charges. Also, the condition of justice and faith, if recognized, prevents the false statement of a relative's witness. Therefore, mere causal or relative relationship cannot be the cause of the witness's injury alone, but citing other conditions of witnesses, such as if the witness is directly the beneficiary of the testimony or if the witness has a criminal record



while he is a relative of the litigants, he has a criminal record or has worldly hostility towards the parties. Or there is another case of witness injury, in such a premise, whether it is a witness from a relative or a non-relative of the parties in the case, testimony cannot be invoked, of course, the diagnosis is with the court, as in accordance with Article 241 of the Civil Procedure Code, the recognition of the value and impact of the certificate is with the court. The legislature has chosen a dual position when it comes to the testimony of relatives. On the one hand, in the Civil Procedure Code of 2000 and the Criminal Procedure Code of 1999 and 2013, the existence of kinship has not mentioned the cause of the witness's injury, and on the other hand, in these same laws, it has pointed out that the court asks the witness about the existence of a causal or relative kinship before hearing the certificate. Now, if a kinship is not a cause of witness's injury, why should the court ask the witness about it?

It is necessary for the legislature to clearly state its position and in this regard, it is suggested that the legislature, by adding a note under the articles related to the witness's injury, state that merely the existence of a causal or relative kinship between the witnesses and one of the parties is not the cause of the witness's injury, but since the recognition of the validity of the testimony is with the court, the judge before testifying, the existence or absence of the witness's closeness with the parties in the dispute. The testimony is essentially something that the witness has seen or heard in person. Despite this indirect testimony, it has been more or less accepted in most countries, especially in cases where direct testimony is impossible, the evolution of the rights related to the evidence proving the claim shows that the strictures of domestic rights in this regard are declining.

### List of references:

1. Aghaie Tugh, Muslim. (2018). Reflection on the effect of annulment of regulations inconsistent with the law. Journal of Public Law Studies, University of Tehran, 48(2), 339-356.
2. Emami, Hassan. (1998). Civil Rights, Vol. 6. Tehran: Islamiyah Publications, 1st Edition
3. Mirzaei, Iqbal Ali. (2014). Re-enactment of the law and its consequences. Journal of Islamic Jurisprudence and Law, 5th year, (9).



4. Jafari Langroudi, Mohammad Ja'far. (2003). Terminology of Law. Tehran, Ganj Danesh.
5. Johari, Isma'il b. Hammad. (1410). Al-Sahah Taj al-Lagha and Sahih al-Arabiya, by Ahmed Abdul Ghafoor Attar. Beirut: Dar al-Lamlin.
6. Tusi, Emadeddin Abi Ja'far Muhammad b. 'Ali (Ibn Hamza). (1408). Al-Wasila to Nile al-Fadila. Qom: Library of Ayatollah Marashi Najafi, 1st edition.
7. Katouzian, Nasser. (1999). Introduction to Law Science. Tehran: Publishing Joint Stock Company, Printing 37.
8. Mirzaei, Iqbal Ali (2016). The rules and conditions of adversions are religious rulings and the rules of the matter. Journal of Islamic Jurisprudence and Law, (13), 175-215.

