




Examining Testimony from the Perspective of Law and Philosophy

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The present study examines testimony from the perspective of law and philosophy. One of the classifications of evidence, based on the judge's role, includes restrictive evidence and diagnostic evidence. Simply put, restrictive evidence refers to binding evidence, while diagnostic evidence refers to persuasive evidence. In this study, following Dr. Hassan Jafari Tabar, the terms "non-criticizable evidence" and "criticizable evidence" have been adopted. In this classification, evidence is diagnostic or persuasive when no pre-existing rules regarding the evidentiary power of reasons exist in the law, leaving the judge's conscience as the ultimate arbiter. The concept of "criticizable evidence" is not a strictly legal term but has more philosophical and sociological undertones. The notions of criticizability or non-criticizability, and the binding nature of certain matters (referred to as "binding evidence") leading to unquestioning obedience, were first introduced by philosophers and sociologists in post-Renaissance Europe. Max Weber, a German sociologist, was the first to diverge from the economic and broad views of law espoused by Marx and Engels. Weber studied law through the lens of sociology—particularly legal sociology—and examined the influence of religion and politics on legal norms. He introduced the concept of "demystification" regarding binding legal concepts. Weber's primary focus in the sociology of law was to explain the stages and factors contributing to the rationalization of modern law, particularly in European civilization. He also analyzed the development of logical lawmaking processes, the relationship between various types of legal thought and social agents through whom the law takes shape in a given society, and the economic and political significance of legal ideas.

Keywords: *evidence, testimony, judge, sociology, social agents.*

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1. Introduction

Testimony is categorized as a form of information, not an act of creation, and thus should not be considered a legal act. The information provided by the witness is not self-incriminating, nor does it establish a right or obligation against them. A witness is not a party to the case; rather, they are an impartial individual whose knowledge is used to substantiate a claim, potentially favoring one party over the other.

It has been stated that information is subject to verification and refutation, and testimony, as evidentiary information, can also be verified or refuted. Testimony, like confession, must be expressed. Until a person speaks, no affirmation can be attributed to them, and silence cannot be construed as an opinion ("al-qaul la yunsub ila al-sakit").

This does not imply that testimony must always be verbal. A witness may affirm or deny a matter through gestures, such as nodding or hand movements, in



response to a court's question. Moreover, as is customary, a witness may document their testimony in a written statement during court proceedings. Such procedural norms do not undermine the validity of testimony (Gol, 2007).

A declaration of intent is effective only when it is intended as information. If it is proven that the witness's apparent gestures or statements diverge from their true intent, and they did not intend to affirm or deny an incident—or if their intent differs from the court's interpretation—testimony is subject to their actual intent. This is particularly relevant when the purpose of adjudication is to uncover the truth rather than merely resolve the dispute (Terrance & Matheson, 2003).

Trust in testimony can be examined from psychological, sociological, and philosophical angles. Psychologists explore the mental or cognitive processes that enable individuals to trust others' statements as reliable sources of knowledge. Sociologists investigate the social standing of individuals that allows their statements to be trusted by others.

The epistemological approach of philosophy to testimony differs. Philosophy's primary question about testimony is whether it can serve as a source of human knowledge alongside memory, reason, sensory perception, and intuition (introspection).

Elizabeth Fricker, a philosophy professor at the University of Oxford, has proposed a unique perspective on testimony in the United Kingdom. Fricker argues that a comprehensive and precise definition of testimony is not feasible, but testimony follows a consistent pattern that constitutes its ideal model. Identifying the conceptual components of this model helps recognize instances that qualify as examples of this model. After accurately describing this ideal model, other forms of testimony—which Fricker terms "extended testimony"—can be examined relative to the ideal model.

2. The Basis of the Validity of Testimony

The validity of testimony is universally accepted in Islamic jurisprudence across different schools of thought. Testimony is considered one of the strongest means of proving claims and is a definitive and established instance of legal evidence (bayyinah shariyyah).

Shams al-Din al-Sarakhsi explains the validity of testimony by stating:

"Based on analogy, testimony should lack validity because it is a form of news that can be true or false. Due to its inherent uncertainty, it cannot possess binding validity. Additionally, solitary reports (khabar wahid) do not produce certainty, and legal judgments require certainty. However, despite these analogical arguments, the validity of testimony in judicial decisions is mandated by Islamic texts. Judges are obliged to rely on testimony according to these texts."

The textual sources include Surah Al-Baqarah, Verse 282, Surah Al-Ma'idah, Verse 106, and the Hadith: "The burden of proof is upon the claimant..." These sources convey two main messages:

1. Given the prevalence of disputes and transactions, it is essential to accept testimony in judicial systems because requiring conclusive proof in all cases would be overly burdensome, and obligations must remain within feasible limits.
2. The acceptance of testimony by judges is mandatory because, despite its potential for error, Islamic law considers it a valid means of resolving disputes. The Prophet Muhammad stated: "Honor the witnesses, for through them, God preserves the rights of people."

In summary, the validity of testimony is broadly recognized in Islamic jurisprudence. However, there are differing views regarding the minimum standards and evidentiary value of testimony in various legal contexts across different schools of thought. These standards can be summarized as follows:

O believers! When you contract a debt for a fixed period, write it down. Let a scribe write it down justly between you. No scribe should refuse to write as God has taught him, so let him write. Let the debtor dictate, fearing God and not diminishing the amount. If the debtor is of limited understanding, weak, or unable to dictate, let their guardian dictate justly. And call upon two witnesses from among your men. If two men are not available, then one man and two women whose testimony you accept—so that if one of them errs, the other can remind her" (Quran, 2:282).

2.1. *The View of Women's Testimony Deficiency Due to Intellectual Reasons*

As noted in the discussion on women's testimony, based on the Quranic verse:

"And call two witnesses from among your men. If there are not two men available, then one man and two women, so that if one of them errs, the other can remind her..."

some interpret the equivalence of the testimony of two women to that of one man, combined with phrases from Nahj al-Balaghah, as a deficiency in women's testimony. They argue that the reason is a deficiency in women's intellect.

Others refer to a Hadith of the Prophet of Islam where he was asked about the deficiency in women's testimony, and the Prophet replied that it was due to their intellectual deficiency. Jurists have elaborated on these statements, noting, for example:

"The deficiency in their faith is due to their exemption from prayer and fasting during menstruation, and the proof of their intellectual deficiency is that the testimony of two women equals that of one man. There is no doubt that such deficiencies have their own reasons and wisdom, ultimately relating to the differences between men and women. If God exempted women from prayer and fasting during menstruation, it was because they experience a state of illness during that time and require more rest, and because their condition is not suitable for worship and prayer. Similarly, the equivalence of two women's testimony to one man's is due to their emotional susceptibility, which may lead them to testify in favor of one party and against another."

2.2. *The View of Differentiating Women's Testimony to Protect Them*

Women's testimony in civil and criminal cases is recognized worldwide. However, in Islamic jurisprudence and law, a woman's testimony is not independently admissible and must be corroborated by men's testimony.

This issue has been interpreted as a deprivation of women's fundamental rights and a form of gender discrimination. However, the reasoning in Islamic jurisprudence and law is that the non-acceptance of women's testimony from a theological and jurisprudential perspective is not a deprivation of their

rights but rather a form of protection from the consequences of testifying.

The opinions of Imami jurists regarding the validity of women's testimony fall into two categories:

1. **Substantiality:** Some jurists consider women's testimony valid only where explicitly stated in legal texts. In certain cases, they accept only women's testimony, in others, they deem it invalid unless corroborated by oaths or combined with men's testimony.
2. **Indicative Nature:** Other jurists view women's testimony as indicative, basing its validity entirely on the judge's confidence.

Legal scholars, following Imami jurisprudence, have expressed similar views. A detailed examination of the available evidence reveals that testimony can be categorized as substantial in matters of divine limits (Hudood) and indicative in non-Hudood cases.

2.3. *The Validity of Women's Testimony in Divine Rights (Hudood)*

There is consensus among jurists that certain crimes, such as adultery, sodomy, and lesbianism, require the testimony of four male witnesses. For cases involving theft, slander, apostasy, and drinking alcohol, two just male witnesses are required.

1. In Hudood, women's testimony alone cannot prove any of these offenses. In cases like adultery, it can be proven with three just male witnesses and two just female witnesses or with two just male witnesses and four just female witnesses.
2. In civil matters or non-Hudood personal rights, non-financial cases cannot be proven solely by women's testimony, even if combined with men's testimony.
3. In financial matters, the testimony of two women, combined with one man, can prove a claim.
4. In limited instances, some matters can be proven solely by women's testimony, such as childbirth, virginity, internal defects of women, menstruation, and similar matters, where men are not usually present. Generally, wherever women's testimony is admissible, two women's testimony equals one man's.

5. In some cases, women's testimony can partially establish a claim. For example, in matters of inheritance:
 - Four women's testimony establishes the full claim.
 - Three women establish three-fourths.
 - Two women establish half.
 - One woman establishes one-fourth.

This system, with minor variations, is consistently mentioned across jurisprudential texts. Both Shia and Sunni jurists largely adhere to these principles, generally rejecting women's testimony in Hudood and Qisas cases but accepting it in financial matters as equivalent to one man's testimony.

2.4. *The View of Prohibiting the Exploration of the Reasons Behind Sharia Rulings*

Some scholars argue that one should not pursue the wisdom and reasons behind Sharia rulings and regulations. They contend that our obligation is to derive God's rulings from Sharia evidence, but understanding the philosophy or wisdom of such rulings is neither a duty nor often within our capacity. Once a ruling is obtained from the Quran and Sunnah, it must be accepted, and efforts to ascertain or justify the philosophy and wisdom behind it should be avoided, as divine rulings may be based on hidden wisdom that is incomprehensible to humans.

Ibn Arabi, the author of *Ahkam al-Quran*, commenting on verse 282 of Surah Al-Baqarah and the phrase "that if one of them errs, the other can remind her," states:

"God, the Exalted, enacts whatever rulings He wills, and He is more aware than anyone of the wisdom and expediency of His decrees. He is not obligated to inform people of the wisdom and benefits of these rulings."

However, some scholars have discussed the rationale and wisdom behind such differences. Among these views, some attribute the lower intellectual capacity of women compared to men as the reason for these rulings. They argue that the equivalence of two women's testimony to one man's is evidence of women's intellectual deficiency, citing Hadiths in support of this claim. Regardless of the authenticity of such narrations, this perspective has existed historically and may still persist today.

3. **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

Since the establishment of the United Nations on October 24, 1945, promoting women's rights and creating equal opportunities for them has been a central focus of the organization. The UN has thus become a leader in advocating for and protecting women's human rights, eliminating violence against women, and eradicating all forms of discrimination. This effort began with the adoption of the Universal Declaration of Human Rights in 1947 and continued with the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social, and Cultural Rights (1966).

These efforts aim to ensure that women achieve equal human rights across civil, political, economic, social, and cultural domains. By addressing gender equality in opposition to gender discrimination, women can distance themselves from poverty, exploitation, and fear of the future, enabling them to fulfill their true roles in international society with dignity and social presence.

The UN itself took the first steps in this regard by ensuring gender equality in administrative roles within the organization. The UN emphasizes that eradicating poverty and hunger, achieving universal education and affordable healthcare, and combating diseases can only be accomplished through equal participation of men and women (González et al., 2018; Kardavani & Ghavam, 2021).

CEDAW identifies any distinction, exclusion, or restriction as discrimination against women and aims to eliminate such disparities. However, some domestic scholars justify issues like inequality in testimony and inheritance through hidden divine wisdom or by framing them as removing burdens from women. Article 2 of CEDAW suggests that states incorporate gender equality in their constitutions and domestic laws to prevent legal discrimination against women (Al-Aidi & Kadem Madhloom, 2022; Rahbari, 2023).

One example of discrimination against women in domestic law is legislation derived from jurisprudential precedents, such as in inheritance, testimony, judiciary, and blood money, where equality between men and women is absent. These laws, influenced by jurisprudential theories, conflict with international documents, including CEDAW and declarations from global women's conferences.

It seems appropriate for domestic legislators to reconsider criminal and civil laws with respect to the global perspective on women's issues and international documents aimed at eliminating discrimination, while also respecting societal traditions and intellectual heritage.

4. Conditions Regarding the Content of Testimony

Testimony must be such that the court can utilize it to uncover the truth. The primary issues concerning testimony include the witness's certainty, the conformity of testimony content with the subject of the case, and consistency between different witnesses' testimonies.

4.1. Certainty of the Witness

Article 1315 of the Civil Code states:

"Testimony must be based on certainty, not doubt or suspicion."

Thus, testimony based on doubt or suspicion lacks validity and can only be considered as circumstantial evidence.

4.2. Conformity of Testimony Content with the Subject of the Case

Article 1316 of the Civil Code provides:

"Testimony must conform to the subject of the case. However, if it differs in wording but aligns in meaning or is less than the claimed amount, it does not cause harm."

It is evident that if testimony conflicts with the claim or exceeds the plaintiff's claim, it is subject to scrutiny.

4.3. Consistency Between Witnesses' Testimonies

The content of witnesses' testimonies must be consistent and not conflict with one another. Article 1317 of the Civil Code states:

"The testimonies of witnesses must be unified in content; otherwise, conflicting testimonies will have no effect, except where a definite conclusion can be drawn from their statements."

Therefore, differences in wording do not invalidate witnesses' testimonies as long as a unified meaning can be inferred.

Additionally, Article 1318 of the Civil Code clarifies:

"Differences among witnesses regarding specific details do not pose an issue if they do not result in discrepancies in the subject of the testimony."

5. Conditions Related to the Subject of Testimony

The subject of testimony is the substantiation of the claimed right, meaning the right for which the case has been initiated. Therefore, the conditions for testimony depend on the nature of the case. Based on the Civil Procedure Code, these conditions can be categorized into three types of cases:

5.1. Conditions for Non-Financial Cases

Non-financial cases are proven with the testimony of two men. According to Article 230(a) of the Civil Procedure Code, cases such as divorce, its types, revocation of divorce, and other non-financial matters (e.g., being Muslim, maturity, injury, amendment, forgiveness of retaliation, agency, and wills) are proven with the testimony of two men. As an exception, marriage—though a non-financial matter—can also be proven with the testimony of two men or one man and two women (Article 230(d)).

5.2. Conditions for Financial Cases

All financial cases are proven with the testimony of two men or one man and two women. Article 230(b) of the Civil Procedure Code states:

"Financial claims or matters aimed at financial objectives, such as debt, sale price, transactions, endowments, rent, wills benefiting the claimant, usurpation, unintentional offenses, and quasi-intentional offenses resulting in blood money, are proven with the testimony of two men or one man and two women."

If the claimant cannot provide the required evidence, they may prove their claim by presenting one male witness or two female witnesses, accompanied by an oath. In this case, the witness testifies first, followed by the claimant's oath.

5.3. Conditions for Women-Specific Cases

Cases specific to women can be proven with the testimony of four women, two men, or one man and two women. Article 230(c) of the Civil Procedure Code states:

"Cases typically within the knowledge of women, such as childbirth, breastfeeding, virginity, and internal defects of women, are proven with the testimony of four women, two men, or one man and two women."

6. Testimony in French and English Law

The French Civil Procedure Code dedicates Articles 199 to 231 to the conditions of testimony and the hearing of witnesses. The French Civil Procedure Code recognizes two forms of testimony: written and oral. Article 199 of the French Civil Procedure Code provides:

"When evidence by testimony is admissible, the judge may hear the declarations of third parties who possess knowledge relevant to the facts of the case. These declarations, whether written or oral, are received in the form of written testimony or witness interrogation."

Article 201 of the same code specifies:

"Written testimony must be issued by individuals qualified to provide testimony."

Regarding eligibility to testify, the first paragraph of Article 205 states:

"The declarations of any individual may be heard as testimony unless they are deemed incompetent to testify in court."

The same article also addresses the issue of witnesses taking an oath, stating:

"The declarations of individuals who cannot be heard as witnesses may still be accepted under the same conditions without requiring an oath. However, the declarations of family members in cases involving divorce or legal separation cannot be accepted as testimony."

The court judge may question witnesses individually and in an order determined by the judge. Witnesses' statements are heard in the presence of the parties or their representatives who have been summoned. However, the judge may, under certain circumstances, request one of the parties to be absent from the hearing, while still ensuring their right to be informed of the witnesses' statements. Witness testimonies are also heard in the presence of the legal representatives of all summoned parties.

In contrast, Article 240 of the Iranian Civil Procedure Code limits testimony documentation to the recording and signature of the witness's statement. The French legislature, however, provides more detailed requirements. For example, Article 210 of the French Civil Procedure Code mandates that witnesses declare

their full name, date and place of birth, residence, occupation, nationality, and any familial, marital, or financial ties with the parties involved.

Article 209 of the Iranian Code of Criminal Procedure (enacted in 2013) partially addresses these gaps. It requires investigators to inform witnesses of the sanctity and penalties for false testimony and to document their name, surname, father's name, age, occupation, education level, religion, residence, email, phone numbers, criminal record, and any familial or financial relationships with the parties involved. These details are often collected in standard forms used in civil cases.

Article 211 of the French Civil Procedure Code requires witnesses to take an oath and testify truthfully. It states: *"Individuals summoned as witnesses swear to tell the truth. The judge reminds them that false testimony will result in civil penalties and imprisonment. Individuals whose testimony is heard without an oath are still informed of their obligation to speak truthfully."*

Similarly, Article 236 of the Iranian Civil Procedure Code requires the judge to remind witnesses of the sanctity and civil liability of false testimony, requiring them to swear to tell the whole truth and nothing but the truth. Article 209 of the Iranian Code of Criminal Procedure further emphasizes this, while Article 210 requires the witness to swear to truthfulness before testifying. However, both French and Iranian laws allow for the hearing of testimonies without an oath in cases where witnesses are unable to take an oath, provided they are still committed to speaking truthfully. False testimony in such cases is subject to civil and criminal penalties.

A significant point noted in French law, which is absent in Iranian law, is the prohibition of witnesses reading testimony from a pre-prepared text during court proceedings. While both Iranian Civil and Criminal Procedure Codes remain silent on this issue, Article 212 of the French Civil Procedure Code explicitly states:

"Witnesses may not read their testimony from a pre-written document."

Article 238 of the Iranian Civil Procedure Code prohibits the parties from interrupting witnesses during testimony. While the use of the term "statements" implies that testimony must be delivered orally, it does not clarify whether witnesses may read from a pre-prepared document.

However, Note 2 of Article 204 of the Iranian Code of Criminal Procedure states:

"If the evidence in the case is not limited to witness testimony, testimony may be obtained electronically, in compliance with electronic trial regulations."

This provision indicates that witnesses may rely on pre-prepared statements during electronic hearings, potentially allowing for the same in civil matters.

7. Limits of a Judge's Authority in Evaluating Testimony

7.1. Testimony in Legal History

Legal history demonstrates that testimony is among the oldest forms of evidence used by societies to resolve disputes. Testimony holds significant importance in Islamic law, being one of the most pivotal evidentiary methods. This importance arises from its accessibility and the historical lack of literacy and written documentation among populations.

In Iranian law, testimony is recognized as a form of evidence under Article 1258 of the Civil Code, and Articles 1306 to 1311 are devoted to the subject of testimony. Following amendments in 1982 and 1991, Articles 1306 to 1311, except Article 1309, were repealed to expand the scope of testimony as evidence. Article 1313 underwent modifications, and in 1988, the Guardian Council deemed Article 1309 inconsistent with Sharia. Subsequently, the Civil Procedure Code of 2000 introduced new provisions regarding testimony in Articles 229 to 247.

Testimony is defined as the statement of a third party, not involved in the case, about a right belonging to one of the litigants and against the other. Some legal scholars define testimony as:

"The non-expert disclosure, based on personal knowledge, of a specific right or a particular Sharia matter, not regarding oneself but in favor of another, without harm to oneself, with the intention of participating in the realization of justice or fulfilling a Sharia obligation in the case at hand."

The credibility of testimony depends on how it is delivered. Witnesses must present their observations and experiences in a way that is comprehensible and effective for the judge. To ensure this, the law sets forth specific conditions, which the judge must verify to assess the credibility of testimony. These conditions are elaborated below.

7.2. Verification of Certainty in the Witness

One of the essential conditions emphasized in Islamic jurisprudence is that testimony must be based on certainty. Witnesses must possess personal knowledge about the matter they testify to, making it credible for the judge. This principle is rooted in various Quranic verses and narrations. For example, the Quran states:

"And those they invoke besides Him have no power of intercession—except those who testify to the truth, while they know."

Similarly, the Prophet Muhammad (peace be upon him) stated:

"If you know something as clear as the sun, testify to it; otherwise, do not testify."

Article 1315 of the Iranian Civil Code stipulates:

"Testimony must be based on certainty, not doubt or suspicion."

Judges must assess the validity of testimony based on personal knowledge rather than assumptions, imaginations, or conjectures. Witness testimony does not have to rely solely on visual or auditory perception; other senses, such as taste and touch, may also serve as valid means of perception. For example, when the nature of the subject permits, knowledge obtained through hearing rather than seeing is sufficient.

The method of obtaining certainty depends on the matter at hand. For instance, physical actions like usurpation and wrongful possession require visual perception, known as ocular testimony. Similarly, cases like divorce require simultaneous seeing and hearing, where testimony from deaf-mute individuals may not be accepted. Additionally, legal and customary presumptions, which require interpretation, cannot serve as the basis for a witness's certainty.

It is important to note that the "certainty" required of witnesses is not philosophical certainty (i.e., an absolute conviction with no possibility of error). Instead, it refers to common certainty, which the general public considers to be absolute. However, even slight doubt or hesitation in the witness's mind renders the testimony invalid.

For example, if a witness states they "likely heard" the divorce formula or "probably" heard it, their testimony lacks the essential condition of certainty and cannot be deemed credible by the judge.

7.3. *Evaluation of Testimony's Consistency with the Claim*

Testimony is admissible only if it aligns precisely with the plaintiff's claim. If the claim pertains to one matter and the testimony concerns another, the testimony is ineffective as it fails to substantiate the claim.

For instance, in Decision No. 1391 dated March 15, 1935, the Judicial Disciplinary Court stated:

"Under the condition specified in the lease agreement, repairs and damages to the leased property caused by the tenant are the tenant's responsibility. Witnesses testified that the house was in good condition before the tenant's occupancy and observed broken windows and damaged painting afterward. However, since the witnesses did not attribute the damages directly to the tenant's actions, as stipulated in the lease, their testimony was deemed insufficient to substantiate the landlord's claim, and the court ruled against the landlord without any violation."

Some legal scholars argue that the term "relevance of testimony to the claim" better reflects the spirit of Article 1316 of the Iranian Civil Code than the phrase "consistency of testimony." Article 1316 provides:

"Testimony must correspond to the claim, but discrepancies in wording that do not affect the meaning or cases where the testimony pertains to less than the claimed amount are permissible."

Judges recognize that language is merely a tool for conveying meaning. If the substance of the testimony aligns with the claim despite differences in wording, it cannot be dismissed. However, if the testimony is irrelevant, the judge must reject the request to admit it, provided that the testimony does not establish a logical, customary, or legal connection to the claim.

For example, if a debtor presents witnesses who observed the creditor holding the debt document, this serves as circumstantial evidence of repayment. In such cases, the judge cannot deem the testimony irrelevant and must admit it.

7.4. *Verification of Consistency Among Witness Testimonies*

When multiple witnesses are presented, the credibility of their testimony depends on the consistency of their statements. The degree to which witnesses' accounts align in meaning is critical. This condition is significant not only in cases where the law explicitly requires

multiple witnesses (e.g., Article 230 of the Iranian Civil Procedure Code) but also because courts rarely base their decisions solely on the testimony of a single witness.

Article 1317 of the Iranian Civil Code states:

"Witness testimonies must be consistent in content; otherwise, conflicting testimonies have no effect."

However, even if witnesses' statements are not entirely consistent, the judge may still achieve a level of certainty from them. For example, if a plaintiff claims damages to crops on one hectare of land, and one witness testifies to half a hectare while another testifies to a quarter hectare, the judge may award damages for the quarter hectare, which is the established minimum (Laugerud & Langballe, 2017; Taghipour, 2021).

Furthermore, according to Article 1318 of the Civil Code, discrepancies in the details of witnesses' accounts do not invalidate testimony unless they create a conflict in the subject matter. For example, if one witness testifies that a debt was repaid at the debtor's home while another testifies that it was repaid at the creditor's home, this discrepancy in the mode of testimony undermines the judge's confidence in the testimony's reliability. The judge may then question the validity and credibility of such testimony.

7.5. *Judicial Evaluation of Testimony in Codified Law*

The Civil Procedure Code of 1939, without imposing conditions on the number or gender of witnesses, provided in Article 424 that, *"The determination of the degree of value and impact of testimony is at the discretion of the court."* However, with the enactment of the Civil Procedure Code of 2000, the legislature, in Article 230, conditioned the admissibility of testimony in most cases on the number and gender of witnesses. Additionally, Article 241 of the same law states, *"The determination of the value and impact of testimony is at the discretion of the court."*

This legislative approach, which lacks a legal precedent, has led to varied interpretations regarding the relationship between these two articles. Some scholars have criticized this approach as rudimentary and impractical, arguing that it may create the impression that the judge's conscience and conviction have no bearing on the credibility of witnesses. Consequently, a judge might feel compelled to rely on superficial objections to a witness's character rather than

abandoning their inner conviction when confronted with a deceptive appearance.

These scholars believe that the requirement of multiple witnesses can coexist with the court's discretion to disregard testimony content, provided the court substantiates any decision to dismiss the presumption of truthfulness attributed to an honest witness. Judicial practice reflects this perspective, indicating that invalidating testimony under current conditions depends on conflicting evidence.

Another view holds that: *"In cases explicitly mentioned in Article 230, if the witnesses meet all the legal conditions, including the number and gender specified, and their qualifications are confirmed, the court must accept the testimony and issue a ruling based on it. However, if the witnesses do not meet some legal conditions, or their number and gender do not align with the law, the value and impact of their testimony remain at the court's discretion."*

A third perspective suggests: *"Based on Article 230, which specifies the number of witnesses required for various claims, the judge cannot issue a ruling based on fewer witnesses than prescribed. However, if the required number or more witnesses testify, their testimony's acceptance depends on the judge's evaluation."*

A fourth opinion asserts: *"In Sharia, testimony is considered independent evidence, and its validity does not depend on the judge's confidence. The determination of the value of testimony in Article 241 refers to verifying the Sharia-based conditions of the witnesses. If these conditions are met, the judge must accept the testimony."*

A fifth view posits: *"The determination of the value and impact of testimony by the judge does not imply that the circumstances are entirely subject to the judge's discretion. Instead, the judge must assess the qualifications of the witnesses and their testimony. If the legal conditions are met, the judge must act based on the testimony; otherwise, it must be entirely rejected."*

8. The Importance of Evaluating Witness Testimony Based on Their Physical and Psychological State

The human brain receives information through the five senses, all of which are prone to errors. Sensory errors can distort perception, such as visual, auditory, and tactile errors. For instance, the common phenomenon of mirages on hot asphalt exemplifies visual error, where the brain misinterprets sensory data to perceive water

where none exists. Similarly, auditory errors are illustrated by the Doppler effect, where the sound of an approaching and then receding train seems to change pitch due to the brain's misinterpretation of sound waves.

Tactile errors occur when both hands are exposed to vastly different temperatures (e.g., one hand in cold water and the other in hot), then placed in water at a moderate temperature. The brain interprets the temperature differently for each hand. Olfactory and gustatory senses also exhibit errors; for instance, in a perfume shop, after smelling several scents, one loses the ability to distinguish between them. The sense of taste struggles to identify similar or mixed flavors accurately. Human perception is highly susceptible to internal and external influences. Hunger, for example, might cause someone to misread the word "book" as "food." Observations are constantly shaped by factors like motivation, personal beliefs, and cultural influences. These variables often lead to errors in testimony due to issues like mood disturbances, anxiety, emotional states, inattention, memory limitations, spatial and temporal distortions, age, habits, delusions, and sensory impairments.

Testimony has two aspects:

1. **Subjective:** The witness's psychological capacity to testify.
2. **Objective:** The inherent nature of the object or event being testified about.

These two aspects form the basis of the witness's perception. Once registered in the brain, the memory must be recalled to be conveyed to the court. Memory recall, which begins as a voluntary act, becomes semi-automatic over time. Initially, memories are spontaneously triggered by association, but when faced with conflicting thoughts, doubt can arise, clouding the witness's confidence and credibility.

Furthermore, humans tend to create logical connections between events they remember, often altering or exaggerating details to make their recollections coherent. Experience shows that many memories are not exact replicas of past events, particularly those further removed in time. Emotional states also influence memory, as recollections adapt to align with personal preferences or interests.

These errors and inaccuracies undermine the credibility of testimony. Witness reliability is further compromised

by the interplay of physical senses and cognitive biases, creating a cascade of potential errors. The judge's role in meticulously evaluating testimony against these influencing factors is critical in determining its credibility (Koushki & Amini, 2017).

9. Formal Evaluation of Testimony

The formal evaluation of testimony, sometimes referred to as its admissibility, concerns assessing the relevance and effect of evidence in a case, which the legislature has identified as a common rule for all evidence. Based on this principle, the formal conditions for the admissibility of testimony are briefly outlined below.

In Iranian law, testimony, influenced by French legal principles, has historically been subject to many limitations. However, through reforms and the removal of certain provisions in the Civil Code to align it more closely with Islamic law, testimony has gained increased importance. In Iranian law, except in cases requiring specific evidence—such as the transfer of registered real estate (Articles 46-48 of the Registration Law) or the transfer of business goodwill (Article 19 of the Landlord and Tenant Act of 1977)—testimony is admissible for all legal acts and events.

One issue that may challenge judges in practice is the admissibility of testimony against the content of an official document. Article 1309 of the Civil Code states: *"Claims contrary to the provisions or content of an official document cannot be proven by testimony."*

However, in 1988, the Guardian Council deemed this article contrary to Sharia and announced:

"Article 1309 of the Civil Code, which invalidates Sharia-based testimony against credible documents, contradicts Islamic principles and is therefore annulled."

This annulment has led to disagreements among legal scholars about whether the article remains valid. Many argue that the Guardian Council's action was legally improper and believe the article remains in effect. Proponents of its validity point out that the legislature did not amend or repeal Article 1309 during the 1991 Civil Code reforms, which suggests its continued enforceability. Furthermore, judicial practice has shown reluctance to prioritize testimony over credible documents, as maintaining the credibility of official documents ensures a proper balance against circumstantial evidence, oaths, and expert testimony.

Other legal scholars argue that the annulment of laws falls outside the Guardian Council's jurisdiction, but they also contend that Article 1309 is practically unenforceable, as evidenced by judicial precedents. Before the annulment, the scope and application of this article were already limited. For instance, they note that if claims contrary to the content of official documents cannot be proven by testimony, how can one prove forgery or fraud? Additionally, they argue that the article only restricts testimony that directly contradicts the provisions of official documents, which does not constitute a significant limitation. This interpretation suggests that the term "document" in this context refers narrowly to *acte* (a formal legal act) rather than *document* in the broader French sense. In cases where a document includes written acknowledgment by its signatory, such acknowledgment takes precedence over testimony due to its evidentiary weight, especially since official agents' testimonies are also embedded within the document.

The Judicial Affairs and Legislation Department of the Iranian Judiciary affirmed in its Opinion No. 1290/7 (May 20, 1998):

"Considering that the 1991 Civil Code reforms did not address or repeal the text of the aforementioned article, Article 1309 retains its enforceability."

In 2022, the Human Resources and Cultural Affairs Directorate of Tehran's Judiciary published a book titled *Evidence in Judicial Practice*. In Section 2(a) on documents, the book references a Supreme Court ruling, which states:

"The Seventh Division of the Court of Appeal of Hamadan Province, in reversing the initial verdict and ruling against the plaintiff's claim, relied on Articles 1309 and 1257 of the Civil Code. However, according to the Guardian Council's ruling, Article 1309 of the Civil Code was deemed contrary to Sharia and annulled. Consequently, reliance on this article is legally unjustifiable. Therefore, in cases involving official documents, testimony may be used to substantiate the plaintiff's claims."

10. Evaluating the Evidentiary Power of Testimony

Article 230 of the Iranian Civil Procedure Code categorizes cases that may be proven by testimony and specifies the conditions, number, and gender of witnesses based on the type of claim. Judges can only accept requests to hear testimony if these legal

conditions are met and the testimony has evidentiary value. For example, if a plaintiff seeks to prove the occurrence of a divorce but presents witnesses other than the two male witnesses required, the judge must reject the request to hear the testimony (Pour Gharamani & Negahedar, 2018).

11. Testimony and Legal Doctrine

The removal of Articles 1306, 1307, and 1308 from the Civil Code has been widely criticized by legal scholars. Historically, Iranian law has placed significant emphasis on written documents over oral testimony. In a written system, parties document their agreements and sign them to prevent disputes.

One legal scholar remarked on the legislative changes after the 1979 Revolution:

"The removal of Articles 1306, 1307, and 1308—innovations of the Civil Code—has limited the evidentiary power of testimony in contracts, following the example of French and English legal systems and many other countries. In the past, illiteracy and lack of access to writing materials meant people could not prepare formal documents. Today, testimony and presumptions are considered weaker forms of evidence because witnesses are prone to forgetfulness, inaccuracy, and dishonesty. Thus, laws in various countries emphasize the preparation of ordinary or official documents in contracts, restricting the evidentiary value of testimony."

The documentation of agreements prevents debtors from denying obligations and reduces frivolous lawsuits, benefiting the judicial system by saving resources and simplifying court proceedings. Removing the limitations on testimony allows opportunists to bring baseless claims, reverting to outdated practices without justification.

Article 1313 of the Civil Code originally provided six clear and verifiable conditions for witnesses, such as the absence of criminal convictions or disqualifications under court rulings. These conditions were modeled after foreign laws but were replaced with five historical and religious requirements, such as justice, faith, and legitimacy of birth.

In the past, where communities were small, and people knew each other intimately, judges could reasonably assess such qualities in witnesses. However, in modern cities with unprecedented population growth, it is

unrealistic to expect judges to investigate such characteristics for every witness (Bell et al., 2011).

12. Conclusion

The integration of economic and political considerations into legal rules, which manifest in social issues, has driven modern law toward the rationalization and critique of legal norms. In contemporary legal systems, mysticism and traditional ideologies have no place, and rationality prevails. According to Max Weber's sociological perspective, rationality underpins all aspects of modern legal systems, distinguishing Western civilization from others, particularly those in China, India, and the Middle East, which are often based on traditional and doctrinal systems.

The evidentiary weight of testimony varies depending on its ability to compel the judge's conscience. Evidence categorized as "criticizable evidence" grants the judge greater evaluative discretion but does not exempt them from providing logical reasoning for rejecting or disregarding such evidence. Failure to adhere to this principle renders the judgment subject to annulment. Thus, even criticizable evidence must adhere to its own logical and rational framework, which will be discussed further in subsequent sections.

Authors' Contributions

Authors contributed equally to this article.

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In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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