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Relatives' Testimony in Courts from the Viewpoint of Iran Law

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ABSTRACT

Testimony is one is the oldest evidences to prove a claim and the historical study of law shows that in all legal systems for a long time it is considered among the most important evidences. However, about its scope of credit and its value has always been controversial. In the jurisprudence and law of Iran, "relatives' testimony" is unclear, especially that in the former code of civil procedure the kinship was considered as a barrier to the testimony. This issue in the new code of civil procedure is not discussed clearly, so it is unclear whether the kinship is one of the obstacles to testify or not? What concludes from the legal Articles and is recorded in the specific form of testimony is that the research's witnesses should not be in-laws or blood-related relative up to the third class of the second category and, if this relationship is discovered, either by affinity, delinquent, witness or defendant or the court, the testimony of the witness would be void a revision would be required only can be present in the court for giving some information.

KEYWORDS: testimony, witnesses, kinfolk, civil procedure of Iran.

INTRODUCTION

Given that offenses of the orders and the laws of God and committing criminal acts prevents of the human growth and leads to the social collapse. Islam, in addition to training commands, development and strengthening the beliefs and the necessary incentives sanctions has also punishments for the rebellious and transgressors and to prevent intrigue and corruption of others. In Islam, to prove the crimes some ways are predicted and one of these ways is to testify. However in the new civil procedure of Iran this article is removed and no new article is incorporated within instead of it, but rather this is not discussed and consequently has led to the ambiguity.

Testimony

Testimony means the definitive news or testifying, or emphasizing on the availability of the right news in favor of one of the parties of the quarrel and against another. In more simple terms, testimony means stating the rightness of claim in favor of one of the parties of the quarrel and against another (Karimi, 2007: 20).

Being relative termly is the same special relationship obtained between two persons or things, e.g. the relationship between husband and wife, or the relationship between father and son and grandfather and child. It is valid between one person and others, but it is further valid for the relationship between relatives and the tribe and it is said that it is a middle relationship between good and bad. This closeness sometimes occurs between two other people whom have no relative relationship together.

Testimony means the statements by people outside the claim about it with the meaning that he has seen or heard the claimant issue or has felt it by his sensory feelings personally. Testimony after confession is considered as the strongest reason. Although with passage of time, testimony as an evidence in the criminal cases is weakening and its legal value is decreasing, but Iran Law by inspiring from the religious sources deems testimony as reliable and gives high value to it. On the other hand, in determining the qualification of testimony and witness is very fastidious in order to make the lie testimony by the piety and non-honor witnesses discredit. One of these conditions which are discussed in jurisprudence and legal literature is lack of relative correlation between the witness and one of the parties to the controversy. Recently, some amendments to the civil procedure law have provided confusion in this field. Article 413 of the former code of civil procedure has placed this under the qualification of the witness and has stipulated that "in the following cases, parties of quarrel can void witnesses:

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1. When between the witness and one party of the quarrel, there is a relative affinity of the third degree by the second category,
2. When between the witness and one party of the quarrel, there is a relationship of the servant and boss.

Stating the testimony in Iran Law

The main question in this case is that given the ethical and religious requirement that the witness should give his information to the judge, whether there is also any legal requirement or not? Answer to this question, considering that the testimony is one of the most important tools of justice and from the other hand, the basic principle is exoneration of denying, its necessity would be doubled.

Article 38 of the Iranian constitution states: [… any torture to extort confessions or acquiring information is forbidden. Compulsion of individuals to testify, confess, or take an oath is not allowed and such testimony, confession, or oath is null and void. Violation of this rule is punishable by law. In other laws, the testimony has two duties: (1) being present to the court, when invoked; (2) to swear on his honesty prior to stating the testimony without any reference to the testimony and no enforcement for these two tasks are available].

Testimony requirements

1.The testimony must be certainly and surely.

Witness who testifies to something should be sure about and if testifies when he is suspicion and doubtful, his testimony would have no credit. He should by using his apparent senses to being sure on the testimony. This way when his testimony is about what he has seen, he would be called a visual witness and his testimony is due to his hearing sense then he would be called an auditory witness. So who testifies the seizure, confiscation, theft, loss or injury should had seen the case, so, in this cases the testimony by a blind witness is not valid. On the contrary, in these cases the testimony of the deaf and the mute should be considered credible, because they can by writing or gesticulation to be sure about the confession and it is possible by using his hearing sense and the hearing sense is not needed. Article 1315 of the Civil Code states that testimony should be based on certainty and not doubt.

2. Testimony must be consistent with the claim.

3. The testimony of witnesses shall be in accordance to each other. Differences in verbal speech of witnesses, when they are in agreement on the meaning do not invalidate the testimony of the witnesses, because the terms in testimony are intended to discover the truth and if the content of speeches of witnesses is the same would prove the case. For example consider the following articles:

Article1316 the Civil Code: the testimony must consistent with the claim, but if they are opposite literally and the same in meaning or less than the claim would be favorable.

Article 1318 of the Civil Code: the differences of the witnesses about the issue if do not lead to discrepancies in the subject of testimony would be acceptable.

Article 1317 of the Civil Code: The testimony of the witnesses should be united in terms of context, so if witnesses testify differently, their testimony would be void, unless when in their statements a certainty to be determined (Imami, 1956: 199).

Witnesses

Witness definition: witness is a person who states something in favor of a party and against another party of a quarrel. Mohaghegh Damad also has said: witness is someone who tells something that is in the hand of some person for someone else, and in fact he is the bearer of testimony and his stator (Mohaghegh Damad, 2008: 59).

Witnesses' conditions: in relation to the witnesses' conditions that their testimony proves a crime, two types of conditions are mentioned: the general condition of the testimony, and special circumstances of any crime. For the general condition in all crimes, the witnesses should have the following requirements:

1.Maturity: the testimony of non-discriminator immature person is not allowed, but about the acceptance of the testimony of immature in the murder and injuries there are differences among the jurists. Imam Khomeini considers the testimony of the discriminator immature in the murder and injuries as acceptable (Khomeini, 2005: 20). Ayatollah Khoei says that the testimony of discriminator immature children is acceptable only about the children provided to two conditions: first, the lack of their dispersion after the incident; second, they should be collected for an allowed action. In the case of children's contradiction, their first statements should be accepted (Khoei, 1986: 23). But, Mohaghegh Helli states that the children's testimony is not acceptable in any way or in any case, unless when they are matured (Mohaghegh Helli, 1989: 1187).

2.Wisdom: impossibility of the acceptance of the testimony of the insane and crazy is in consensus and also is one of the fundamentals of Islam. However, the testimony is the cyclic insane when being healthy is accepted, provided that when testifying he is healthy and this has proven to the judge.

3. Protection: witness must have the power of protection. The testimony of someone who often makes mistakes and the oblivion, forgetfulness and ignorance prevails in his testimony cannot be trusted, regardless of being just (Mousavi Khomeini, 2005: 22).
4. Justice: in this there is no disagreement. Shaykh Tusi in his detailed book wrote: the Sharia justice means being just in religion, behavior and rules (Odeh, 1426 AH: 697).
5. Not being enemy: the testimony of enemy against his enemy is not allowed, provided that their feud to be in relation to the world issues such as property, inheritance, trade and so on, because the hostility for the earthly affairs is prohibited and thus the testimony of those who have committed unlawful acts cannot be trusted, but if the hostility of the person is because of immorality and irreligion then such hostility does not prevent from accepting testimony.
6. Frustration of fatherhood: the testimony of the child is not accepted to harm the father. However, Imam Khomeini said that this non-compliance is questionable. But, according to the Shiite jurisprudence being relative does not void acceptance of testimony. So, the testimony of father against his child, the testimony of brother in favor of his brother, testimony of the father in favor of his child and testimony of husbands in favor or against each other is acceptable.
Testimony of child against his mother, grandfather, grandmother and foster parent is not subject to the aforementioned ban. So, mother would be as like as father, especially that Saheb Javaher to confirm is has said that "testimony to the detriment of the father not only is non-acceptable, but in fact means to deny and reject the words of the Father, which committing such an act results in impiousness that in turn avoids acceptance of the testimony (Odeh, 1426 AH: 697).
7. Not being accused: someone who is the beneficiary cannot to testify, e.g. testimony of a partner in favor of his partner or the testimony of alieutenant in favor of his client as well as the testimony of the heir or someone who is beneficiary of the inheritance.
According to proviso 2 of the Article 1313 of the Civil Code, the testimony of someone who is beneficiary or some rights in the dispute is not accepted. Article 155 of the Code of Criminal Procedure has also declared that not being beneficiary is one of the conditions of witness. In the Former Code of Criminal Procedure, the Article 413 of the Civil Procedure Code has declared situations in which the testimony would not be accepted:
1. Having a relative closeness or affinity of the third degree by the second category,
2. Having a relationship of the servant and boss.
3. Presence of a criminal or civil litigation between the witness and the person who has given evidence against him. And if a fight between the witness and someone against him the testimony is stated. If criminal dispute there had been available between the witness and the defendant and five years in the case of a criminal or two years in the case of misdemeanor has not passed of its occurrence, in this case parties of quarrel can testify against each other. In the new Code of Civil Procedure, this Artic is completely removed and it seems that in these cases, evaluation of the testimony and confirmation of the qualifications of the witness is allotted to the discretion of the judge. So there may be a witness despite having the aforementioned relationships do not be recognized beneficiary, whereas witness despite not having the aforementioned relationship to be recognized beneficiary and consequently his testimony might be rejected (Karimi, 2007: 23).

Conclusions

With consideration and investigation as well as comparing the Former and New Legal Articles of the Code of Criminal Procedure and Articles of the Civil Law it reveals that in the Former Law among the cases in which the testimony of witness would be void include: having kinship relationship between the witnesses and parties of quarrel, but according to the New Civil Procedure Law, approved in 1999, the former act with respect to Article 529 of the Civil Procedure Code is no longer valid. Of course, some people still believe that the testimony of relatives is not plausible yet or their credibility is to provide information and should not be seen as a witness, which may be considered as a legal or religious proof and the importance of the result of this context would become obvious in the oral agreements or written contracts, which occurs in a family and private environment, where those who testify are only close friends and relatives and foreign individuals have no entrance within them to become present in the court and to testify.

Although at tops of expression, it is stated that the judge must ask the degree of being relative in terms of blood-relative or affinity of the two parties of the case, but never in Article 155 of the Criminal Procedure Code there is no reference to the kinder relationship in the 8 paragraphs of the witness' conditions. Also, no reference is made to the necessity of not having closeness or kinder relationship of the witness with both parties of the quarrel.

The opposite concept to is the rule to permit the correctness of its occurrence so that even in the fifth problem of Tahrir al-Vasileh of Imam Khomeini it is said: [kinder relationship does not prevent from accepting testimony and the mere fact that the witness is his son or his father does not make his testimony in favor or against him to be

rejected, but the testimony of the Father and the Son in favor or against each other and the testimony of the brother in favor or against his brother as well as the testimony of the other relatives for each are acceptable, and ….].

It seems that the merely being relative in terms of blood-relative or affinity does not prevent their testimony, but with respect to the other witnesses circumstances it can be voided where, for example, they are directly beneficiary, despite the witness is relative of the defendant but it may claims criminal records, the witness may have hostility with parties of the dispute or another cause of rejection of the witness conditions may there exist. In these cases, regardless of witness being relative and non-relative with parties of the dispute, his testimony cannot be cited as legal and religious reasons to issue a verdict, because according to the Article 241 of the Civil Procedure Law, the recognition of the value and effectiveness of these testimonies is allotted to the court.

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