



A Comparative Study of Judicial Evaluation of Testimony in Islamic and Positive Law

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Abstract

In new legislations, there is a trend to enhance the power of the civil judge as in criminal affairs and have more trust in him in order to discover the truth. Therefore, the rules limiting the judge's diagnostic power are decreasing, in such a way that the traditional view based on separating criminal cases from civil lawsuit has disappeared in proving. The positive law system of Iran, following Islam, the constitutional and legal principles of which are sincere and conscience confidence of the judge based on free evaluation of evidence and impressed by the world's legal system, is moving fast toward the free evidence system to find the truth and administer justice. Its feature is free legal evaluation of the evidence to help the judge to evaluate any evidence such as testimony.

Keywords: Evidence evaluation, truth discovery, testimony, judge, science.

Introduction

Legal procedure is inspired by a certain school like other legislations of and state, according to the thoughts and trust foundations of the legislator. Except Islamic school, liberalism and socialism are among the major schools affecting the procedure.

The free evidence system is developing fast around the world to find the truth by transferring extended authority to judges. It is the result of inspectional procedure and impressed by socialism insight, It is inevitable for the judges to have freedom in evaluating the civil evidence to find the truth and it has made the advanced legal systems to accept it. The transnational civil procedure, which is one of these codes, states in clause 6, principle 16: "the court must evaluate the evidence of the parties freely..." and in clause 2 rule 28 states: "the court must evaluate the evidence" In addition, the American federal legislation of proving evidence states this in clause 1, article 34: "Although there is no comparative establishment is present in dispute rules of evidence legislation, but the court has the power to specify more value to an evidence compared to another based on what he concludes from the case conditions. In the court, the fact finder (judge or jury) decides about reliable subjects and the value of testimony¹." The present study is intended to notify the importance of reasonable freedom of testimony's legal evaluation, the need to apply it in legal life and its impact on legal procedure besides answering the question of what is the civil procedure's objective in Islamic jurisprudence and positive law. It also plans to notify the importance of reasonable freedom of judicial evaluation of testimony and the need to apply it in judicial life and its effect on the procedure to lead the

pessimistic views of trusting the judge toward a reasonable procedure to administer justice.

The Procedure's Objective

The judge's authority, in which there are still ambiguity and questions, is affected by the procedure's objective based on civil evidence; the ambiguity which has religious jurisprudence and legal base, because most jurisconsults have defined the judgment as dispute resolution. Its legal basis is the traditional view of acquisition prohibition of evidence and some still regard it as an exit from impartiality. Therefore, it is necessary to regard this fact before inspecting the value and importance of testimony is achieving the procedure's objective.

The truth discovery theory in Islamic jurisprudence: Liberalism school believes that for the permanence survival of the society. Personal freedom and rights should be supported. With an insight toward the governance of lawsuit parties on procedure, following this school results in the fact the judge waits for the parties to state their legal evidence and then he is the official who resolves the dispute passively with the supposed evidence of legal value. Against this view stands the socialism school. In this school, the judge wants to discover the truth and with extended legal authority "he tries to compensate the inequality between the parties by seeking help from the society's battle and power to protect the defenseless and obtain the beneficiary"². In fact, "he is the judge of truth not claims"³ and this will result in the conformity of legal truth to actual truth and the legal verdict conforms to justice⁴. This sort of evaluating the evidence and its effect on justice has resulted in naming this method as "the effect of evidence on the wise

power”⁵. Islamic procedure, the base and pivot of which is religious law impressed by divine religion and the objective of which is providing the worldly and here after prosperity of humans, has established the objective as providing truth and justice and the worldly and hereafter prosperity. The judgment’s objective in Islam is not just closing the case officially or presenting a high rate of investigation, rather applying justice and equity⁶. In spite of its similarity to investigation system in transferring the power to the judge, which is seen as a way to find the reality, it is not contained in any of these two schools, but this religion is based on the faithful people’s trust⁷. Referring to Islamic resources, it has become clear that administering justice and avoiding carnal desires are the major objective based on the precepts of the Qur’an and Sunnah⁸ and this is regarded as a new objective in current civil procedure⁸.

There are numerous verses and hadith emphasizing on adjudication, which is the truth. Allah says in the Qur’an: O David! Lo! We have set thee as a viceroy in the earth; therefore judge aright between mankind, and follow not desire that it beguile thee from the way of Allah (S^haad, verse: 26).

And when kinsfolk and orphans and the needy are present at the division (of the heritage), bestow on them therefrom and speak kindly unto them (An Nisa', verse: 58).

How come they unto thee for judgment when they have the Torah, wherein Allah hath delivered judgment (for them)? Yet even after that they turn away. Such (folk) are not believers (Al Maidah, verse: 42).

Lo! Allah enjoineth justice and kindness (An Nahl, verse: 90).

Say: My Lord enjoineth justice (Al A'raaf, verse: 29).

We verily sent Our messengers with clear proofs, and revealed with them the Scripture and the Balance, that mankind may observe right measure (Al Hadid, verse: 25);

The verse “(O man), follow not that whereof thou hast no knowledge” (Al Israa', verse: 36), which is explicit in the judge’s access to the truth in addition to the verses 45, 47 and 48 of Al Maidah⁹.

In addition to the Qur’an, many hadiths are quoted from Imams about the importance of procedure and adjudication, because adjudication is the major objective of judicial system, services and administering the rights of the poor. Imam Ali (PBUH) says: I’ve heard from the prophet (PBUH) that no society is amended unless the oppressed takes his right from the oppressor without stammering. It can be said that according to this hadith there should be no obstacle on the way of adjudication for the oppressors¹⁰.

Despite these reasons, referring to jurisprudence resources and observing the definition the jurisconsults have suggested for judgment as the dispute resolution, this question raises that why

do the jurisconsults call judgment as dispute resolution in spite of knowing these reasons? To remove any uncertainty this is the answer: although in defining judgment, some jurisconsults regard it as the dispute resolution and say: “judgment is adjudicating among people in the case of quarrel and resolving disputes”¹¹⁻¹³. Alternatively, some of them say about the verses, which order to administer right and justice: “the aim of the verses is truth and justice conforming to judicial criteria”¹⁴. However, in contrast, some jurisconsults talk clearly about discovering the reality and administering justice as the major objectives¹⁵ and it is said, “justice and right, especially the latter, means the justice or right which is in accordance with the reality”¹⁶. Sabzevari also believes that mentioning the dispute resolution is jurisconsults’ definition is because they have not had extended authority to make the judicial system themselves, and most of the judgments has been about disputes and quarrels¹⁷.

Apparently, what is shown from the evidence is that, the Islamic judgment’s pivot is based on finding the actual truth and mentioning dispute resolution, which has come in the procedure definition, is not the objective of it¹⁸. If we want to regard dispute resolution as the objective of procedure, we would be involved in a cycle, because we regard judgment as are solution and in fact, we have said that judgment and sentence are moving on their own path¹⁹. Therefore, it should be said that dispute resolution, which is brought from the judgment definition, means the end of procedure and this ending can result in dispute resolution in particular or truth discovery; in other words dispute resolution includes dispute resolution in particular and truth discovery.

Truth discovery theory in positive law

In jurist’s point of view, regarding truth discovery as an end is obvious. Most of the jurists believe that, the judge is not only responsible for dispute resolution and resolving private disputes, but also he should make the typical and material truth clear²⁰. Because, civil procedure, the main foundation of which is the wise policy, is a technique to find the truth although civil procedure considers dispute resolution as well (article 3, civil procedure code). But, its objective is finding the truth, the reality which is connected to the history and judges try to shed light on that reality, which is hidden in the darkness of the past, be effective methods and manifest is as much as possible²¹.

Bonnier says: the law which tries to satisfy human’s conscience by regulating justice rules is responsible for another human’s need which is finding the truth and there are various reasons and devices with the help of which human’s mind can find it²².

Jurists do not doubt in the necessity of finding the truth, but their major consideration in finding the truth is the extent of civil judge authority to find it and they are worried that the judge deviates from impartiality with this extent of authority and causes the misuse.

However, finding the truth is the ideal perfection and the end of procedure. Wisdom does not let to leave what is supposed to be reached and all of the efforts done to obtain it, and to yield the possibilities. The judicial policy has not involved in such an old-fashioned thinking and has not left the procedure's objective to these uncertainties, which are a reminder of traditional thinking. This reminds us of the ever-increasing trust the legislator has in the judge, because "it is the judicial policy of each state and the degree of trust in the judge that determines the adjustment and agreement of regulation and justice"²³.

In finding the truth, it is necessary for the judge to have more extended authority to ask any explanation needed from the parties and summon them to do so. That is why the evidence and rules of evidence are accessible and he should be able to evaluate them, and the legislator considers this objective²⁴. This developing trust trend started from the previous decades, i.e. since amending article 8 of the rule of justice law amendment 1978, and then article 28 of forming general court (ratified in 1979) was approved and finally article 199 of new civil procedure code legitimated the freedom and authority of the judge explicitly, to guarantee finding the truth. It is a truth that finding of which is a clear responsibility of the court that there is no need to express it openly in legislations²⁵. Human has sought the fact that what justice is from the day they have known themselves and wanted to observe justice in judgment, because they are historical twins²⁶.

Adjudication is obligatory and it is the judge's responsibility, which is lawful and good. Therefore, the judge should apply this lawful fact, so if he knows the truth of a lawsuit, he cannot refuse applying the lawful. Therefore, in order for the judge to bear his responsibility, it is necessary to provide the means to create the knowledge, and make the judge sure about the quality and nature of the reality and truth through his authority and provide power in evaluating the evidence, in order to make it possible to adjudicate and administer justice.

Among the main and judicial principles of Islam are evaluating and having inward and absolute confidence of the evidence and if the inward belief of the judge is against rules of evidence it is not allowed to follow it²⁷. It is the judge's duty to use any means to find the truth. If it was discovered by righteous witness, he can announce the verdict, but if by two righteous witnesses the truth wasn't found and wasn't verified, he must not announce the verdict²⁸. Finding the truth is the base for evidence, whether we are talking about law or another science²⁹. Therefore, we must not emphasize the means more than objectives, and regulations should be enacted for the principle of the judge's authority in evaluating all of the evidence, the objective of which is providing effective regulations to find the truth, and the requirement for which the Iran's legislation system has taken effort similar to other advanced civil procedure systems.

To find the actual truth, in civil procedure code (enacted in 2001), Iran's legislator does not give this authority to the judge

to ignore his own knowledge about the truth and just try to resolve the dispute on the strength of the false confession of the defender or the testimony that he is aware of its falsehood³⁰. It is a fact that religious jurisprudence emphasizes on it. Halabi states: "the correctness of the judgment is by confession or evidence and conditioned swear to help the judge in reaching the knowledge about them"³¹. This perfection is ideal for any «civil justice» which can obtain the objective (absolute) truth, in which the procedure's duty is obtaining the verdict's objective, i.e. right and justice, and this cannot be achieved unless accepting freed will in evaluating the evidence³². The civil judge is not obliged to announce the verdict based on the available evidence in the case against his inward convincing. He is allowed to evaluate the evidence to achieve the real objective and in the case of acceptance, announce the verdict based on that. The objective is finding the truth and the rules of evidence are the path to achieve it³³.

The transnational civil procedure, as an advanced rule in civil procedure has established in rule 2-28 that: "the court must evaluate the evidence freely..." because "the events are verified when the trial is convinced about the reason and its correctness commonly"³⁴. Therefore, we should not expect the judge to announce a verdict just by relying on the evidence and the claim that the plaintiff has presented to him, against what the plaintiff has presented to the court that hasn't been true in reality, an action which considers the judge as a storyteller to blame him³⁵. In Iran's law, the legislator shifts the course of procedure from the traditional theory of resolving the disputes to the truth discovery by ignoring it, and it seeks the truth by giving extended power to the civil judge and it has predicted the dispute resolution as the last solution in the case of not finding the truth. Therefore, resorting to dispute resolution is not the procedure's objective, but "this is the necessity of the procedure that calls announcing such a verdict, because every dispute should result in a verdict and end, although the judge has not reached the positive knowledge and contentment"³⁶.

The judge's authority in evaluating testimony in Islamic jurisprudence

One of the rules, mentioned in some books of Fiqh, is "legal evidence". The content of this rule denotes the legal evidence that the judge should follow it. In the case of obtained legal evidence "according to the jurisconsults, observing the contents of the evidence is obligatory for the judge and it is imposed to him. In other words, the presumption for the witness's speech truth is among the judicial presumptions and it is not dependent on the situation of the case to let the judge to have authority in evaluating and accepting it"³⁷.

Shahid Sani believes that in asserting the difference between confession and legal evidence, unlike confession, proving the effect of the legal evidence in verifying the truth requires announcing the verdict by the judge³⁸. Habib-Allah Rashti, after Shahid Sani's quote based on the necessity of the judge's verdict

after the witness's testimony to verify the truth, states that the judge's verdict is ineffective in verifying the truth. He also says this fact is just true about verification, and the truth is verified merely by the testimony, although giving effect and applying the justice depends on the judge's order³⁹.

Some jurisconsults regard the obligation of the judge to announce the verdict on the circumstance of the testimony against analogy, because testimony is a report in which there is the possibility of truth and falsehood. Ibn Qayyim Joziyah (Hanbali) believes that the judge must use any means to seek the truth, even if it is the testimony of a truthful witness. Because, legal evidence is a means to find the truth, adjudication and affirmation of which is necessary, and its annulling is unlawful. Ibn Najim (Hanafi) states in his book, *Ashbah*, that in the case of uncertainty, the judge can delay issuing the verdict and this is an opportunity which allows the judge to evaluate the testimony⁴⁰. Ardebili states: the evidences should be regarded and followed as a means and it is only valid, when the reality is not clear to us and there is the possibility of influencing the reality. However, if we know about the falsehood, which is against the reality this validity makes no sense; because all of the emphasis is merely for maintaining justice measurements and observing the rights. Because the validity of the legal evidence is a means and its being regarded as an objective is improbable, therefore, in the case of the clear evidence's falsehood, it cannot be a proof⁴¹.

The authority of judge in evaluating the testimony in positive law

Iran's civil procedure law (passed in 1940) has predicted without the condition of the number or gender of witnesses in article 424 "it is the court that recognizes the value or effect of the testimony". By passing the civil procedure law (passed in 2001), in article 230 of it the legislator has stated that in most disputes the testimony is dependent upon the number and gender of witnesses and in article 241 of this law it is prescribed that: «recognition of the value and effect of the testimony». This type of legislation with no legal background has resulted in different interpretations when addressing these two articles together, in such a way that some of the jurists have regarded the legislator's act as primitive and inapplicable which can cause this suspicion that the judge's conscience and contentment has no effect on the witnesses' truthfulness. This will result in the fact that the judge will not ignore his inner voice against the witness and his deceitful appearance, and try to act based on his conscience contentment through formal objections to the witness's personality⁴². And they believe that the necessity of the number of the witnesses and the possibility of the court's deviation from the content of testimony are retractable, but with the condition that the court must present some reasons to invalidate the honesty of the righteous witness and the jurisdiction's precedent continues this process⁴³. Noticing this view states that invalidity of the testimony is dependent on the evidence contradiction in current situation.

Another view is that "in explicit lawsuits of article 230, if the introduced witness or witnesses have all of the established legal conditions, and their number and gender is based on established legal order and the witness's condition is obtained, the testimony is imposed to the court and the court is bound to announce the verdict based on the testimony. But if witness or witnesses don't have the established legal conditions or their number or gender is not of established legal order, recognizing the value and effect of the testimony is up to the court"⁴⁴.

The third view: "According to article 230 of the civil procedure code which has determined the number of the required witnesses to verify different disputes, the judge can not announce the verdict for less than that number of witnesses, but if the required or more number of them witnessed, accepting their testimony depends on the judge's opinion"⁴⁵.

Fourth view: "legal evidence is considered independent proof lawfully and its validity does not depend on judge's assurance. Recognizing the value of the testimony of article 241 of the civil procedure code means obtaining the lawful conditions about witnesses and if these lawful conditions are present they are imposed to the judge"⁴⁶.

Fifth view: "Recognizing the value and effect of the testimony by the judge does not mean that the situation is committed to him, but the judge investigates about the witness and testimony's conditions. If the lawful conditions are provided, he acts based on the testimony, otherwise he rejects it completely"⁴⁷.

The necessity of legal evaluation of testimony

Before commenting about the judge's power for testimony in current situation, it is necessary to first, investigate the importance of evaluating testimony.

Testimony's validity results from two legal presumptions; one is bearing the testimony or understanding the reality correctly and the other is the witnesses' truthfulness in expressing the testimony⁴⁸. Therefore, the importance of legal evaluation of the testimony should be considered from two aspects.

The importance of evaluating testimony with respect to the physical psychological condition of the witness: Most of the time, testimony is baseless and makes the judge to be led into an error, because eyes and ears make many mistakes and this is the result of the psychological talents and capabilities of the witness in addition to the effect of internal and external factors. Human's observations and perceptions and changing because of a series of internal and external factors and because the perception power of human consists of selective and reformatory functions, it is not always able to present a clear image of the event. Mostly, personal memory and perception being interviewed is impressed by a collection of abilities, viewpoints, motivations, personal beliefs and cultural and

environmental factors. Factors, which result in human errors during testimony are too many among which include: health disorders, anxiety, excitement, carelessness, low memory, time and space dimension, age, type difference, habits and illusion⁴⁹.

Testimony includes two stages psychologically; one is subjective, which means the psychological ability of the person to testify and the other is objective, that is the features of the event or affair, which is the subject of associative testimony. These are the foundation of the individual's perception from the witnessed. Before recording the perception in the mind, perception must be remembered to be presented to the judge. In fact, remembering the memory's content in testimony is a voluntary fact in the beginning; then it almost becomes automatic. First, they come successively by automatic memory association dynamism. However, when the individual's thoughts face other thoughts this trend is stopped and uncertainty, which has been hidden in him grows immediately and makes him distressed, and surprised. This mental condition is one of the damages, which distorts the validity of his sayings⁵⁰. Besides to the fact that human being wants to create a logical relation between the events he can remember and put aside the insensible details. This remembrance represents some events more intensive than the reality or adds some details to make the whole memory understandable. It has been proven experimentally that most of the past events are not the same as reality when they are remembered and it is obvious that the more the memory is near present, the more it is close to reality. The passive background of any individual affects his/her memories, because our memories do not have a stable and they change to conform to our taste and interests⁵¹. The set of errors and mistakes the witness makes, always threatens the value and validity of his/her testimony. The reason for this errors and mistakes is that his/her soul and wisdom is captured by his body and his/her senses, imagination, inclinations and sensualities interfere their understanding and cause a series of mistakes⁵². The judge's clear-sightedness emerges when he can evaluate the testimony, regarding these effecting factors.

The importance of evaluating testimony because of material civilization sovereignty: Referring the civilization revolution history reveals that the more luminous culture and knowledge is among the world's people and they seem more civilized, the more declined is morality and religion among them. Purity, beliefs and honesty which have been regarded as the social security of previous communities, are lost from people's lives and suspicion and libertinage are replaced and people can not be satisfied with spiritual securities to protect the rights between their relations⁵³. It is here where the role of the judge's inward faith and belief and its effect on testimony becomes important. Secular civilization sovereignty in spiritualities enhances this possibility that the testimony is not true. However, it is because of factors such as rancor, envy, spite, personal interest, political thoughts and interests. Lying is a serious threat for fair procedure, an injustice that is resulted from the heart of truth⁵⁴. If the testimony is imposed to the judge, there is the danger that

he announces the legal as illegal or vice versa in spite of knowing the truth, which is an illegal and indecent matter.

Nowadays, most of the states have left the value of the testimony to the judge because of the dangers that threaten the testimony's truth, in order to find the truth. Comparative law shows that the judge's authority is increasing in this regard and the limitations existed in the past are decreasing. Therefore, new legislators emphasize the judge's view more⁵⁵. In Iran's law system, the uncertain position of legislator related to the judge's authority has started discrepancy. I have seen before that jurists have different views toward the new law of civil procedure. It seems that the legislator should be aware of the effects of secular civilization on spiritualities and other factors that endanger the truth of testimony. The legislator, aware of the testimony risks, can extend the judge's authority dramatically to attain the truth. If he develops the extent of its proof. Therefore, in deducing the law, we should lead the mind to the direction that conforms to the sensible social and belief changes and the legislators' viewpoint. Civil procedure law has created the numeral condition of witnesses in positive law (article 230). Although it is impressed by jurisprudence but it is not present in the known jurisconsults' viewpoint verification. Because article 241 has left the value of testimony to the judge's view, unlike the known viewpoint. There is no evidence present to impose the testimony to the judge in the case of attaining the number condition; while otherwise, the judge's authority in verifying the testimony is stipulated (article 241 of civil procedure code). It is not exaggeration if we say that the legislator's act has given a legal frame to the procedure, because, in effect, the courts do not confirm their confidence based on just one witness. Because testimony is informative and in wisers' point of view the information's validity basis is its ensuring (truth-making)⁵⁶. In our view, the numerical condition of witnesses is the acceptance condition. If this minimum number, which has been common in effect before legislation, does not exist and it cannot be completed by complementary oath, the judge can not announce the arrangement of witness's testimony hearing because in that case the testimony does not have the proving power (article 200 of civil procedure code). Nevertheless, issuing the arrangement of hearing the testimony has nothing to do with imposing the testimony value based on attaining the numerical condition of witnesses. Rather, article 241 of civil procedure code has left recognizing the value and effect of the testimony to judge's view and in confirming this point article 171 of criminal procedure code has provided that, if the witness's court is introduced and they have the legal conditions their testimony is accepted and otherwise it is rejected. Verdict number 7/6154-16-09-2001 announced by the Department of Law and Judiciary legislation, confirms this view: «article 230 of civil procedure code of general and revolutionary courts in civil affairs, provides the form, number and combination of the witnesses without regarding the testimony's content. However, article 241 of the code provides the effect and value of the testimony content, attaining truth and evaluation of which is assigned to the related court (Judicial Affairs, 2010: 129/22). Therefore,

testimony whether direct or indirect, is measurable and the number of witnesses, which is a condition to form this reason, has no opposition to its being measurable. In other words, the legal quantity of testimony is does not hinder its legal quality, because the numerical requirement is just effective in forming the testimony. Verdict number 764-15011-1980 of the judge's disciplinary Supreme Court states: «the judge of the court can verify the witness's testimony when the reliance and confidence attributable to the court is obtained from their testimony ...»⁵⁷. This is the requirement accepted by the procedure system of other states. For instance, in England, the witness's duty is to inform the court or the jury about the realities and this right is protected for the court to announce verdict for non-acceptability of it⁵⁸. In Egypt's law, judge's conscience contentment is the basis regardless of the number of witnesses. In addition, in the law of France, which did not verify the testimony of the witness, this issue is abolished in current law⁵⁹. Therefore, mere witness's presentation should not be the objective, because in that case its falsehood is not effective in rejecting it, while it is not the case; it is possible for the judge to investigate for the correctness or inaccuracy of the witness and about the event's characteristics, time, space and quality of it (article 235 of civil procedure code). It is natural that this investigation can lead to some thing contrary to the witness's statements and in that case, the judge cannot issue the verdict based on their testimony, but with the condition that the court should reason to reject the witness. In other words, the judge's view validity is not absolute at all and it is limited because it should be reasonable and proved. Rejecting the witness's testimony should be expressed by reason in the written verdict to make it possible to supervise and review the mentioned reasoning in revision court⁶⁰. Because evaluating the testimony is a substantial fact not a legal, therefore, in Iran's law it is out of the supreme court's supervision like Romanist system of some associate countries of common law like the united states of America⁶¹. However, in conforming the testimony conditions to law, testimony is reviewed by the Supreme Court. It is stated in the Supreme Court's verdicts: «the court should not content itself to their testimony not having the legal conditions when rejecting the witness's testimony. Rather, it should state the contrary side through legal conditions, otherwise the verdict will be violated» verdict number 1566-28/09/1938 and 1331-19/03/1940⁶². What should be mentioned finally is that, if the parties rely on the witness's testimony in former lawsuit, does the judge verify its value according to the presented lawsuit?

Judge is the only person who is qualified to measure the value of testimony, because he has the power to reject the testimony of those who affected or witnessed with bad intention. The faith and inward belief of the judge of the case and its effect on the testimony is very important. Therefore, with the hypothesis that the testimony has satisfied the last judge, maybe it cannot satisfy the present one⁶³. In lawful judicial system, only the judge and the parties can necessarily follow his verdict and he cannot be obliged to accept the last judge's view in evaluating the evidence. Therefore, from jurisprudence point of view, the

judge who issues the verdict should hear the testimony because the verdict of the last judge is not necessarily a proof for him⁶⁴. Therefore, from positive law's point of view, hearing the testimony by the judge who issues the verdict is required (article 235 of civil procedure code). In cases, where it is done by someone else through his supervision (article 245 of civil procedure code) the value of testimony is determined by the investigating judge (article 241 of civil procedure code).

Conclusion

The judge's authority principle in evaluating evidence is required for every judgment because the judge must issue the verdict by obtaining the reality. The lawsuit verification means are the only way to reach the truth ad their value is determined by the contentment they provide for the judge. Therefore, if the judge obtains the contentment contrary to the evidence appearance, he should ignore any contrary evidence. In Islamic jurisprudence, finding the truth and administering justice are the objective too and mentioning dispute resolution is in jurisconsults' definition in its general sense. Because, the objective of any dispute is being resolved and ending it, which is ended by adjudication or in the case of not being accessible, the procedure's necessity, which is setting the dispute by arbitration results in resolving the dispute in its specific sense.

Because the legal policy of each state determines the amount of trusting in the judge, increasing his authority in proving in Iran's civil procedure parallel to finding the truth shows the effect that the judge's authority has on achieving this objective.

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