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A Critical Analysis of the Executive and Judicial Challenges of Testimony upon Testimony in Proving Ta'zīr Crimes in Iranian Law and the Proposal of Reformatory Solutions

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ABSTRACT

Testimony upon testimony, as one of the evidentiary means for proving claims in the Iranian legal system—particularly in ta'zīr crimes—occupies a distinctive position. This evidentiary method is applied in situations where the principal witness is absent or where the possibility of giving direct testimony is not available, relying instead on the testimony of a person who conveys the original witness's testimony. Despite the acceptance of this institution in Islamic jurisprudence and the Islamic Penal Code, its practical implementation within the judiciary faces serious challenges. The most significant of these challenges include ambiguity regarding the conditions for establishing the validity of testimony upon testimony, the risk of abuse of this institutional capacity, the lack of precise guidelines for assessing the accuracy of transmitted testimony, and its potential conflict with the principles of impartiality and procedural justice. From an executive perspective, insufficient training of judges and judicial officers, the lack of effective verification tools, and incomplete coordination between jurisprudential theories and judicial practices have resulted in the limited effectiveness of this institution in proving ta'zīr crimes. A critical examination of these issues demonstrates that, in order to enhance accuracy and reliability in the use of testimony upon testimony, reforms such as the تدوین of transparent regulations, specialized training for judges and judicial officers, the utilization of technologies for the recording and documentation of testimony, and the revision of relevant legal provisions are necessary. These measures can preserve the jurisprudential and traditional status of this institution while aligning it with the principles of fair trial and the requirements of the modern criminal justice system, thereby reducing the risk of infringement upon the rights of defendants and victims.

Keywords: *testimony upon testimony; ta'zīr crimes; executive challenges; judicial challenges; reform of the adjudicative system*

Introduction

The judicial system of every country, in its pursuit of the establishment of justice, the protection of citizens' fundamental rights, and the preservation of public order, is grounded in evidentiary mechanisms for the proof of claims. Among such means of proof in criminal matters, *testimony* has always occupied a central position due to its basis in the witness's direct and unmediated perception of the event, and it has consistently served as one of the most important instruments for discovering the truth and forming the foundation of judicial decisions (1, 2). Nevertheless, situations may arise in which the principal witness, for reasons such as death, illness, absence, or



fear, is unable to appear before the court and provide direct testimony. In such circumstances, and in order to prevent the violation of rights and the stagnation of the justice process, the legal institution of *testimony upon testimony* (or *transmitted testimony*) is introduced as an exceptional solution, whereby a subsidiary witness recounts before the judicial authority what he or she has heard from the principal witness. On the one hand, this institution may function as an effective tool for proving crime; on the other hand, due to its mediated and indirect nature, it faces serious challenges concerning its credibility and probative force (2). The risk of error, forgetfulness, distortion in the transmission of testimony, and the reduced ability of the judge to assess the veracity of the principal witness's statements are among the factors that undermine the reliability of this form of evidence. This inherent tension becomes even more complex in the realm of *ta'zīr* crimes, which constitute a substantial proportion of criminal cases. Unlike crimes subject to fixed divine punishments, in which testimonial rules are applied with strict rigor, the legislator, in Article 204 of the Islamic Penal Code, has entrusted the determination of the value and effect of testimony upon testimony in such crimes to the knowledge and discretion of the judge. Although this discretion may contribute to flexibility in uncovering the truth, it simultaneously creates the potential for inconsistent judicial practices, the acceptance of weak testimonies, and ultimately the infringement of the defendant's defense rights (1). In light of these legal ambiguities, the absence of transparent executive guidelines, and the practical challenges encountered in judicial proceedings, a comprehensive and critical analysis of this institution appears necessary. Accordingly, the present study seeks, through a meticulous descriptive–analytical approach, to examine the substantive and procedural (executive and judicial) challenges associated with testimony upon testimony in proving *ta'zīr* crimes. In doing so, by analyzing statutory texts, legal doctrine, and judicial practices, the study aims to identify existing gaps and weaknesses and, ultimately, to propose concrete reformative solutions at the legislative, judicial, and executive levels, so that the optimal use of this evidentiary tool in the discovery of truth may be ensured while, at the same time, the principles of fair trial and the defendant's defense rights are upheld to the greatest extent possible.

The Concept of Ta'zīr

From a linguistic perspective, *ta'zīr* is derived from roots that convey meanings such as assistance, support, and, in another sense, a form of beating or discipline. One primary meaning denotes honor, reinforcement, and support, while another refers to discipline without a fixed punitive measure, as reflected in the Qur'anic verse: "So that you may believe in God and His Messenger, and support Him, honor Him, and glorify Him morning and evening" (Qur'an, al-Fath, verse 9). Lexicographical analysis indicates that *ta'zīr* encompasses assistance and support accompanied by respect, as well as punishment that is less severe than the prescribed *ḥudūd*; the latter meaning ultimately returns to the former insofar as it involves moral discipline combined with a form of guidance and support (3).

In legal terminology, *ta'zīr* refers to the punishment imposed for offenses for which no fixed *ḥadd* punishment has been stipulated by the sacred law. In addition, the term is also used for the disciplinary correction of a non-offender, such as when a father disciplines his child (4). Shaykh al-Ṭūsī, at the conclusion of the chapter on beverages, states that anyone who commits a sinful act for which no fixed punishment has been prescribed is subject to *ta'zīr*, such as a person who steals property reaching the *niṣāb* from an unprotected place, or property below the *niṣāb* from a protected place, or engages in illicit sexual contact without penetration, or kisses a non-maḥram woman, or insults or strikes another person; in such cases, the Imam imposes *ta'zīr* upon him (5). This

understanding demonstrates that *ta'zīr* operates as a flexible punitive mechanism aimed at discipline and social order rather than the application of predetermined sanctions.

The Concept of Testimony upon Testimony

Testimony upon testimony, which in juristic terminology is also referred to as *testimony over testimony* or *transmitted testimony*, constitutes one of the exceptional and secondary methods of proving claims in the Iranian legal system and is accepted only under specific conditions. The foundational concept of this institution stands in contrast to the primary rule of testimony, namely *sensory testimony*. According to the primary rule, valid testimony is that in which the witness directly and without mediation perceives the disputed event through one of the senses, such as sight or hearing, and recounts those observations before the judge. Owing to the witness's direct connection with the event, this form of testimony enjoys the highest degree of credibility (2).

Testimony upon testimony, however, describes a situation in which an individual (the subsidiary witness) has not directly observed the event but appears before the judicial authority to testify that he or she has heard from another person (the principal witness, who directly observed the event) how the incident occurred. In essence, the subsidiary witness functions as the transmitter and narrator of the principal witness's testimony, and the subject matter of his or her testimony is the very act of testimony given by the principal witness.

The philosophical justification for the existence and acceptance of this institution is rooted in necessity and the prevention of rights violations. The legislator has recognized that a principal and direct witness to a crime or legal event may, for legitimate and unavoidable reasons, be unable to appear before the court and personally testify. Article 199 of the Islamic Penal Code enumerates such reasons as death, illness, absence, or other impediments that render the witness's presence impossible. In such circumstances, if the witness's testimony constitutes the sole means of establishing the truth, disregarding it would result in a deadlock in adjudication and the denial of justice. Accordingly, testimony upon testimony acquires legitimacy as a substitute mechanism and a means of conveying the substance of the principal witness's testimony to the court (1).

For the validity of testimony upon testimony, several essential conditions must be satisfied. First, the impossibility of the principal witness's appearance must be established to the satisfaction of the court. Second, both the principal witness and the subsidiary witness must possess the general qualifications for testimony at the time of bearing witness (for the principal witness) and at the time of giving testimony (for the subsidiary witness), as stipulated in Article 177 of the Islamic Penal Code, including maturity, sanity, justice, faith, and the absence of personal interest (2, 6). This requirement implies that the chain of testimonial transmission must consist exclusively of reliable and qualified individuals. Third, the subsidiary witness must clearly and explicitly state that the testimony has been heard from the principal witness and must transmit its content accurately and without omission.

Nevertheless, due to its mediated and transmissive nature, testimony upon testimony invariably enjoys a lower degree of credibility than direct testimony. This intrinsic weakness stems from the possibility of error, forgetfulness, or unintentional or intentional distortion in transmission, and, more importantly, from the fact that the judge is deprived of a crucial tool for assessing testimonial reliability—namely, direct confrontation with the principal witness and the evaluation of his or her psychological state and sincerity through immediate questioning. For this reason, its probative value in the Iranian legal system is not uniform and varies according to the type of crime. In crimes subject to *ḥudūd*, owing to their gravity and the principle of caution in matters involving life and divine punishments, this form of testimony is entirely devoid of validity (7-9). In cases of *qiṣāṣ* and *diyāt*, it is accepted only under

extremely stringent conditions. However, in the extensive domain of ta'zīr crimes, the legislator, pursuant to Article 204 of the Islamic Penal Code, has delegated the determination of its value and effect to the judge's judicial knowledge. In such cases, testimony upon testimony is generally regarded not as conclusive proof but rather as a strong judicial presumption that, when considered alongside other evidence and indications in the case file, may lead to the formation of judicial certainty and serve as the basis for rendering a verdict (1).

The Principle Governing the Acceptance of Testimony upon Testimony in Law

In the Iranian legal system, the prevailing principle is that testimony, as one of the most important means of proof, must be grounded in the witness's direct and unmediated observation of the event. This rule—commonly referred to as *sensory testimony*—guarantees the accuracy and credibility of the evidence, as it enables the judge, through cross-examination and the assessment of the witness's psychological and behavioral states, to evaluate the witness's sincerity and precision (2). Nevertheless, the legislator, recognizing the complexities of real-world conditions and seeking to prevent the violation of rights and the frustration of the truth-finding process, has accepted the institution of *testimony upon testimony* (or transmitted testimony) as an exception to this principle. The legitimacy and basis for accepting this type of testimony in Iranian law are not unitary or uniform; rather, they are dual in nature and adopt markedly different approaches depending on the type of crime and its gravity. This dual approach is rooted in jurisprudential foundations as well as in the legislative philosophy that distinguishes between crimes subject to fixed divine punishments and ta'zīr crimes.

To accurately understand this dual legitimacy, one must first consider the general framework for accepting testimony upon testimony under the Islamic Penal Code of 2013. Article 199 of this Code sets forth the basic and preliminary conditions for accepting this institution as follows: "Testimony upon testimony is valid provided that the principal witness has died or, due to absence, illness, or the like, his or her presence is impossible." This provision clearly indicates that recourse to transmitted testimony is a secondary and exceptional measure, and that so long as the appearance of the principal witness is possible, the court is obliged to hear the direct testimony. In addition, another fundamental requirement—derived implicitly from the general rules governing testimony—is that both the principal witness (at the time of giving testimony to the subsidiary witness) and the subsidiary witness (at the time of testifying before the judge) must satisfy the legally prescribed qualifications for a lawful witness, as enumerated in Article 177 of the Islamic Penal Code (including maturity, sanity, justice, faith, legitimate birth, absence of personal interest, and absence of enmity) (2, 6). Once these preliminary conditions are established, the foundation for addressing the probative value of transmitted testimony is laid; however, that value varies fundamentally depending on the nature of the crime.

The pivotal point revealing the legislator's dual approach emerges in the distinction between crimes punishable by *hudūd*, *qiṣāṣ*, and *diyāt*, on the one hand, and ta'zīr crimes, on the other. With respect to the former category—crimes of high gravity that directly implicate divine rights or established private rights concerning life and bodily integrity—the legislator, exercising exemplary caution, has adopted a presumption against the acceptance of testimony upon testimony. Article 200 of the Islamic Penal Code explicitly provides: "In testimony upon testimony, the subsidiary witness may testify without the presence of the principal witness. *Hudūd* are not established by testimony upon testimony; however, *qiṣāṣ* and *diyāh* may be established thereby." The accompanying note then prescribes highly stringent conditions for its acceptance in *qiṣāṣ* and *diyāt*, including the requirement that two just men testify upon the testimony of two other just men (or one just man and two just women). This strictness is

grounded in the jurisprudential maxim “*al-ḥudūd tudra’ bi-l-shubuhāt*” (ḥudūd are set aside in cases of doubt). Because testimony upon testimony, by virtue of its mediated and transmitted nature, is inherently susceptible to error, forgetfulness, and distortion—and thus entails an element of doubt—the Sharī’a, and consequently the legislator, has deemed it insufficient to establish serious crimes such as adultery or consumption of intoxicants that carry divine punishments (7-9). Accordingly, in this domain, the governing principle is non-acceptance and maximal precaution.

By contrast, in the expansive domain of ta’zīr crimes—which constitute the overwhelming majority of criminal cases—the legislator’s approach is entirely different, and the governing principle is conditional acceptance subject to judicial evaluation. This shift is embodied in Article 204 of the Islamic Penal Code, which provides: “In ta’zīr crimes, testimony upon testimony shall be heard provided that the principal witness, pursuant to Article 199 of this Code, is unable to appear. Its value and effect in proving the crime shall be determined with due regard to the judge’s opinion.” This provision is the key to understanding the legitimacy of accepting testimony upon testimony in this category of crimes. While recognizing the admissibility of such testimony, the legislator has refrained from prescribing numerical thresholds or complex formal requirements, instead placing the weighty responsibility of assessing its credibility and effect squarely on the judge’s judicial knowledge. This means that, in ta’zīr crimes, testimony upon testimony is not regarded as conclusive proof per se; rather, it is treated as a strong *judicial presumption* that must be evaluated alongside other evidence and indicia in the case file. The judge is required to assess the character and justice of both witnesses (principal and subsidiary), examine their potential motives, consider the degree of consistency between the transmitted testimony and other evidence, and ultimately reach judicial certainty based on the totality of circumstances (1). Thus, the governing principle here is not definitive acceptance but *judicial discretion in evaluation*. This flexible approach enables the judiciary, on the one hand, to employ this tool in the absence of the principal witness to discover the truth and combat criminality, and, on the other hand, by assigning responsibility to the judge, to prevent judgments based on weak or unreliable evidence while safeguarding the defendant’s defense rights. In sum, the legitimacy of accepting testimony upon testimony in Iranian law rests on a precaution-oriented principle for serious crimes and a flexible, judge-centered evaluative principle for ta’zīr crimes.

Conditions Governing Testimony in Testimony upon Testimony

In this regard, several conditions may be identified:

1. Unity of Subject Matter and Meaning in Testimony upon Testimony

The requirement of unity in the subject matter of testimony (*mashhūd bih*) has been emphasized by the vast majority of jurists (8). The necessity of unity in the substance of testimony upon testimony is inferred from the general statements of jurists concerning convergence upon a single meaning. Moreover, the rational practice of reasonable persons (*‘urf al-‘uqalā’*) deems unity of meaning essential for acceptance, in such a way that no probability of doubt, suspicion, or discrepancy arises. This entails unity of subject, unity of time, and unity in the object of testimony—conditions that are necessary to establish conceptual unity.

Pursuant to Article 1317 of the Civil Code: “The testimony of witnesses must be unified in substance; therefore, if witnesses testify inconsistently, it shall have no effect, unless a certain minimum can be derived from their statements.” The concluding clause of the article addresses discrepancies in quantity within the same genus—for

example, where one witness testifies to one thousand dirhams/dinars and another to two thousand—such that the certain minimum is one thousand (9). Article 1318, read together with Article 1316, further clarifies that unity in wording is not required where unity of meaning is preserved; and given the discretionary nature of judicial assessment, no one may fault the judge for failing to derive a certain minimum or for evaluating the credibility of opposing witnesses.

2. *The Requirement of Knowledge as a Governing Criterion among Witnesses*

In Islamic jurisprudence, the foundational principle is that a witness must testify on the basis of sensory knowledge and certainty, and testimony grounded in conjecture or mere supposition is invalid pursuant to the explicit prohibitions found in the Qur’anic verses and narrations. Nevertheless, in specific circumstances and due to practical necessities, an exception to this rule has been recognized. Jurists have held that testimony based on *istiṣhāb* (the presumption of continuity of a prior state) may be accepted. The reasoning is that because attaining absolute certainty is not feasible in all matters, and in order to preserve social order and the regularity of affairs (such as the validity of transactions in Muslim markets), reliance on reliable outward appearances and the prior state of affairs is permissible, and judgments may be rendered accordingly. Thus, while testimony based on mere conjecture is invalid, testimony grounded in reliable appearances for the purpose of establishing matters is deemed sound and acceptable (6).

3. *The Nature of Testimony upon Testimony*

The question of whether “difference” (i.e., non-identity) is required in testimony upon testimony, and the criterion of gender unity between the principal witnesses and the intermediary (subsidiary) witnesses, has always been disputed among Shiite and Sunni jurists. Based on the examination undertaken on this issue, the complexity appears to stem from the fact that jurisprudential treatment has been framed through a foundationalist lens; that is, because there are firm textual bases concerning the necessity of observing the quorum of *two just witnesses* (*‘adlayn*) with respect to intermediary witnesses—texts that are not readily contestable—jurists have sought to articulate a justificatory foundation for the stated legal effects. At the same time, the transmitted narrations do not provide a clear method for establishing a general rule on the necessity or non-necessity of “difference” as such. As a result, scholars have attempted to justify the latter issue by reference to the same underlying rationale, which has contributed to the diversity and fragmentation of opinions in this area. It is on the basis of this perspective that the criteria reflected in Article 188 of the Islamic Penal Code (2013) and its Note 1, as well as Article 231 of the Civil Procedure Code, have been unable to clarify the matter, leading judges to adopt, at times, divergent practices or to seek guidance from higher authorities to resolve the need for determination. The inquiries of this article—through the collection of the proofs advanced by both sides and the emphasis on the necessity of a unified view regarding the present issue—together with two foundations for testimony upon testimony as approaches for correctly determining the aforementioned legal effects, have led to the conclusion that the *evidentiary* foundation should govern matters related to the quorum of witnesses, while the *substitutionary (standing-in)* foundation should govern matters related to the gender of witnesses (6, 8). This approach ensures that jurisprudence is not abandoned, that the foundational character of legal rulings is not called into question, and that the stated effects are stabilized through a rational rule, supported by an interpretive reading of juristic evidence. Accordingly, with respect to observing the quorum, it may be said that since the nature of testimony upon testimony is its evidentiary force, the

requirement of two just witnesses is undeniable; and given that there is no prohibition against a single witness establishing multiple matters, the same approach provides a pathway for two just intermediary witnesses to establish the testimony of two principal witnesses. With respect to the gender dimension of intermediary witnesses, on the basis of the substitutionary rationale, the general stability of women's testimony is affirmed; and because intermediary witnesses are meant to establish the testimony of the principal witness, they possess—at a minimum—the capacity to establish the matter where the underlying subject is proven exclusively by women's testimony or by women's testimony in conjunction with other testimony. In applying this discussion to Sunni jurisprudence, the well-known view among Sunnis accepts two just intermediary witnesses, while Shāfi'ī jurists—because they consider secondary testimony to have a deputizing character—require difference among intermediary witnesses; consequently, in matters established by two principal witnesses, they require four intermediary witnesses, a view that is considered unsupported. Likewise, regarding the probative capacity of a single witness, the Hanbalī jurists generally deem it provable on the basis of the substitutive character of the subsidiary witness standing in place of the principal witness, even though the subsidiary witness bears neither greater rights nor greater obligations than the principal witness. [. Accessory follows the principal.] Apart from them, the dominant view in Islamic jurisprudence, along with Shiite narrations, emphasizes treating the statement of a single witness as an indicium of reality and a confirmatory circumstantial proof (6).

The Legal Status of Testimony upon Testimony as a Presumption (Amārah)

In Article 1258, presumptions are introduced as one of the means of proof, and they fall within the category of grounds possessing shar'ī and legal probative authority. In the Islamic Penal Code as well, Article 211 identifies circumstantial evidence and presumptions as the bases of the judge's knowledge, and requires the judge to expressly state the basis of his or her knowledge in the judgment. In the Note to that provision, statements of informants, local investigations, and inspection of the scene are presented as illustrative examples of circumstantial evidence and presumptions that may serve as the basis of the judge's knowledge. A fortiori, the statement of a witness whose truthfulness is established but who is only a single witness, or a person who—within testimony upon testimony—was the only one who heard the principal witness recount the event at the time of death, if disregarded entirely, would result in substantial rights deprivations. Therefore, testimony upon testimony, even where the quorum is not satisfied—such as a single witness testifying upon a single witness—or where one of the two secondary witnesses lacks legal validity while the other is valid, and similar cases, may function as confirmatory indicia and manifest presumptions, such that the judge attains inner conviction and believes, in conscience, in the truthfulness and correctness of the person's statement (2).

Executive Challenges of Testimony upon Testimony in Iran's Judicial System

Testimony upon testimony, as one of the means of proof in ta'zīr crimes, has a particular position in the Iranian legal system, and it is referenced in Article 189 of the Islamic Penal Code (2013). Despite the statutory recognition of this proof mechanism, its use in Iranian courts faces multiple executive and judicial challenges that have limited its effectiveness in proving ta'zīr crimes. These challenges may be examined in several principal categories: practical difficulties in establishing witness qualifications, social and cultural obstacles, constraints arising from judicial practice, and the impact of the existing legal structures. In this section, each of these challenges is examined in detail through reference to juristic and legal sources and by analyzing Iranian judicial practice.

1- Practical difficulties in establishing witness qualifications

One of the most significant executive challenges of testimony upon testimony in Iran's judicial system concerns the difficulty of establishing the juristic and legal qualifications of witnesses. Article 189 of the Islamic Penal Code, drawing on Imāmī jurisprudence, permits testimony upon testimony in cases where principal witnesses cannot appear in court due to reasons such as death, illness, or lack of access, and where the subsidiary witnesses (witnesses to testimony) possess the qualifications required of principal witnesses, including justice, sanity, maturity, and faith (2, 6). In Imāmī jurisprudence, the justice (*'adālah*) of the witness is one of the key conditions, commonly understood as avoidance of major sins and non-persistence in minor sins (6). However, establishing justice in practice faces multiple difficulties.

First, in Iran's modern judicial system, the judge is rarely able to assess the justice of witnesses with precision, because doing so requires extensive inquiry into a person's moral and religious background—an undertaking that is time-consuming and complex (6). For example, in cases involving *ta'zīr* crimes such as fraud or embezzlement, which often require testimony about specific events, it is difficult to find individuals who both witnessed the incident and meet the justice requirement. Second, the number of witnesses typically required for testimony upon testimony (commonly two principal witnesses and two subsidiary witnesses) intensifies this challenge (8). In many cases, the shortage of qualified witnesses leads the judge to rely on other grounds, such as judicial knowledge or documentary evidence, which in turn diminishes the functional role of testimony upon testimony in practice.

2- Social and cultural obstacles

In addition to practical difficulties, social and cultural obstacles also play a significant role in limiting the use of testimony upon testimony. In Iranian society, general distrust in the judicial system or fear of the consequences of giving testimony—such as retaliation by the litigating parties or legal and social complications—has caused individuals to refrain from offering testimony, especially testimony upon testimony. This issue is more pronounced in *ta'zīr* crimes, which are often connected to financial or social disputes (2).

For instance, in cases involving financial offenses such as breach of trust, individuals may abstain from testifying due to social relationships or fear of reputational harm. Moreover, within Iranian culture, testimony is often perceived as a religiously weighty act that requires justice and truthfulness; at times, misunderstandings surrounding these requirements discourage participation in the process. These social constraints, combined with the juristic complexities, have contributed to the relatively limited practical use of testimony upon testimony.

3- Limitations of Iranian Judicial Practice

Iranian judicial practice itself constitutes one of the key factors contributing to the executive challenges of testimony upon testimony. An examination of judicial case files indicates that judges in Iran tend to rely more heavily on other forms of evidence—such as written documents or judicial knowledge—rather than testimony upon testimony, due to the complexities involved in establishing witness qualifications and the potential for inconsistencies in testimonies (2). For example, in a criminal case heard by the Tehran Criminal Court in 2018, the judge rejected testimony upon testimony on the grounds that the justice of the subsidiary witnesses could not be established and instead relied on material evidence and expert reports.

This judicial tendency is exacerbated by the absence of clear guidelines for evaluating testimony upon testimony. Although Article 189 of the Islamic Penal Code refers to the admissibility of testimony upon testimony, it does not provide sufficient detail regarding the methods for verifying witness qualifications or resolving potential testimonial conflicts. This legal ambiguity has led judges to adopt differing approaches in similar cases, resulting in inconsistency in judicial practice (1). Moreover, the lack of specialized training for judges on how to assess testimony upon testimony—particularly in ta'zīr crimes, where greater flexibility exists—has further intensified this challenge.

4- The Impact of Existing Legal Structures

Existing legal structures, particularly Article 189 of the Islamic Penal Code, also play a role in creating executive challenges. Although this provision formally recognizes testimony upon testimony, it imposes stringent conditions for its acceptance that, in practice, significantly limit its applicability. For instance, the requirement of the presence of two principal witnesses and two subsidiary witnesses, all of whom must satisfy the condition of justice, is impractical in many ta'zīr cases (7). In addition, the lack of coherence between Article 189 and other provisions of the Islamic Penal Code—such as those governing judicial knowledge or documentary evidence—has led judges to prioritize alternative forms of proof.

Another legal difficulty lies in the insufficient attention paid to the diversity of ta'zīr crimes. Ta'zīr offenses encompass a broad spectrum of violations, ranging from financial crimes to offenses against persons. Nevertheless, Article 189 addresses testimony upon testimony in a general manner and does not provide adequate detail for its application across different categories of ta'zīr crimes (4). This legal ambiguity, combined with executive and judicial challenges, has resulted in the infrequent practical use of testimony upon testimony in Iranian courts.

Critical Assessment of Executive and Judicial Challenges in Iran's Judicial System

The executive and judicial challenges of testimony upon testimony in Iran, as discussed in the preceding sections, are rooted in legal structures, judicial practice, and social conditions. These challenges are further reassessed below through a deeper critical analysis.

1- Critique of the Deficiencies of Article 189 of the Islamic Penal Code

Although Article 189 of the Islamic Penal Code formally recognizes testimony upon testimony, its lack of sufficient detail regarding implementation and evaluation has limited its practical utility. The provision merely refers to general conditions—such as justice and the number of witnesses—without offering specific guidelines for verifying these conditions or resolving testimonial conflicts (1). This legal vagueness has led judges to adopt divergent interpretive and applicative approaches, resulting in inconsistency in judicial rulings. For example, in a 2019 criminal case before the Shiraz Criminal Court concerning an insult charge, the judge rejected testimony upon testimony due to the absence of clear evaluative guidance and instead relied on judicial knowledge (2). This example illustrates the ineffectiveness of Article 189 in providing a workable framework.

Furthermore, Article 189 fails to adequately address the diversity of ta'zīr crimes. Ta'zīr offenses range from financial crimes, such as fraud, to crimes against persons, such as insult or assault, each of which entails different evidentiary needs. Nevertheless, Article 189 adopts a uniform approach for all such crimes, rendering testimony upon testimony impractical in more complex cases, particularly financial crimes (4). This legislative shortcoming has encouraged judges to prioritize alternative evidence, such as documents or expert reports.

2- Critique of Inconsistencies in Judicial Practice

Judicial practice in Iran represents one of the principal obstacles to the effective use of testimony upon testimony. An examination of judicial decisions reveals that judges, due to the complexities of verifying witness qualifications and the risk of testimonial inconsistencies, show a greater inclination toward relying on material evidence or judicial knowledge (2). For instance, in a 2020 criminal case before the Tehran Criminal Court involving a theft charge, the complainant invoked testimony upon testimony; however, the judge deemed it unreliable due to minor discrepancies in the subsidiary witnesses' statements regarding the timing of the offense and instead relied on digital evidence, such as surveillance camera footage. This case exemplifies the prioritization of material evidence in Iranian judicial practice.

In addition, the absence of specialized training for judges in assessing testimony upon testimony has intensified inconsistencies in judicial decisions. In some cases, judges have accepted testimony upon testimony when corroborative evidence was present, whereas in similar cases, they have rejected it due to the lack of clear guidelines (1). Such inconsistency not only undermines public confidence in the judicial system but also marginalizes the functional role of testimony upon testimony.

3- Critique of Social and Cultural Barriers

Social and cultural barriers—such as public distrust of the judicial system and fear of the consequences of giving testimony—play a significant role in reducing the use of testimony upon testimony. In Iranian society, individuals often refrain from testifying, particularly as subsidiary witnesses, due to concerns about prolonged judicial proceedings or social repercussions, including retaliation (4). For example, in a 2021 criminal case before the Isfahan Criminal Court, subsidiary witnesses in an insult case refused to appear in court out of concern that their testimony might harm their social relationships. This distrust, rooted in procedural complexity and fear of accusations of false testimony, has severely restricted the application of testimony upon testimony.

Reform Proposals to Improve the Use of Testimony upon Testimony

In light of the foregoing critiques, the following reform proposals are advanced to enhance the use of testimony upon testimony in Iran's judicial system. These proposals are inspired by successful models in other Islamic jurisdictions and adapted to Iran's specific conditions.

1- Amendment of Article 189 of the Islamic Penal Code

To eliminate the ambiguities of Article 189, it is recommended that the provision be amended through the addition of explicit executive guidelines. These guidelines should include the following elements:

Framework for Establishing Justice: The definition of practical methods for verifying the justice of witnesses—such as reliance on judicial records or certification by credible authorities—could expedite the process (2). For instance, a centralized system for reviewing witnesses' backgrounds could be established.

Differentiation among Ta'zīr Crimes: Article 189 should prescribe distinct conditions for different categories of ta'zīr crimes (financial, offenses against persons, moral offenses). For financial crimes, where material evidence is more prevalent, less stringent testimonial requirements may be appropriate, whereas stricter conditions may be imposed for crimes against persons (4).

Management of Testimonial Conflicts: The adoption of guidelines for addressing minor discrepancies in testimonies—such as accepting non-essential differences, including slight variations in the precise timing of an offense—could facilitate the practical use of testimony upon testimony and prevent its categorical rejection (2).

Conclusion

Testimony upon testimony in the Iranian legal system constitutes one of the jurisprudential–legal instruments for proving claims and, particularly in taʿzīr crimes, may be used as a substitute for direct evidence. This institution, which has deep roots in Imāmī jurisprudence, was originally developed to address situations involving the absence of the principal witness or the impossibility of providing direct testimony. However, the analysis conducted in this study demonstrates that its application within Iran’s judicial system faces significant obstacles and complexities.

From a judicial perspective, the most important challenges include ambiguity in the criteria for admitting and evaluating testimony upon testimony, divergent interpretations and practices among different court branches, the absence of clear standards for assessing the credibility of transmitted testimony, and its potential conflict with fundamental principles of fair trial, such as the principle of immediacy and the protection of the defendant’s defense rights. These challenges have led some judges, despite statutory recognition, to restrict the use of this institution in practice or to accept it only under highly stringent conditions.

From an executive standpoint, serious deficiencies exist, including inadequate specialized training for judges and judicial officers in evaluating indirect evidence; the lack of technical tools for recording and verifying the principal testimony prior to its transmission; the absence of reliable electronic systems for storing, retrieving, and matching testimonial content; and insufficient oversight of the testimonial transmission process to prevent distortion, fabrication, or undue pressure on transmitters. Field observations and documented judicial practices indicate that, in certain cases, testimony upon testimony has even been misused as a means of circumventing evidentiary rules or facilitating fabrication.

In taʿzīr crimes, due to the wide variety of offenses and the legislator’s flexibility in determining punishments, indirect evidence—particularly testimony upon testimony—is more frequently invoked. This situation creates both opportunities and risks: an opportunity insofar as transmitted testimony may, in necessary cases, help achieve justice; and a risk insofar as, if applied without rigorous oversight and transparent mechanisms, it may result in error or the infringement of the parties’ rights.

Recommendations

It is necessary to reform Article 189 of the Islamic Penal Code in such a manner that crimes subject to fixed divine punishments, and taʿzīr offenses expressly annexed to such punishments by statute, are deemed incapable of proof through testimony upon testimony. However, in taʿzīr offenses involving religious prohibitions that are not expressly codified and are not annexed to fixed punishments, testimony upon testimony may be admissible in order to avoid evidentiary deadlock. In such cases, the judge’s knowledge should serve as a supporting element for proof.

Accordingly, in light of the foregoing findings, the following final recommendations are proposed to improve the application of testimony upon testimony in Iran’s judicial system:

1. **Comprehensive legislative reform:** Article 189 of the Islamic Penal Code should be amended by adding explicit executive guidelines. These guidelines should include practical methods for establishing justice (such as reliance on judicial records), differentiation of conditions according to categories of taʿzīr crimes,

and acceptance of non-essential discrepancies in testimonies. Such reform may be undertaken by drawing inspiration from judicial systems that treat testimony as complementary to material evidence.

2. **Standardization of judicial practice:** The development of judicial guidelines for evaluating testimony upon testimony, accompanied by specialized training for judges, can reduce inconsistency in judicial decisions. These guidelines should define clear steps for comparing testimonies and integrating corroborative evidence. For example, in a hypothetical fraud case, a judge could, pursuant to such guidelines, disregard minor testimonial discrepancies where financial documents are present.
3. **Strengthening judicial infrastructure:** The establishment of a centralized body for verifying witness qualifications could accelerate the process of assessing justice. Such a body could examine judicial and social records, reduce the burden on judges, and enhance public confidence in the judicial system.
4. **Enhancing public trust:** Legal protection for witnesses—such as safeguarding identity or mitigating the consequences of accusations of false testimony—combined with public educational campaigns, can increase social participation. This approach has proven effective elsewhere and could likewise be beneficial in Iran.
5. **Utilization of judicial technology:** The adoption of digital systems for recording and evaluating testimonies can improve accuracy and efficiency in adjudication. For instance, digital registration of testimonies may facilitate more precise comparison between the content of principal and subsidiary testimonies.

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Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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