



Research Paper

Legitimacy of Resumption of Jurisdiction in Conclusion Litigation by a False Decisive Oath in the View of Islamic Denominations' Jurisprudence and Iranian Positive Law

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Abstract

From the perspective religions jurisprudence and and the Written Law of Iran, peremptory adjuration is decisive for litigation, just like confession and confession. In many cases, after swearing an oath and issuing a final verdict, the other side requests a resumption of the trial with the ratio of lying to the oath. Due to the fact that the law of civil procedure has recognized the request for resumption of proceedings in certain aspects in final judgments, this article is trying to explain the nature of termination of litigation based on the reliable sources of religious jurisprudence and Iranian law. With an oath, examine the possibility of resuming proceedings under false oath. The main question of this article is whether, from the perspective of Iranian religious jurisprudence and subject law, the claim that the oath is false can be considered as one of the reasons for reopening the proceedings or not? The findings of this research show that the opinion of the religious jurists is that when the verdict is final with the oath of one of the parties to the lawsuit, retrial is not permissible according to Shari'ah, and it will not be heard in the case of a motion. From the point of view of law, although some jurists, influenced by Article 595 of the new French Civil Procedure Code, believe that if the oath is false, the final verdict can be retrialed, but false oath is not a retrial. The presented evidence shows that from the point of view of the legal rules, the resumption of the proceedings in the mentioned assumption is rejected.

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Extended Abstract

1- Introduction

According to Article 1328 of the Civil Code, "The person who is in the position of swearing an oath, if unable to prove the falsity of the other's claim, must either take the oath or delegate the oath-taking to the opponent. If the person neither takes the oath nor delegates it, the defendant will be condemned by the claimant's oath under the judge's ruling regarding the claim for which the oath was requested." (Allāmah Ḥillī, 1402 AH, 5: 145) In some cases, after the defendant or claimant has taken an oath and a final judgment has been issued; one party may contest the result by alleging the falsity of the oath. Despite the criminalization of false oaths, the question raised here, "Whether, in cases where a court's ruling is based on the acceptance of the defendant's oath at the claimant's request (due to insufficient evidence), and considering Article 1331 of the Civil Code, is it possible to seek a retrial under Clause 5 of Article 426 of the Code of Civil Procedure for General and Revolutionary Courts in Civil Matters by proving fraud and deceit used in the court's judgment?"

Therefore, the fundamental issue is to detect the approach of Islamic jurisprudence and the Iranian legal system regarding this matter. "Can the right to a retrial be granted to the claimant after the defendant's oath?" In other words, "Is the retrial considered legitimate in this context?"

2- Method

This article is written to address the practical challenges faced by judges in the courts. The writing process involves

considering the broad applications of the relevant legal provisions and the necessity of interpreting them, consulting Islamic jurisprudence texts, statutory laws, various legal resources, and the legal doctrines of Iran.

3- Result

Findings derived from the article are as follows:

1. From the perspectives of Islamic jurisprudence and law, a decisive oath (*qasam battī*) contrasts with a non-decisive oath (*qasam istizhārī*) and an oath of denial of knowledge (*qasam nafy al-'ilmī*). It serves as a means of proof in a lawsuit and is considered conclusive.
2. According to the Code of Civil Procedure, the grounds for a retrial must be explicitly specified by law.
3. The consensus among Imami jurists regarding retrials in cases of perjury is that once a judgment is finalized based on an oath from one of the parties, a retrial is not permissible in Islamic law and will not be granted, regardless of whether the claimant has forgotten about existing evidence or whether the defendant has imposed a condition for the claimant to waive their right before taking the oath.
4. The origin of the Imami jurists' ruling on the impermissibility of retrials in cases concluded by a decisive oath lies in the effect of the defendant's oath in ostensibly extinguishing the claimant's right, even though the defendant's soul is burdened with the debt and must discharge it.
5. Imami jurists permit the claimant to seek retribution if the defendant



subsequently confesses to having perjured themselves.

6. Jurists of various Islamic schools have accepted the admissibility of evidence presented after a defendant has taken an oath, citing arguments that prioritize just evidence over a false oath. However, they have not explicitly addressed the concept of retrial as an independent legal avenue and, based on their discussions, it can be inferred that they consider an oath to be conclusive evidence and that a retrial cannot be requested without the claimant presenting new evidence.
7. From a legal standpoint, some jurists argue that a final judgment, regardless of how it was reached, can be subject to a retrial if it is subsequently proven that the oath was false. This view is largely influenced by Article 595 of the new French Code of Civil Procedure, which explicitly lists perjury as a ground for retrial.
8. Conversely, other jurists do not consider perjury to be grounds for retrial and instead emphasize the conclusive nature of an oath in a lawsuit.
9. Considering the status of an oath as a means of proof in both Islamic jurisprudence and law, as well as the general principle enshrined in Article 1331 of the Civil Code that an oath is conclusive evidence and no statement contradicting the oath will be accepted, the impermissibility of retrials in cases concluded by a decisive oath is supported.
10. In conclusion, while considering the nature of retrials and factors such as the legislature's intent to limit retrials and

the principle of finality of judgments, it is important to distinguish retrials from appeals and reviews.

11. However, if a judge becomes aware after rendering a judgment that an oath was false, similar to gaining certainty about the falsity of evidence, they are obligated to re-examine the case. It is clear that this scenario is distinct from a retrial requested by one of the parties and is based on the judge's knowledge of the judgment's incorrectness.

4- Conclusion

Findings of this research indicate that in lawsuits concluded with a decisive oath, the party against whom the judgment has been rendered does not have the legal right to request a retrial of the *res judicata*. This recurring scenario in court cases can be addressed and regulated concerning the conclusions drawn from this research.

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6- Authors' contribution

Mohammad Taghi Moradi is the corresponding author of this article. Dr. Mohammad Ali Raghebi served as the co-author and provided scholarly guidance throughout the writing process.

7- Conflict of Interest

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