



## Invisible sociological components affecting witness testimony in the Iranian criminal justice system

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### Abstract

Testimony is when a person who has information about a lawsuit states it to the judicial authorities. Witness testimony is one of the important evidences in criminal law. The issue of the present article is the position of witness testimony in criminal procedure and the level of support for them. The purpose of the present article is to examine the comparative attitude towards witness testimony in jurisprudence, Iranian criminal law and the International Criminal Court. The present article is descriptive-analytical and uses a library method to examine the mentioned question. The findings indicate that witness testimony is of great importance in Iranian jurisprudence and criminal law and is considered one of the important reasons for proving a crime, in such a way that witnesses may be summoned to testify if they deem it appropriate. Witness testimony is also important in the International Criminal Court, but witness testimony is voluntary and there is no compulsion in this regard. The most important effects of the type of attitude towards witness testimony are manifested in the support of witnesses. In Iranian criminal law, various mechanisms have been considered, such as non-disclosure of witness information, remote hearing of testimony, and executive protective measures. These measures in the International Criminal Court are different in some cases, such as non-disclosure of witness information, and similar in others, such as taking executive measures, although the Court, due to its international nature, has limited possibilities in the field of taking executive measures in the protection of witnesses.

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### 1- Introduction

Justice and fairness are concepts that humanity, by its very nature, deeply values and strives to achieve. The realization of justice in society has been one of the most significant goals of the prophets' missions. The most fundamental and crucial arena for achieving justice is its implementation and the assertion of rights in the capacity of judging and arbitration, which is termed "judicial justice." The execution and realization of the sacred concept of judicial justice must encompass both the individual and social spheres of human life. "Individual justice" is the inner disposition that safeguards a person from deviation and compels adherence to religious commands. "Social justice," on the other hand, is the granting of rights to those who are rightfully owed them, in a manner befitting their entitlement. Therefore, the primary purpose of implementing justice is the simultaneous realization of individual and social justice within society.

In his command to Malik Ashtar, after appointing a judge, the Master of the Devout emphasized the principle of judicial independence, making the judge independent of worldly wealth, bestowing honor and

status upon the judge's position, and providing support and ensuring the execution of the judge's rulings. He stated: "Increase the judge's rights and grant him enough so that poverty is removed from him and his need for people decreases. Grant him such a position and status in your domain of authority that none of your nobles and close associates covet that status and position, so that at the peak of that lofty position, he is safe from the schemes and slanders of the ill-wishers, and no opportunity is given to the seditious to instigate trouble regarding him. Seat him near you, endorse his judgment, execute his ruling, and be his supporter".

The independence of the judge and the judiciary is considered a principle of "fair trial" and impartiality in all legal systems worldwide today. Judicial independence means the absence of bias and prejudice, and the independence of the judge's opinion in administering fair judgment. In another sense, it means "the non-domination of other powers over the judiciary." Even in international criminal tribunals, judicial independence is recognized as a factor ensuring impartiality and a key principle of due process. The importance of the independence and status of the judge in Islam is evident to all, and the sacred law's emphasis on its sanctity is not without reason. From the perspective of Islamic jurisprudence, the strength and resilience of society are indebted to the independence and sanctity of judges, and the power or weakness of judicial independence affects the intensity or weakness of societal independence. One aspect of this is that many social, cultural, political, economic, and psychological phenomena in society can be rooted in the judicial conduct of judges and the independence of the judicial system. "Distance from whims" and "following God" can be considered two fundamental conditions and the bedrock of a judge's work and the pillars of judicial independence. Therefore, by legitimizing and attending to the principles of impartiality of the judge and the judiciary, and by establishing fair and equitable trials, the implementation of this fundamental principle can be guaranteed in society and in the thinking of the people and the rulers. The independence of the judge and judicial systems has deep roots in jurisprudence and the religious beliefs of the people. Since secular laws in legal systems are shaped based on cultural components, customs, religion, traditions, and the values and religious beliefs of the people, and become norms or deviations; our country's lawmakers, following the constitution which is rooted in Islamic jurisprudence, have defined the independence of the judge and the judiciary, along with the conditions and qualifications of a judge. This is so that, consequently, the sensitive task of judging and its independence become tangible and perceptible to the general public.

## **2- Theoretical Foundations and Research Background**

**Invisible:** Refers to a phenomenon or issue that is either not observable, or we lack the knowledge/understanding to observe it, or it is only observable mentally.

**Invisible Component:** All influencing factors that are not observable, or we lack the knowledge/understanding to observe them, or they are only mentally observable and affect the actors in the criminal process.

**Actors:** Factors involved in the criminal investigation process, including the judge, judicial staff, lawyer, expert, witnesses, informants, complainant, defendant, judicial enforcement officers, etc., each playing a role in the criminal investigation process in their own way.

**Criminal Process:** A set of organized and sequential actions performed during the criminal investigation process with the aim of reaching a specific outcome.

**Witnesses and Informants:** A witness or informant is a person who reflects or expresses what they have seen, heard, or other testimony that they have incidentally acquired through sensory means regarding a matter, to the judicial authority.

Altavila, translated by Mehdi Kiania, 2017, in the book "Judicial Psychology," concluded that: "Hypocrisy and lies, honesty and emotional states, the influence of time, distance, memories, etc., are factors influencing witness testimony." The relationship of this research to the current study is that the aforementioned research has examined some of the factors influencing witness testimony.

Javer, Hussein – Hussein Hooshmand, 2017, in the article “Violation of Moral Reputation in the Realm of Witness Testimony and Discrediting Witnesses,” concluded that: “In the context of ‘bearing testimony,’ ‘giving testimony,’ and ‘discrediting witnesses,’ where the content of the testimony or discrediting relates to the moral reputation of the ‘witnessed party,’ the ‘witness,’ or the ‘beneficiary of the testimony,’ individuals’ moral reputation may be at risk of violation. Due to the priority of interests in ‘giving testimony’ and ‘discrediting a witness,’ giving testimony or discrediting a witness, even when it leads to a violation of the moral reputation of the witnessed party or witnesses, and sometimes the beneficiary of the testimony, is permissible in consideration of the greater interest and, at the very least, is allowed and therefore among the justifiable causes for responsibility, without any compensation”.

Khodadadi, Abolghasem - Ali Khaladi, 2016, in an article titled “Remote Testimony (Analysis of Article 186 of the Islamic Penal Code),” concluded that: “Remote testimony is divided into non-electronic written testimony, electronic testimony, and live or recorded audio-visual testimony. If the conditions of the witness and testimony are met in general, along with the specific conditions for remote testimony, it will have the power to prove the subject of the claim, as appropriate, in criminal, civil, and commercial cases. It has also been proposed that to regulate its administrative procedures, a circular be issued to provide instructions on how to conduct remote testimony.” The relationship of the aforementioned research with the present study is that the mentioned research examined Article 183 of the Islamic Penal Code regarding remote testimony. Since remote testimony appears to be a suitable solution in some cases to prevent certain invisible components, it is of importance.

### **3- Research Methodology**

The present research is considered applied and problem-oriented in terms of its objective. In terms of data collection methods, information and necessary data are obtained through both documentary or library methods and survey methods. In the survey section, after defining the statistical population and sample population based on scientific sampling methods from various research groups, including judges, court staff, lawyers, and witnesses and informants themselves, the necessary research information is obtained through both quantitative and qualitative methods.

### **4- Invisible Sociological Components Affecting Witness Testimony in the Criminal Procedure**

#### **1-4- Sociological Theories Affecting Witness Testimony**

Witness testimony is one of the fundamental tools in judicial processes that helps the judge and other actors uncover the facts and events of a case. Understanding and analyzing these testimonies can gain greater depth not only by examining their details and accuracy, but also through recognizing the sociological theories that influence the behavior and perception of witnesses. These theories help us understand how social and cultural factors can affect the way witnesses express and interpret events.

Sociological theories examine human social behavior and the various effects that society and culture have on individuals. These theories provide us with tools to understand human behavior and decision-making in different situations. In the context of witness testimony, these theories can explain how social pressures, cultural expectations, and group dynamics may influence individuals’ testimonies.

#### **Symbolic Interactionism Theory**

George Herbert Mead, one of the founders of this theory, believed that an individual’s identity and behavior are shaped through social interactions and interactive processes. In this regard, people in different social environments communicate with others and, through these interactions, assign symbolic meanings to behaviors and events. These meanings affect how individuals perceive and interpret events. Mead, alongside the absence of instinct, like form, points to positive factors that help humans establish meaningful communication with their environment and others. Understanding signs and symbols is one of the most important tools that gives humans the greatest opportunity to communicate with their surroundings. This capacity for reasoning and interpretation is actualized only within the context of reciprocal social relationships and through the process of socialization. Therefore, a human separated from society is not

only no different from other animals, but is even weaker and more incapable than them in life and survival. It is only in a social environment and social experience, and only in relation to other minds, that the essence of the human self is formed and developed. (Tanhayi, 1399: p. 31).

## **2-4- Structuralism Theory and Sociological Analysis of Witness Testimony**

### **Fundamental Concepts of Structuralism Theory**

Structuralism is one of the foundational approaches in social sciences and anthropology that focuses on analyzing the underlying structures of society and their impact on individuals' perceptions, behaviors, and thoughts. This theory is based on the premise that every society is composed of macro-structures that, often hidden, shape individuals' beliefs, norms, and actions. These structures include social institutions (such as family, religion, education system, and judicial system), laws, values, and behavioral patterns. Claude Lévi-Strauss (1963), as one of the pioneers of structuralism, believed that "the true nature of the relationship between language and culture can only be understood if we accept that language is not merely a tool for communication, but a system of signs that structures how individuals perceive and interact with the world. These deep structures, which are largely unconscious, profoundly shape human thought and behavior, organizing social life according to implicit patterns that go beyond individual awareness" (Lévi-Strauss, 1963, p. 38).

Within the framework of this theory, individuals' perceptions and behaviors, including witness testimony in criminal proceedings, are influenced by macro-social structures. Cultural norms and social expectations can affect how a witness perceives an event and how they articulate it in court. For instance, according to findings by Albright (2017), "eyewitness misidentifications may arise due to cognitive biases, social pressures, and cultural differences in perception, all of which influence accurate identification" (Albright, 2017, p. 7759). This finding aligns with the structuralist perspective, as social pressures and cultural differences, as part of society's macro-structures, subtly influence witnesses' perceptions and statements. For example, in the Courtney case, the "own-race bias" as a cultural structure led a Latino witness to incorrectly identify a Caucasian suspect, resulting in a wrongful conviction (Albright, 2017, p. 7761). This example illustrates how cultural structures, particularly racial biases, can act as invisible factors influencing the testimony process.

### **Application of Structuralism in Analyzing Witness Testimony**

Structuralism, by emphasizing the analysis of underlying structures and the relationships among different societal components, offers an effective tool for examining witness testimony in the criminal procedure. In the judicial system, legal structures and procedures play a decisive role in shaping trial processes and the administration of justice. Laws and regulations govern how lawyers, judges, and witnesses interact and indirectly influence how testimony is presented. For example, judicial structures might, by creating institutional pressures, such as standard but rigorous interrogation methods, lead witnesses to provide information that does not align with reality. These pressures can act as invisible factors affecting the accuracy of testimony.

From another perspective, structuralism emphasizes the role of sign systems and language as part of cultural structures. Lévi-Strauss (1963), referring to the role of language as a sign system, demonstrates how linguistic structures can shape individuals' perceptions and behaviors (Lévi-Strauss, 1963, p. 38). In the process of testimony, these structures manifest as a linguistic process that not only reflects objective reality but is also influenced by the vocabulary and discursive structures employed by the witness. For instance, the use of emotional vocabulary such as "terrible" or "frightening" in a testimony might steer the judge's mind toward a biased judgment, whereas more neutral vocabulary can enhance the objectivity of the judgment. This analysis indicates that linguistic structures, as part of cultural structures, can subtly influence judicial decision-making and negatively impact the accuracy of testimony.

### **3-4- Structural Analysis of Testimony: Uncovering Hidden Patterns**

Within the framework of structuralism, structural analysis aims to uncover recurring and underlying patterns in individuals' behaviors and speech. In the context of witness testimony, this analysis can identify common patterns resulting from social and cultural influences that subtly affect the testimony process. These patterns may include specific methods of expression, reliance on shared experiences, or the use of similar narratives. For example, in many criminal cases in Iran, witnesses have been observed using stereotypical phrases such as "I think it was like this" or "I think it was him." These linguistic patterns, which may stem from uncertainty and the influence of social pressures, indicate the impact of cultural structures on how testimony is presented and can reduce its accuracy.

### **4-4- Sociological Analysis of Testimony in Light of Structuralism and Symbolic Interactionism Theories**

The theories of structuralism and symbolic interactionism, by offering both macro and micro levels of analysis, provide a comprehensive understanding of the witness testimony process. Structuralism posits that testimony is shaped within a framework of social, legal, and cultural structures. These structures, including norms, power hierarchies, and media discourses, subtly influence witnesses' perceptions and statements. For example, a witness's social status (such as belonging to a particular class or ethnic group) and the media coverage of a case can influence how they present their testimony by creating preconceived notions in their mind. For instance, in high-profile cases that receive extensive media coverage, a witness might present testimony that deviates from reality, influenced by the dominant media discourse. These effects, acting invisibly, can reduce the accuracy of testimony and negatively impact the judicial process.

In contrast, symbolic interactionism theory emphasizes the momentary interactions within the courtroom environment. This theory suggests that testimonies are shaped through the symbolic meanings that individuals present in court (such as the judge and lawyers) attribute to the situation. For example, the type of questions posed by a lawyer or the judge's demeanor can alter how a witness expresses themselves and the vocabulary they choose. In one case I experienced, leading questions from the lawyer caused the witness to use more emotional and assertive language, which influenced the court's perception and led to a misunderstanding in judgment. This example illustrates that momentary interactions in court, as articulated by symbolic interactionism theory, play a significant role in shaping the content of testimony and can affect the objectivity of the judicial process.

### **5-4- Feminist Theory and Phenomenological Analysis of Testimony**

The foundation of feminist perspectives is shaped by the fundamental assumption that in contemporary societies, women are subjected to a form of structural marginalization. This marginalization is not merely at the economic or political level but is institutionalized in deeper social, cultural, and legal layers. Accordingly, feminists believe that the two dominant phenomena—male dominance on one hand and the social subordination of the female sex on the other—are not only manifestations of fundamental gender inequalities but are directly linked to the patriarchal structure, which has reproduced itself within legal systems as well (Salimi, 1390, p. 261).

### **6-4- Racial Theory and Its Impact on Evaluating Testimony in the Criminal Process**

This section attempts to explain the role of racial theory as one of the most important sociological approaches in analyzing structural inequalities, particularly in the context of the criminal justice process and the evaluation of testimony. This discourse is the product of the author's critical study of legal sociology literature and the analysis of institutional outputs related to criminal justice within the context of racial inequalities.

Racial theory is based on the fundamental assumption that racism is not merely individual prejudice but has an institutional structure, becoming pervasively ingrained at all social levels, including legal and judicial institutions. This theory reveals that racial inequalities are not exceptions but are part of the everyday logic

of operation for many social structures. In this regard, Delgado and Stefancic argue that racism operates in a “normal” and often invisible manner at the core of the legal system (Delgado & Stefancic, 2017, p. 27).

## **5- Elucidation of Research Objectives and Questions, and the Importance and Necessity of Identifying Invisible Sociological Components**

### **Stating the Importance and Necessity of Identifying Invisible Sociological Components**

Identifying invisible sociological components in the criminal justice process means understanding and analyzing hidden social factors that can influence witness testimony. These factors include attitudes, values, social pressures, fear of potential consequences, and other social dynamics that sometimes unconsciously affect witnesses’ decisions and behaviors. Identifying these components is essential because it can contribute to a more just and accurate judicial process. Through this improved understanding, judges and lawyers can develop strategies that provide a safer environment for witnesses, making it more possible for them to offer unbiased and more truthful testimonies. Furthermore, this identification allows for addressing and preventing interferences that might hinder the pursuit of truth and the administration of justice. Ultimately, understanding invisible sociological components can lead to strengthening public trust in the judicial system, as well as reinforcing the principle of impartiality and justice in the criminal proceedings.

Additionally, identifying invisible sociological components allows legal professionals to design the best communication methods and strategies that minimize the negative impact of these factors and guide criminal proceedings toward their primary goal, which is the execution of justice. This action may include training witnesses to resist social pressures and prejudices that might impede the attainment of rights. By making witnesses aware of how invisible factors can influence their perception and reporting of facts, they can be helped to increase accuracy and reduce unwanted susceptibility. Moreover, addressing issues such as ethnicity, social class, and gender is fundamental to identifying and mitigating structural inequalities that may affect witness testimony. This insight can help courts be more sensitive to these factors and their interactions with the judicial system.

In summary, achieving a precise and complete understanding of invisible sociological components empowers us to support witnesses in an environment that encourages fair and impartial testimony. This is crucial for protecting individual rights, ensuring justice in criminal proceedings, and maintaining the integrity and effectiveness of the entire judicial system.

## **6- Invisible Sociological Components**

### **Fears, Personal Motives, and Social Pressures**

Fears and personal motives, as invisible yet highly potent components of social life, play a significant role in shaping the behaviors, actions, and decisions of individuals giving testimony. These factors can be implicitly and often unconsciously influential. Social pressure, for example, often guides individuals toward conforming to prevailing societal norms, creating an environment where deviating from those norms can lead to social isolation or other consequences. This fear of exclusion from the group and its social repercussions can impact an individual’s agency and choices.

The fear of retaliation, which may arise from personal experiences or witnessing vengeful actions by others, can profoundly alter individual behavior. This fear also hinders honesty and transparency in expressing opinions and behaviors, as individuals may refrain from voicing views that contradict the dominant discourse or the opinions of a powerful group. In essence, the witness in such situations intends to protect themselves from harm and therefore cannot practically convey the realities of the actual world to the adjudicating authority. This is why supporting witnesses can, to some extent, remove obstacles to the realization of judicial justice.

The fear of arrest or punishment is also an effective factor in behavioral patterns. Societal laws and regulations serve as guidelines for maintaining order, but the fear of legal prosecution or potential punishments also causes individuals to think more cautiously about their actions and discard options that

might be unlawful. In this regard, it must be acknowledged that filing baseless complaints against witnesses also practically prevents witnesses from testifying, and legislative and judicial policies will be instrumental in such cases. Therefore, laws and regulations should be enacted by the legislator in such a way that witnesses see themselves under the protection of the law and the criminal justice system.

## **7- Conclusion**

Structuralism, by offering a framework for analyzing social, cultural, and linguistic structures, provides a deeper understanding of the testimony process of witnesses and informants in criminal proceedings. This theory shows how hidden factors—including cultural norms, power hierarchies, and linguistic structures—can affect the manner and content of testimony and ultimately influence judicial decision-making. For example, linguistic structures, which according to Lévi-Strauss (1963) function as sign systems, can shape a witness's perception and behavior and affect the objectivity of testimony (Lévi-Strauss, 1963, p. 38). Combining this perspective with symbolic interactionism highlights the importance of two-level analysis (macro and micro) and emphasizes the necessity of paying attention to invisible components in judicial processes. This analysis not only helps clarify the hidden dimensions of testimony, but can also provide a basis for practical reforms in Iran's judicial system, including revising interrogation methods and strengthening the training of judges and lawyers to reduce the influence of biases and social pressures on testimony.

In sum, the criminal adjudication process is not merely a legal and procedural process based on evidence and explicit rules; it is also deeply affected by invisible and less apparent components—factors that especially influence the behavior and agency of witnesses and informants. These factors may include fear of the consequences of testifying, psychological and social pressures, emotional or kinship ties, distrust in the justice system, concern about identity disclosure, perceptions of personal safety, and even subjective understandings of justice-seeking or prudential calculation. In many cases, it is precisely these hidden elements that determine what a witness will say, what they will conceal, or whether they will enter the judicial process at all.

From this perspective, the success of criminal proceedings depends not only on discovering the truth in the abstract, but also on the extent to which the justice system is capable of identifying and managing these invisible layers. The more support mechanisms, security guarantees, information confidentiality, and public trust in adjudicatory institutions are strengthened, the greater the likelihood of sincere and effective participation by witnesses and informants. Therefore, attention to invisible components is not a marginal matter, but an essential condition for improving the efficiency, accuracy, and justice of criminal proceedings.

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