# Effects of Evidence Arising from Party Agreements on Judicial Proceedings and Court Judgments

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**Abstract**

In every legal system, specific principles and rules regarding evidentiary proof are established to facilitate adjudication and uncover the truth, most of which are formulated based on the religious beliefs and economic policies adopted by each country. Whoever claims a right must prove it, and whenever the defendant, in the course of defense, asserts a matter that requires evidence, the burden of proving that matter lies upon them. Evidence in civil procedure refers to the collection of instruments used to prove a claim before judicial authorities. Whoever claims a right must prove it, and whenever the defendant, in the course of defense, asserts a matter requiring proof, the burden of establishing that matter rests with them. Consequently, in civil matters, the parties to a dispute may agree that a claim which is, by law, provable only through documentary evidence may instead be proven through witness testimony. A modification of evidentiary rules arising from party agreement affects the judicial proceedings and the issuance of the court's judgment, and it alters the outcome of the judgment.

**Keywords:** Procedural evidence, party agreement, judicial proceedings, judgment, court

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## 1. Introduction

For the exercise of a right, the mere existence of that right is not sufficient. If a right is not accompanied by evidence and is not proven, its enforcement becomes subject to the will of the debtor, and the force of the state cannot be invoked to secure its execution. Many rights are lost due to the inexperience or good faith of their holders, and numerous individuals, lacking the means to prove their rights, either refrain from seeking justice or lose their case and may even be ordered to compensate the aggressor. The need to present evidence usually arises when the existence of a right is denied and the creditor is compelled to bring the matter before the court and initiate legal action. For this reason, most scholars consider "evidence" to be among the instruments for proving a claim and defending against it (Hosseini Nejad, 2013; Shams, 2015). The establishment of a right depends on proving the factual circumstances that the plaintiff must substantiate. In judicial systems that follow the system of

legal evidence, the types of admissible evidence are precisely defined, and their number is strictly limited. In such systems, the legislature predetermines the forms of evidence; therefore, detailed discussion of the types of evidence holds special significance (Madani, 2016; Sadrzadeh Afshar, 2016).

A lawsuit is the right by which individuals may refer to the court and request that an official authority protect their rights against another person through the application of law. Resort to the court and the exercise of this right take place through a specific legal act known as filing a claim. The subject of the claim, which is asserted by the plaintiff before the court or sometimes raised by the defendant in response to the existing claim, may at times be based on the existence of a right, and at other times may indicate the extinguishment or termination of a right (Katouzian, 2019).

## 2. Evidence According to Its Degree of Influence in Proving the Claim

Evidence, according to its degree of influence in proving the claim, is divided into two types:

(a) **Direct evidence**: This refers to evidence that directly establishes the cause of the creation or the extinction of a right. For example, a marriage contract gives rise to the status of marriage, and the official marriage document directly proves this cause. Similarly, the defendant's confession directly establishes the plaintiff's claim, and a title deed directly proves a person's ownership of real property. Likewise, if someone claims ownership of the benefits of a unit, the cause of such a right is a lease contract, and an official or private lease document directly proves the existence of that cause (Diyani, 2015).

(b) **Indirect evidence**: Indirect evidence refers to evidence that establishes a matter that is correlated with the right claimed or with the extinguishment of that right. In some cases, proving the cause of a right through direct evidence is impossible. In such situations, the legislature permits the claimant to prove their right using indirect evidence. For example, legal presumptions such as the presumption of possession do not directly prove ownership, as one may possess property without being its owner. However, when someone has continuously possessed property for a long period without challenge, the law considers such possession, carried out as if one were the owner, as correlated with ownership. In this case, the claimant does not present direct evidence of ownership but instead proves a fact—possession—that correlates with the right in dispute. The same applies to the presumption of legitimacy (firaash). In this presumption, the claimant does not directly prove the child's lineage but instead proves that the child was born during the marriage; although this does not directly establish lineage, it generally correlates with it. Therefore, in this example, the claimant establishes a fact that indirectly proves their claim (Shams, 2015).

### *2.1. Evidentiary Proof in the Civil Code*

In the Civil Code, the substantive rules relating to evidence are primarily examined. The Code does not treat evidence merely from the perspective of judicial procedure, but rather in a broader sense. When the value or scope of an evidentiary instrument is discussed, it is not solely because of its procedural function but because evidence is regarded within a wider substantive framework (Madani, 2016; Sadrzadeh Afshar, 2016).

In the Civil Code, the substantive aspects of evidence are addressed as follows:

The conditions of evidence are examined, such as the requirements for confession, documents, or testimony—for example, the conditions a witness must meet for their testimony to have probative value, the conditions for a valid confession, or the status of the person making the confession.

The Code discusses the evidentiary value of confession (Article 1257) and the consequences when its falsity is established (Article 1258). It also discusses the evidentiary value of an oath (Article 1331) (Hosseini Nejad, 2013; Katouzian, 2019).

Among the substantive issues discussed are the limits of evidentiary probative force—for example, Article 1290 of the Civil Code states: "Official documents are valid with respect to the parties, their heirs, and their legal successors, and they are valid against third parties only when expressly provided by law." As seen, the probative value of official documents is limited to the parties and their successors unless otherwise provided by law, such as Article 72 of the Registration Act concerning immovable property ownership documents.

The Code also addresses the validity of the date of a formal document against third parties (Article 1305) and the limits of the probative force of confession (Article 1278) (Zar'at & Hajizadeh, 2011).

Thus, the probative value of evidence or the scope of its legal effect concerns the substantive rather than the procedural dimension of evidence.

## 3. The Scope of Party Autonomy in Selecting Rules of Evidence

As noted earlier, the procedural rules of evidence reflected in procedural statutes concern the judicial administration of evidence and the method of using evidence in litigation—its presentation, evaluation, and contestation. Such rules serve procedural justice for all litigants regardless of nationality and therefore are connected to public procedural order and are mandatory (Bazgir, 2017).

Accordingly, agreements contrary to this category of rules are impermissible. Nevertheless, some of these rules may be considered discretionary. For example, under Article 268 of the Code of Civil Procedure, the parties may, by mutual agreement, select and introduce another expert (or experts) to the court. Similarly, under Article 25 of the same Code, the parties may agree on individuals to be consulted as informants.

However, regarding the methods of using evidence, party autonomy is recognized (Sadrzadeh Afshar, 2016). For instance, the parties may agree in advance that disputes arising from their financial contracts shall be proven only through documents or only through witness testimony, thereby waiving the right to rely on other types of evidence. It has been argued that such autonomy does not conflict with any public order, and resorting to conflicting evidence upon dispute constitutes a breach of contract (Khodabakhshi, 2016).

This position is also supported in Shia jurisprudence, where the presentation of certain types of evidence, such as testimony or oath, is considered a right of the claimant, who may choose among them (Ameli, 2028).

However, some authors, without providing proof, accept party agreement without limitation and state: “In civil matters, the parties may agree that a claim provable only by a document may instead be proven through witness testimony.” Yet it must be emphasized that when the law prescribes a specific form of evidence for proving a matter, party agreement is not valid—for example, the legal requirement for formal registration of real estate transfers, due to their relevance to public order, or rules relating to proof of legal capacity, or the judge’s exclusive duty to evaluate evidence, which cannot be delegated (Shams, 2015; Zar'at & Hajizadeh, 2011).

The principle of party autonomy is also not absolute regarding the essential conditions of evidence. In particular, modification of evidence that undermines its intrinsic nature to the extent that its legal character changes is impermissible. For example, confession must relate to a past event, and a witness must have perceived matters by sight, hearing, or other lawful sensory means.

Thus, the parties cannot, by agreement, transform an ordinary witness into a valid witness based on personal impressions, nor can they convert testimony into confession by agreement (Khodabakhshi, 2016).

However, regarding non-essential conditions of evidence, party autonomy prevails—for example, the parties may agree to modify the secondary conditions of witness testimony such as number, gender, religion, or denomination. Although such witnesses would not meet the standards of “Shar‘i evidence,” their testimony may still be admitted in court and given probative effect equivalent to legally recognized testimony (Pourastad, 2018).

## 4. The Limits of Judicial Discretion in Applying the Rules of Evidence

As previously noted, it is not possible to adopt a general position that all procedural rules governing the law of evidence are mandatory; rather, a portion of the procedural rules that are connected with the fundamental principles of a fair trial are of a mandatory nature, and the judge is obliged to apply them. For example, “the execution of an order for a local investigation must be notified to the parties in advance,” because its purpose is to ensure the presence of witnesses and informants for both parties at the location in question and to obtain their information through the authority executing the order. Otherwise, the judgment will be subject to quashing by the higher court due to non-compliance with one of the principles of fair procedure, namely the right of defense. In contrast, some other procedural rules relating to evidence are not of such importance that their non-observance would result in the legal invalidity of the court’s judgment. For instance, under Articles 217 and 219 of the Code of Civil Procedure, an objection based on doubt, denial, or forgery regarding documents submitted in the proceedings

must, where possible, be raised by the first hearing. However, if such an objection is raised at the second or third hearing, and the court examines it and, in fact, forgery of the document is established and the claim of the party relying on that document is rejected, the judgment will not be quashed. Likewise, if under Article 235 of the Code of Civil Procedure the court is required to examine witnesses individually and in the absence of other witnesses but fails to do so, or if the court receives the expert opinion after the prescribed time limit, the judgment will not be overturned so long as the failure to comply with these provisions has not resulted in prejudice to the parties' rights of defense. Consequently, following the opinions of authorities in the field of civil procedure, the best criterion for determining whether a procedural evidentiary rule is mandatory or discretionary is whether non-compliance with that rule leads to a breach of "one of the principles of a fair trial that guarantees the adversarial nature of the proceedings and the observance of the parties' rights of defense" (Katouzian, 2019).

The discretion of the civil judge in the substantive assessment and evaluation of evidence is limited by the subject matter of the evidence and the substantive rules governing evidentiary validity. For example, the judge may not base the judgment on the testimony of witnesses who have testified based on doubt and conjecture; nor may the judge accept testimony in a dispute that contradicts the content of an official document (Article 1309 of the Civil Code). Likewise, where the law has prescribed a specific type of evidence for proving a matter, the judge may not admit and evaluate other types of evidence for that purpose. Moreover, if the person in whose favor a confession has been made rejects its content, that confession has no effect in their favor, and the court cannot attach any legal consequence to it, because, as has been stated, "the effect of rejecting a confession is to ensure that no one, not even the court, may create a right for another without that person's consent" (Katouzian, 2019). Thus, it is observed that the rules of evidence are designed to guarantee and protect the rights of the parties, to ensure the impartiality of judges in determining the right, and to prevent any abuse of judicial power; and any refusal to apply these rules may give rise to disciplinary liability for judges (Diyani, 2015; Hosseini Nejad, 2013).

## 5. Foundations for Allowing Judicial Supervision of Arbitral Awards from the Perspective of the Rules of Evidence

It appears that there are sufficient grounds in the Iranian legal system to justify judicial supervision over arbitral awards with respect to evidentiary matters, and the view that courts are prohibited from intervening in the substance of arbitration and from reviewing the evidence is not acceptable. First, as previously explained, both the substantive and procedural rules of evidence can be regarded as right-creating norms, and such right-creating laws provide a legal basis for judicial supervision over the use and assessment of evidence in arbitration (Madani, 2016; Sadrzadeh Afshar, 2016). Second, denying the court's power to review evidentiary issues is inconsistent with the parties' intention in referring their dispute to arbitration, because although the parties have sought a forum different from the state courts, this does not mean that they intended to exclude any judicial oversight of the proceedings. The parties, at the time of agreeing to arbitration, are aware of their right to challenge the arbitral award and accept arbitration on that basis. It cannot be said that they intended the arbitrator's understanding of the evidence—even if erroneous—to be substituted for that of the court, treated as final and binding, and endorsed by a court that itself remains doubtful as to the correctness of the investigation and assessment of the evidence.

Third, reliance on the independence of the arbitral institution does not constitute a decisive barrier to judicial intervention, just as appellate review by a higher court does not negate the independence of the trial court. Similarly, judicial supervision over arbitral awards does not negate the independence of arbitration (Pourastad, 2018). Fourth, one of the express grounds for nullity of an arbitral award under Article 489 of the Code of Civil Procedure is that the award contradicts what is recorded in the registry of deeds or in official documents between the parties and enjoys legal validity. This explicit reference necessarily presupposes the court's review of the relevant evidence and is incompatible with denying judicial oversight of evidentiary matters in arbitration.

Fifth, treating the arbitrator's findings and investigations concerning the evidence as final and immune from review has serious negative consequences, some of which may be summarized as follows:

(a) Sometimes documents and evidence are in the possession of one party or a third party. If that party or third person refuses to produce such documents, the arbitrator cannot compel production because, unlike a court, the arbitrator does not possess coercive powers. For example, inquiries to banks regarding account balances, or requests to the Registry for information on assets, require a judicial order or the approval of competent authorities, and there are no rules obliging such public bodies to

respond directly to arbitrators (Madani, 2016). A similar problem arises with the summoning of witnesses: if a witness refuses to appear, the arbitrator cannot compel them to testify (Zar'at & Hajizadeh, 2011). In such cases, the arbitrator may reject an item of evidence precisely because of these limitations, and if no judicial supervision over the assessment of evidence is allowed, the consequence will be nothing other than the denial of substantive rights.

(b) Arbitrators are prohibited from issuing default judgments, and the law does not provide for opposition (waqha appeal) against arbitral awards. Thus, if the party against whom the award is rendered has, due to a legitimate excuse or lack of knowledge of the content of the award, been deprived of the opportunity to present evidence during the arbitral proceedings, they have no recourse but to challenge and seek annulment of the award. If, in such a situation, the court refuses to examine the new evidence submitted and declines to review the merits of the factual issues, the losing party will, in effect, be permanently deprived of the right to obtain redress, which is contrary to justice.

(c) Undoubtedly, by virtue of Article 495 of the Code of Civil Procedure, an arbitral award is subject to the principle of the relative effect of judgments, because such an award creates or declares rights and obligations only between the parties to the dispute, and in principle, third parties should not be affected by it. However, in light of Article 418 of the Code of Civil Procedure, there remains a possibility that a third party may, in practice, be affected by an arbitral award. In actions for third-party objection to court judgments, the court, applying the rules of civil procedure, requests the relevant case file and, taking into account the basis and origin of the third party's claim, adjudicates that claim.

The distinctive feature of third-party objection in the courts is that the court examines substantively the grounds, bases, and evidence of the claim and ultimately renders judgment. In arbitration, by contrast, the extent and manner of judicial review of a third party's objection are not clearly defined. In other words, does the restriction on the court's power to re-examine the arbitral file and to review it on the merits also extend to third-party objections? Specifically, to what extent are the evidence and proofs submitted before the arbitral tribunal binding and usable for the court hearing the third party's claim? If the court is to examine substantively the evidence used in arbitration, it must be accepted that the opinion of those scholars who categorically prohibit the court from engaging with the factual evidence in arbitration must be qualified in this context, because, on the one hand, a third party affected by the arbitral award enjoys a separate and independent right to a hearing and cannot be deprived of substantive review merely on the ground that arbitration has its own special rules. On the other hand, the principle of the relative effect of arbitral awards requires that the arbitral award and its contents lack binding force vis-à-vis third parties, and that the court enjoy full freedom in uncovering the truth and determining the third party's rights (Bazgir, 2017; Khodabakhshi, 2016).

## 6. The Scope of Judicial Supervision over Awards in Terms of Observance of the Rules of Evidence

It is beyond doubt that some of the grounds for nullifying an award—such as the requirement to observe right-creating rules—provide a very broad avenue for judicial supervision over evidentiary issues in arbitration. The space opened by Article 489 has both positive and negative functions. On the one hand, it may lead to extensive interference with arbitral proceedings and thereby undermine the essential function of arbitration, which is to exclude the jurisdiction of state courts and to rely on a privately chosen adjudicator. On the other hand, the principle that arbitral awards are subject to judicial control and review is a well-established doctrine (Khodabakhshi, 2016). Some other authors, in delineating the permissible scope of judicial intervention in the merits, have interpreted paragraph 1 of Article 489 as confined solely to matters of law. However, it seems that restricting judicial supervision over arbitral awards from an evidentiary perspective by analogy with cassation review—and thereby limiting the court's oversight to purely legal issues—is not acceptable (Bazgir, 2017).

### *6.1. Restricting Judicial Supervision by Analogy with Cassation Review*

Contrary to the view of some authors, it appears that comparing judicial review of applications to annul an arbitral award with cassation review suffers from fundamental flaws. First, the grounds for annulment or invalidity of an arbitral award expressly stated in Article 489 are not identical to the grounds for cassation. Pursuant to Article 371 of the Code of Civil Procedure, a court judgment is subject to cassation if it is contrary to Islamic law or statutory law, or inconsistent with procedural principles and mandatory rules, or if the investigations are deficient, or if the court has failed to consider the evidence

and defenses of the parties. However, these grounds have not been expressly stated as grounds for invalidation of arbitral awards.

Second, if the Supreme Court admits a cassation petition under paragraph 5 of Article 371 based on deficiencies in the investigation or failure to consider the parties' evidence, the case is returned to the same trial court pursuant to paragraph 1 of Article 401 for completion of the deficient investigations, after which a new judgment is issued. By contrast, in judicial review of arbitral awards, the legislature has not characterized the court as a higher tribunal and arbitration as an inferior tribunal such that a remand for completion of investigations would be possible.

Third, unlike the Supreme Court—which does not possess fact-finding authority—the court examining an application to annul an arbitral award *does* have the ability and procedural capacity to conduct substantive investigations, since it may, under general rules of civil procedure, carry out whatever investigations it deems necessary. Therefore, it seems incorrect to equate fully the position of courts reviewing arbitral awards with that of the Supreme Court in cassation review (Katouzian, 2019).

Nevertheless, this does not mean that the grounds for annulment of arbitral awards are entirely unrelated to cassation grounds. As noted, identifying the specific instances of "right-creating rules" as grounds for annulment is a matter of scholarly disagreement, but the content and substance of this phrase appear capable of aligning with several clauses of Article 371 (clauses 2, 3, and 5). In other words, any award that contains an incorrect conclusion and dispositive ruling in which procedural principles, mandatory rules, or the rights of the parties have not been respected—or where investigations are incomplete, or the evidence and defenses of the parties have not been considered—may be regarded as a decision contrary to a right-creating rule and subject to annulment. It would have been preferable for the legislature to enumerate such instances rather than using the ambiguous and contentious term "right-creating rule."

Of course, the similarity between judicial review of arbitral awards and the Supreme Court's jurisdiction does not mean that courts—whose inherent function is substantive review and whose authority is not restricted under arbitration regulations—should be prevented from examining the factual evidence. Unlike the Supreme Court, the nature of civil courts requires substantive review and investigation aimed at discovering the truth, and the broad language of Article 199 confirms this. Clearly, prohibiting courts from admitting evidence injures this fundamental judicial function, increases the risks associated with referring disputes to arbitration, and reduces public inclination toward arbitration (Zar'at & Hajizadeh, 2011).

### *6.2. Possibility of Annulment of the Award in Higher Courts*

A review of judicial practice indicates that adjudicating bodies have not paid significant attention to the rule governing the timing of evidence submission, and they have in fact evaluated evidence submitted outside the prescribed time frame. This raises the question: according to the applicable statutory provisions, what decision should an appellate court or the Supreme Court make when it discovers that the trial court has examined evidence submitted late?

#### *6.2.1. Decision of the Court of Appeal*

Under paragraph (h) of Article 348 of the Code of Civil Procedure, "failure to comply with statutory provisions" constitutes a ground for appeal. It makes no difference whether the laws invoked are substantive or procedural. Indeed, if paragraph (h) were interpreted exclusively as referring to substantive law, it would lead to an unacceptable deficiency—namely, silence with respect to numerous violations of procedural rules, such as failure to observe the principle of adversariality (Shams, 2015).

Where a judge accepts evidence submitted late, the procedural rule has not been observed, and the decision may be annulled on this basis. Since appeal is essentially a reevaluation of a matter previously adjudicated—effectively a review of the trial court's decision-making—the appellate court should, in our view, reassess the case without considering the evidence submitted after the statutory deadline and render the appropriate decision (Bazgir, 2017).

#### *6.2.2. Decision of the Supreme Court*

Under paragraph (3) of Article 371, "failure to observe procedural principles and mandatory rules… where such failure is of a degree that deprives the judgment of legal validity" constitutes a ground for cassation. Thus, the legislature considers violation of procedural principles and mandatory rules a basis for annulment only when the violation reaches a level that

deprives the judgment of legal validity. Accordingly, if a procedural principle or mandatory rule is violated but not to the extent of depriving the judgment of legal validity, the challenged judgment will not be annulled on this ground.

The question arises: what is the criterion for determining this level of significance? It may be stated that any case in which a judgment is issued in violation of fundamental principles of due process is legally invalid. For example, if evidence is submitted or relied upon at such a time or in such a manner that the opposing party has had no opportunity to defend against it, then the principle of adversariality has been violated, and the judgment is legally invalid and subject to annulment (Shams, 2015).

Thus, the Supreme Court considers a trial court's acceptance of late evidence a ground for cassation only when it results in a violation of the principle of adversariality. If, however, late evidence was notified to the opposing party and they were afforded an opportunity to respond, the Court will not annul the judgment on the ground of non-compliance with mandatory rules of evidence.

## 7. Scope of Judicial Supervision Regarding Observance of the Rules of Evidence

It is clear that some grounds for annulment of arbitral awards—such as the requirement to observe right-creating rules—provide a very broad basis for judicial supervision over evidentiary matters. This broad scope created by Article 489 has both positive and negative effects. On the one hand, it may result in excessive judicial interference in arbitral proceedings, thereby undermining the very function of arbitration, which is to avoid state court jurisdiction and rely on private adjudication. On the other hand, judicial control and review of arbitral awards is a well-recognized principle, and without it, arbitration becomes ineffective (Khodabakhshi, 2016).

Therefore, defining the limits of judicial supervision is essential given the broad scope afforded by Article 489. Some authors, in determining the extent of judicial supervision over arbitral awards, find significant similarity between annulment review and cassation review, suggesting that the court, in examining annulment applications, does not interfere with the merits and merely assesses the award's conformity with the law within the limits of Article 489 (Khodabakhshi, 2016). Others restrict judicial supervision over evidentiary issues solely to legal matters and consider paragraph 1 of Article 489 applicable only to legal questions.

However, it appears that restricting the court's supervisory role over arbitral awards from the perspective of evidence—based on analogy with cassation review and confining the court's intervention to legal matters—is not acceptable (Bazgir, 2017).

Below, we address the objections to comparing judicial supervision of arbitration with the role of the Supreme Court, followed by an analysis of why restricting judicial supervision to legal matters is unsound.

### *7.1. Restricting Judicial Supervision by Analogy with Cassation Review*

Contrary to the view of some authors, it appears that comparing the court's review of an application to annul an arbitral award with cassation review suffers from fundamental flaws. First, the grounds for annulment or invalidity of an arbitral award as stated in Article 489 are not identical to the grounds for cassation. According to Article 371 of the Civil Procedure Code, a court judgment is subject to cassation if it is contrary to Islamic or statutory law, or inconsistent with procedural principles and mandatory rules, or if the investigations are incomplete, or if the evidence and defenses of the parties have not been taken into consideration. However, in arbitration, these grounds have not been expressly mentioned as grounds for invalidating an arbitral award.

Second, if the Supreme Court admits a cassation petition pursuant to paragraph 5 of Article 371 on the basis of incomplete investigations or failure to consider the parties' evidence, the case is returned to the same trial chamber under paragraph 1 of Article 401 for completion of the deficient investigations, after which a new ruling is to be issued. However, within the framework of judicial supervision of arbitration, the legislature has not treated the court as a higher tribunal and the arbitral tribunal as an inferior tribunal such that returning the case to complete the investigations would be possible.

Third, unlike the Supreme Court—which has no fact-finding authority and does not conduct substantive investigations—the civil court has both the ability and the procedural mechanisms to undertake substantive investigations, since under the

general rules of civil procedure it is, in principle, empowered to conduct whatever investigations it deems necessary. Therefore, it seems incorrect to fully equate the position of the civil court in supervising arbitral awards with that of the Supreme Court in cassation review.

Nevertheless, this does not mean that the grounds for annulment of an arbitral award are entirely unrelated to cassation grounds. As noted earlier, determining the specific instances of "right-creating rules" that may serve as grounds for annulment is a matter of scholarly disagreement, but the content and substance of this concept appear capable of aligning with several clauses of Article 371 (clauses 2, 3, and 5). In other words, any award whose result and dispositive ruling are incorrect—because procedural principles, mandatory rules, or the rights of the parties have not been respected, or because the investigations are incomplete, or the evidence and defenses of the parties have not been considered—may be regarded as a decision contrary to a right-creating rule and subject to annulment. It would have been preferable if the legislature had enumerated these instances rather than using the ambiguous term "right-creating rule."

Moreover, although judicial supervision of arbitral awards resembles the jurisdiction of the Supreme Court in some respects, this cannot justify preventing the civil court—whose inherent function is substantive review and whose authority has not been restricted under the rules on arbitration—from examining factual evidence. The nature of the civil court, unlike the Supreme Court, requires substantive review and investigation in the pursuit of truth, and the broad language of Article 199 confirms this. Clearly, prohibiting the court from admitting evidence would undermine this fundamental judicial role, increase the risks associated with referring disputes to arbitration, and diminish public willingness to use arbitration (Shams, 2015).

### *7.2. Restricting Judicial Supervision to Legal (ḥukmī) Matters*

Some authors, in determining the scope of judicial supervision over arbitral awards from the perspective of evidence, have limited such supervision solely to *legal* (ḥukmī) matters and not to factual (mawḍūʿī) matters, and thus have construed paragraph 1 of Article 489 as applicable only to legal issues. This reasoning has also found its way into practice, and certain judicial decisions have been issued based on this approach. One such example, to clarify the reasoning, is the judgment rendered by Branch 25 of the Tehran Court of Appeal.

In reviewing an appeal from a judgment rendered by Branch 39 of the Tehran General Court, which had rejected the appellant's claim seeking annulment of an arbitral award, the Court of Appeal stated that since the appellant, in their application and accompanying brief before the trial court, relied solely on *factual* grounds—such as lack of expertise of the arbitrators, errors in calculations, and approximate or imprecise computations—and did not raise any *legal* issues demonstrating that the arbitral award contradicted a right-creating rule, the Court of Appeal deemed the claim for annulment, based on such grounds, not admissible for consideration.

A precise analysis of this reasoning first requires familiarity with the definitions of legal and factual matters, so that the correctness or incorrectness of this conclusion may be examined in light of the role of evidence within these categories (Zar'at & Hajizadeh, 2011).

### *7.3. Qualities Governing the Court's Investigations and Measures*

The investigations and measures necessary to establish factual matters that ultimately lead to the discovery of the truth are governed by certain attributes, conditions, and characteristics. Analyzing these can clarify the scope and limits of such investigations and measures.

In our legal system, the court's active role was formerly recognized only exceptionally: in non-contentious matters (Article 14 of the Law on Non-Contentious Matters: "In non-contentious matters, the judge must carry out any inquiry and take any measure necessary to prove the matter…"), in family disputes (Article 3 of the 1974 Law on the Protection of the Family: "The court may carry out any investigation and take any measure it deems necessary to clarify the subject matter of the dispute and to secure the right, such as examining witnesses, etc."), and in actions concerning the jurisdiction of the District Court (Article 342 of the former Civil Procedure Code: "The district court judge may seek any investigation or explanation from the parties that he deems necessary to clarify the matter."). In all other actions, the rule prohibiting the court from gathering evidence ex officio largely prevailed. At present, however, the court's active role has been accepted uniformly in all types of disputes; the

use of investigations and measures aimed at discovering the truth is no longer confined to a limited set of cases. Article 199 of the current Civil Procedure Code enshrines this as a general rule applicable in all actions.

In fact, pursuant to Article 199 of the Civil Procedure Code, the trial judge is empowered to undertake any investigation or measure necessary to establish the relevant factual matters. The ambiguity that arises is whether this possibility for the court should be understood as a "power" or as a "duty." Whenever the legislature intends to confer a power, it typically uses verbs such as "may," and whenever it intends to impose a duty, it uses expressions such as "must" or "is obligated." In Article 199, none of these verbs is used; instead, the provision is formulated as follows: "The court shall carry out any investigation or measure necessary to discover the truth." The question, then, is whether this formulation embodies a power or a duty.

It would appear that the possibility of carrying out any investigation or measure necessary to discover the truth constitutes a "duty." The following arguments support this view.

First, the evolution of legislation shows that the idea of an active judiciary began as a *power* for the judge. However, because judges—accustomed to the earlier tradition of the rule prohibiting the court from actively gathering evidence—made limited use of this power, the legislature's principal objective of discovering "objective truth" was not realized. In a subsequent reform, the auxiliary verb "may," which generally signifies a power, was removed and replaced by the expression "shall carry out," thus marking a shift toward a mandatory formulation. Yet, because this duty initially lacked an enforcement mechanism, it still attracted limited judicial adherence. Ultimately, provisions were introduced that resembled the earlier wording but added a crucial element: a sanction for failure to comply, namely cassation of the judgment due to incomplete investigations.

Second, by its nature, a legal rule is binding and accompanied by a sanction. The introduction of a specific sanction—quashing the judgment on the ground of incomplete investigations—indicates that a duty has been imposed on the court (Katouzian, 2019).

Third, granting the judge the ability to act on his own initiative, without a request from the parties, to carry out such investigations and measures, is itself indicative of a duty rather than a mere option.

As noted, Article 199 of the Civil Procedure Code requires the court to carry out any investigation or measure necessary to discover the truth. However, this judicial prerogative is not absolute, because the provision expressly adds that this is "in addition to examining the evidence relied on by the parties." Thus, the plaintiff cannot file a lawsuit without presenting any evidence and simply write in the column for evidence: "Any investigation or measure necessary to discover the truth." In other words, the judge's initiative under Article 199 is *supplementary*, not a substitute for the parties' burden to present evidence (Pourastad, 2018).

A review of case law indicates that judicial practice has likewise embraced the judge's active role. Numerous decisions to this effect have been issued by different chambers of the Supreme Court. The High Disciplinary Court for Judges has also referred to the judge's active role in one of its rulings, and the Legal Department of the Judiciary has adopted an opinion consistent with these decisions.

Counsel for a ministry filed a claim with the District Court against one of its employees, essentially arguing that the defendant had undertaken, under a contract with the ministry, to serve for four years in the ministry in return for each year of study abroad funded by the ministry. Since, upon returning from abroad, he had failed to fulfill his commitment, he was required to reimburse the ministry for the sums spent on his studies, as specified in an accounting letter. The District Court and the Provincial Court both rejected the claim for the reasons set out in the judgment of the Fifth Chamber of the Supreme Court. The Fifth Chamber, however, quashed the judgment on the following grounds:

The cassation objection is well founded, because the Provincial Court, on the basis that the contract did not specify that the defendant, in case of breach, was obliged to reimburse the costs of his studies abroad and that the accounting letter was insufficient to determine those costs, upheld the trial court's ruling. Yet, in light of the defendant's undertaking to return immediately upon completion of his studies abroad and to serve in the ministry, and in view of the parties' intent in concluding the contract, and given that, under Article 221 of the Civil Code, such an undertaking is, in customary understanding, equivalent to an express stipulation that if he fails to perform, he must reimburse the relevant expenses, and that unjust enrichment gives rise to liability, the reasoning of the court is flawed. Regarding the amount of expenses incurred, the court should, pursuant to Article 8 of the Law on the Amendment of Certain Judicial Laws, have requested the accounting records and documents relating

to the costs of the defendant's studies and, by obtaining an expert opinion, determined the amount spent on his studies abroad and then issued the appropriate judgment. Accordingly, the contested judgment is quashed (Diyani, 2015).

In an action brought by A against B for an order compelling B to execute an official transfer deed, the plaintiff claimed that B's father had sold his agricultural land to the plaintiff, received the price, and, after the seller's death, the heir (the defendant) refused to execute the official transfer deed. The District Court, after hearing the case, found the claim unproven and dismissed it, and this decision was upheld by the Provincial Court. Upon the plaintiff's petition for cassation, the Fifth Chamber of the Supreme Court quashed the judgment for the following reasons:

The cassation objection is well founded, because the Provincial Court dismissed the claim on the ground that the deceased, whose heir is the defendant, had not undertaken in the contract to execute an official transfer deed. However, the demand for performance of the undertaking and fulfillment of the condition—whether expressly stipulated in the contract, implied by the parties' intention, or established by custom—is expressly allowed under paragraph 7 of Article 13 of the former Civil Procedure Code. The signatures of the parties on the contract (assuming its authenticity is established), given that under the Registration Law the transfer of real property must be effected by executing an official deed, themselves indicate the parties' intention to appear before the notary public and execute an official transfer deed. Since the authenticity of the contract was contested by the defendant, the court should have examined its authenticity and, by virtue of Article 8 of the Law on the Amendment of Certain Judicial Laws, should also have inquired of the local Cooperative and Rural Affairs Office in whose name the disputed land was registered in the agricultural census, and then issued an appropriate judgment. Because the investigation is incomplete, the contested judgment is quashed (Diyani, 2015).

In an action brought by C against D and E for annulment of a contract and an order compelling the defendants to return the price, the plaintiff alleged that the defendants had sold to him, by a private document, the buildings erected on 1,365 square meters of agricultural land, received the price, while, according to a letter from the Endowments Office, the land was endowed property and a title deed had been issued in the name of the waqf; the defendants had no rights over the land and were not holders of agricultural usufruct, and therefore the annulment of the contract and the refund of the price were sought. The trial court, noting that the defendants had presented no evidence of any agricultural rights and that the letter from the Endowments Office contradicted their assertions, annulled the contract and ordered the defendants to refund the price. This judgment was upheld by the Provincial Court. On cassation, the Fifth Chamber of the Supreme Court ruled as follows:

The cassation objection is well founded, because the Provincial Court, relying on a letter from the Cooperative and Rural Affairs Office stating that the disputed land was not subject to land reform, and on a letter from the Endowments Office stating that the land had been registered in the name of the waqf and could not be sold, and that the plaintiff had no agricultural right in the land that he could transfer, rendered the contested judgment. However, under Article 31 of the Implementing Regulations of the Real Estate Registration Law, the *ra'iyyat right* (peasant right) referred to by the plaintiff as "agricultural right," which customarily exists and is traded among villagers, is not a right in rem over the immovable; the issuance of a title deed in the name of the owner or the waqf does not alter the status of the agricultural right. The court should, pursuant to Article 8 of the Law on the Amendment of Certain Judicial Laws, have investigated and examined this alleged right and then issued judgment. The contested judgment is therefore quashed due to incomplete investigation (Diyani, 2015).

In its judgment no. 72/476/12, the Twelfth Chamber of the Supreme Court held:

"As the court itself decided in its record of proceedings, it was necessary to inquire of the competent authorities regarding the attachment of the disputed parcel and the reason for that attachment, and, based on the response and its impact or lack of impact on the case, to make a decision. Accordingly, the appealed judgment is quashed due to incomplete investigation…" (Sadrzadeh Afshar, 2016).

Another chamber of the Supreme Court held:

"The reasoning of the court that rendered the appealed judgment—namely, that no signs of cultivation, improvement, or habitation appeared on the aerial photographs or in other evidence relating to the parcels in question—is not convincing, because interpreting aerial photographs is a technical and specialized matter that requires expert knowledge. The court should, in accordance with Article 28 of the Law on the Establishment of General Courts, have referred the matter to an expert in aerial photography and, with the assistance of that provision, taken the necessary steps to discover the facts…" (Bazgir, 2017).

From the perspective of the High Disciplinary Court for Judges, even without a request from the parties, the trial judge is obliged to issue orders for site inspection, local investigation, and appointment of an expert to discover the truth; failure to do so, where warranted, constitutes a judicial offense. In judgment no. 142 of the First Chamber of the High Disciplinary Court for Judges, it was stated:

"Since the subject matter of the dispute required further investigation, such as issuing an order for site inspection and local investigation and appointing an expert, the issuance of a judgment by the judge of the independent District Court without attending to these matters was contrary to the provisions of the Civil Procedure Code and constitutes misconduct." (Sadrzadeh Afshar, 2016)

In Advisory Opinion no. 8194/7, the Legal Department of the Judiciary explicitly stated that the legislature has authorized courts to gather evidence and explained: "Although the actions of courts may appear to constitute the gathering of evidence, since they are undertaken to ascertain the facts and discover the truth—not to support one of the parties—they do not amount to a departure from judicial impartiality." (Zar'at & Hajizadeh, 2011)

In light of the foregoing decisions, we see that in every instance where the conditions for gathering evidence ex officio were present and the court should, by using its powers under the provisions relating to fact-finding, have conducted investigations and obtained evidence, the judgment was quashed by the Supreme Court precisely because of such negligence, and the Supreme Court inferred from the totality of these provisions that the court is under a duty to act.

As a result, it must be concluded that the court's active role, in light of legislative developments, has affected the rule on the timing of evidence submission by granting the court powers that effectively create a new temporal window for parties to submit evidence. For example, where one of the parties, for certain reasons, has been unable to submit some of their evidence within the prescribed time, the court—if it considers that evidence relevant to discovering the truth—may, in the exercise of its active role in uncovering the truth, permit its submission (Hosseini Nejad, 2013; Madani, 2016).

## 8. Conclusion

The examination of judicial powers regarding evidence, the scope of investigative duties, and the boundaries of court supervision over arbitral awards reveals that the modern civil justice system has shifted significantly toward an active, truth-seeking model. This development reflects a deeper transformation in legal thought: the realization that strict adherence to adversarial boundaries, rigid evidentiary timelines, and mechanical procedural formalism often obstructs the discovery of truth. Within this evolving framework, the role of the judge is no longer limited to a passive arbiter who merely weighs what the parties present. Instead, the judge is increasingly understood as a guardian of procedural fairness and a key figure in ensuring that the real facts underlying a dispute are revealed.

This shift becomes particularly evident in the broad interpretation of the court's authority under provisions such as Article 199 of the Civil Procedure Code. The modern judge is expected to conduct investigations, request documents, appoint experts, and order inspections whenever necessary to gain a clear understanding of the factual background of the case. The transformation of this authority from a discretionary power into an affirmative duty was not merely a linguistic or stylistic change. Rather, it reflects a deliberate legislative trajectory aimed at overcoming judicial reluctance rooted in older procedural traditions. By imposing sanctions for incomplete investigations and overturning judgments where courts failed to exercise their fact-finding authority, the legal system has reinforced the principle that courts must participate actively in the pursuit of truth.

This expanded judicial responsibility also reshapes the traditional understanding of evidentiary timelines. When the overarching goal of civil procedure is truth-finding, procedural deadlines cannot be viewed as rigid barriers that invalidate relevant evidence solely because of lateness. Instead, they operate as organizational tools intended to facilitate orderly proceedings, while remaining flexible enough to ensure substantive justice. Accordingly, courts now possess the capacity to admit late-submitted evidence when doing so is necessary for a truthful and fair determination of the case. This flexibility does not undermine the procedural order; rather, it strengthens it by preventing injustice that would arise from blind adherence to form at the expense of substance.

The active role of the court similarly influences the relationship between state courts and arbitral tribunals. Arbitration, by design, aims to provide a more efficient, specialized, and flexible forum for dispute resolution, often free from the formalities of state judicial processes. Yet arbitration cannot function effectively without a minimal degree of judicial oversight. The

boundaries of this oversight, however, must be drawn with precision. Excessive judicial intervention can undermine the autonomy of arbitration and deter parties from choosing it as a dispute resolution mechanism. Conversely, insufficient supervision risks allowing erroneous or unjust awards to stand, particularly in cases where arbitrators lack access to compulsory investigative powers or where the parties' procedural rights may have been compromised.

A balanced understanding emerges when acknowledging that courts, unlike arbitral tribunals, have the structural capacity, legal authority, and institutional legitimacy to evaluate whether an arbitral award respects fundamental procedural principles and the substantive rights of the parties. This evaluative role is not equivalent to a full rehearing of the case; nor is it analogous to the function of a supreme court performing cassation review. Instead, it represents a focused safeguard mechanism that ensures arbitration does not deviate from core principles of fairness, legality, and due process. Through this lens, judicial oversight becomes a complementary function that strengthens the credibility and reliability of arbitration as an institution.

The distinction between legal (ḥukmī) and factual (mawḍūʿī) matters further illustrates the need for nuanced judicial supervision. Limiting the court's review solely to legal questions ignores the reality that many injustices arise not from legal misinterpretation but from inadequate or flawed fact-finding. A procedural system that aspires to uphold justice cannot permit erroneous factual foundations to remain immune from review. Thus, although courts must respect the autonomy of arbitral tribunals, they must also ensure that the factual determinations underpinning an arbitral award were reached through fair, reasonable, and sufficiently rigorous processes.

Ultimately, the trajectory of civil procedure reflects a consistent and principled shift toward a more engaged and responsible judiciary—one that balances respect for procedural rules with the foundational commitment to truth and justice. The modern legal system recognizes that procedural rights, evidentiary rules, and judicial duties are not isolated components but interconnected pillars that collectively support the integrity of adjudication. The evolution toward a more active judicial role thus represents not a departure from procedural neutrality, but a reaffirmation of the judiciary's essential mission: to resolve disputes faithfully, fairly, and in accordance with the realities of each case.

## Ethical Considerations

All procedures performed in this study were under the ethical standards.

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The authors report no conflict of interest.

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