

Foundations, Formation Process, and Developments of Oath in Islamic Jurisprudence and Legal Procedure

1. Masoud Kaabi¹: PhD Student, Department of Law, Islamic Jurisprudence and Fundamentals of Law, Ramhormoz Branch, Islamic Azad University, Ramhormoz, Iran
2. Hormoz Asadi Koohbad^{2*}: Associate Professor, Department of Law, Ramhormoz Branch, Islamic Azad University, Ramhormoz, Iran
3. Sadeh Albooghabish³: PhD Student, Department Of Law, Abadan Branch, Islamic Azad University, Abadan, Iran
4. Saeed Abbasiniya⁴: PhD Student, Department of Law, Ramhormoz Branch, Islamic Azad University, Ramhormoz, Iran

*Correspondence: e-mail: asadi.koohbad@gmail.com

Abstract

In Islam, oath holds a significant and special position. Numerous oaths and vows have been cited in Quranic verses. In Iranian statutory law, oath as a means of proof has experienced different statuses throughout the history of Iran's legislation before and after the Islamic Revolution, undergoing numerous transformations. Some of these transformations pertain to the probative value of the oath as evidence in proving crimes, while more significant developments have occurred in the realm of evidence for proving criminal offenses in general. Consequently, a historical review of the laws prior to the Islamic Revolution of Iran indicates that the use of oaths as evidence in criminal matters had no precedent. In other words, although the Civil Code enumerated the means of proof in a limited manner before the Islamic Revolution, dedicating eleven articles to the oath as one of the means of proof, its application in criminal matters was absent. The research method in the present article is descriptive and analytical. The primary question is: what are the foundations, formation process, and developments of the oath in Islamic jurisprudence and legal procedure? It appears that the oath in Islamic jurisprudence has remained unchanged; however, this term has undergone multiple transformations in Iranian statutory law, particularly in the field of criminal law. Although the oath in civil law and in the chapter on evidence remains consistent with the pre-revolution law, certain transformations in criminal law relate to the probative value of the oath as evidence for proving crimes, with more significant changes occurring in the realm of evidence for proving criminal offenses. The foundation of the oath in jurisprudence is derived from divine approval, while its formation in Iranian law is rooted in Islamic jurisprudence and moral conscience. The aim of this article is to identify the causes and methods of oath-taking in Islamic jurisprudence and Iranian law from past to present.

Keywords: Foundations, Developments, Oath, Legal Procedure, Islamic Law

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1. Introduction

In most legal systems, the oath is considered one of the means of proof in litigation. In Iranian statutory law, the oath, which is the weakest form of evidence among the means of proof in the strict sense, is a declaration made by an individual invoking God as a witness in their favor. The function of this type of evidence is merely to “resolve the dispute,” which occurs when the plaintiff lacks other evidence, and the judge, at the plaintiff’s request, asks the defendant to take an oath. Regardless of whether the basis for requiring the defendant’s oath is the consensual nature of the dispute or the defendant’s interest in denial, if it is performed under proper conditions, according to Article 1331 of the Civil Code, it is conclusive of the dispute and results in the dismissal of the plaintiff’s claim.

In Islam, the oath holds a special and significant position. Numerous oaths and vows are mentioned in Quranic verses, where God uses them to emphasize the value, importance, and greatness of certain matters and subjects.

In terms of concept and application, the oath in the Islamic religious and legal system does not differ from its counterparts in pre-Islamic religious, civilizational, and legal domains, except that the oath in Islamic legal systems—referred to as *ḥilf*, *istiḥlāf*, *taḥāluf*, *muḥālaḥa*, *yamīn*, and similar terms—is subject to specific conditions. Failure to meet these conditions renders the oath legally invalid, as exemplified in a case reported in Jami’s *Shawāhid al-Nubuwwa*, where an individual who slandered Imam Ja’far al-Sadiq (AS) before Mansur al-Dawaniqi took an oath in the Imam’s presence, but the oath was deemed invalid due to its failure to meet the necessary conditions for a valid oath. The research method in the present article is descriptive and analytical. The significance of the research lies in the fact that no serious, coherent, and structured work has yet been conducted to comprehensively discuss and examine the various dimensions of this issue. No books, articles, or theses have been written on this subject. However, this work has its limitations, such as insufficient reference to primary and fundamental jurisprudential and legal sources, and a lack of attention to Sunni jurisprudence. The objective of this article is to examine the foundations, identify the causes, and explore the methods of oath-taking in Islamic jurisprudence and Iranian law from past to present.

2. Concept and Typology of Oath

2.1. Concept of Oath

According to linguistic definitions, *qasam* (oath) with a short vowel on the first letter and a silent second letter (on the pattern of *fals*) means “to divide” or “to apportion” (*Qasam Allah al-rizq li al-‘ibād* – God apportioned sustenance among His servants). This meaning is also reflected in the Quran: (*Fa al-muqassimāt amran*) – by the angels who apportion duties by divine command. If pronounced with a long vowel on the first and second letters (on the pattern of *fars*), it is synonymous with *ḥilf* and *yamīn*, meaning oath, share, or portion. Several Quranic verses reflect this meaning:

Surah Al-A’raf, verse 21 states: *Wa qāsamahumā innī lakumā lamīna al-nāsiḥīn* – and he [Satan] swore to them both that he was indeed a sincere advisor to them.

In Arabic, when *qasam* means oath, it is conjugated in the *af’ala* form (*aqsama*) and is accompanied by the preposition *bā* (bi-): (*Aqsama al-rajul bi-kadhā*) – the man swore by God or another entity; (*Aqsama ‘ala ihlāki khaṣmihi*) – he swore to destroy his enemy, meaning he vowed to do so (Elyasi, 2017).

In legal and exegetical terminology, scholars have provided various definitions of oath. Jalal al-Din al-Suyuti defines an oath as “a sentence that emphasizes a non-exclamatory declarative statement” (Suyuti, 1431 AH, p. 40). Shia jurists have discussed the types, conditions, and rulings of oaths in jurisprudential texts such as *Tawdih al-Masā’il* and in narrative sources under the chapter on oaths (*aymān*) (Al-Kulayni, 1986).

The Quran and narrations prohibit swearing by entities other than God in personal matters, such as swearing by the Quran, the Prophet (PBUH), and the Imams (AS), unless it does not entail polytheism or is intended for educational, guiding, or sacred purposes. Numerous examples of oaths can be found in the Quran and the sayings of the Imams. God swears by the life of the Prophet, the Day of Judgment, human soul and spirit, angels, and magnificent entities such as the sun, moon, night, day, dawn, Mecca, the Bible, the olive tree, and others. According to some reports, the term *qasam* appears 93 times in the Quran (Aliyan Nezhadi, 2007).

In Iranian law, the oath is one of the means of proving criminal claims when other evidence such as witness testimony, confession, or the judge's knowledge is unavailable. The scope of the oath in criminal law pertains to proving offenses against the person, including *diyyah* (blood money) and *qisās* (retribution in kind), but it holds no probative value in proving *ta'zīr* (discretionary punishment) or *ḥadd* (fixed punishment) offenses, except concerning private rights and damages resulting from the crime. Since crimes cannot always be proven through specific means like confession, testimony, or judicial knowledge, the legislator has established the institution of oath as a means of proof in certain cases, allowing judges to utilize it within the bounds of law for specific crimes (Zaheri Abdeh Vande et al., 2019).

2.2. Typology of Oath

2.2.1. Promissory or Binding Oath (*Yamīn al-'Aqd*)

A promissory or binding oath is one in which an individual undertakes to perform a duty, mission, or action under specific and defined conditions, or refrains from violating the oath.

Types of promissory oaths include: 1) judicial oaths by judges, 2) oaths by physicians, 3) oaths by the President, 4) oaths by members of Parliament, and 5) oaths by attorneys, official judicial experts, and others.

2.2.2. Votive Oath

A votive oath occurs when an individual swears to perform a mandatory or recommended act or to refrain from a disliked or prohibited act, or when they commit to a permissible act. For example, they may vow to donate a certain amount to the construction of a mosque if they achieve a certain goal or to fast if they commit or omit an action. The person making the vow does so with intent and will, invoking God's name, and is obliged to fulfill it upon the occurrence of the specified condition.

2.2.3. Judicial Oath

A judicial oath, also known as a probative oath, is one taken before a judge to establish or negate a right or claim. If performed in court before the *Imam al-Qudāt* (chief judge), it is termed a judicial oath (*yamīn al-qaḍā'īyyah*). If performed outside the court or before legal authorities other than the court, it is called a non-judicial oath. Articles 1325 to 1335 of the Civil Code and Articles 270 to 279 of the Code of Civil Procedure pertain to judicial oaths (Bahrami, 2015).

2.3. Differences Between Oath and *Qasāmah*

In this section, the oath will be compared with *qasāmah* based on the following points.

2.3.1. Independence

Although *qasāmah* is an exceptional and extraordinary means for proving or denying *diyyah* (blood money) and *qisās* (retribution in kind), it is recognized within its scope of validity as an independent means of proving criminal offenses. This is supported by Articles 160 and 312 of the Islamic Penal Code. Article 160 explicitly states that the means of proving a crime include confession, testimony, *qasāmah*, and oath in legally prescribed cases, as well as the judge's knowledge. In this article, *qasāmah*, like other means of proof, is recognized as one of the means of proving a crime, albeit restricted to legal cases. It can also be argued that this restriction is redundant because it is naturally understood that all means of proof are valid only within the legal framework and are not recognized beyond that. From Articles 160 and 312 of the Islamic Penal Code, it is evident that *qasāmah* and oath share the characteristic of independence, both being recognized by law (Bakhshizadeh & Aarafi, 2013).

2.3.2. Definition

Qasāmah and oath are similar in terms of definition, as both are clearly defined in the Islamic Penal Code. Article 313 defines *qasāmah* in a manner similar to oath.

2.3.3. *Rebuttability*

The possibility of rebutting *qasāmah* is recognized by the legislator, similar to oath. This is evidenced by Articles 344 and 346 of the Islamic Penal Code. According to these articles, *qasāmah* is subject to rebuttal by the law, making it one of the rebuttable means of proof.

2.3.4. *Conditions of the Declarant*

Qasāmah and oath share identical conditions regarding the declarant. Although the articles on *qasāmah* do not explicitly mention the four conditions of maturity, sanity, intention, and free will, it can be inferred that the individuals taking an oath in *qasāmah* must meet these conditions. This is because:

Firstly, these four conditions are general requirements for legal capacity, and individuals are always expected to meet them.

Secondly, Article 339 of the Islamic Penal Code explicitly states that all conditions set forth in the first book of this code for taking an oath must be observed in *qasāmah*. One of these conditions, as stipulated in Article 202, pertains to the declarant's qualifications.

Therefore, individuals taking an oath in *qasāmah* must possess the same qualifications. This is significant because *qasāmah* requires a specific number of individuals, and imposing conditions such as maturity, sanity, intention, and free will limits the pool of eligible relatives of the plaintiff or defendant who can take the oath, thereby making reliance on *qasāmah* more challenging and less frequent (Goldouzian, 2013).

2.3.5. *Formula*

Oath and *qasāmah* are subject to identical rules regarding the formula of the oath. The formula for an oath is stipulated in Article 203 of the Islamic Penal Code, and based on Article 339, which establishes the equivalence of conditions for oath and *qasāmah*, it is clear that the same rules apply to both. Thus, *qasāmah* and oath are identical in this respect (Goldouzian, 2013).

3. **Jurisprudential Foundations and Developments of Oath**

3.1. *Jurisprudential Foundations of Criminalizing the Breach of Non-Judicial Oaths*

This section will address the jurisprudential foundations for criminalizing the breach of non-judicial oaths, explaining each foundation accordingly.

3.1.1. *Quran*

- First Verse: “*And fulfill the covenant of Allah when you have taken it, and do not break oaths after their confirmation while you have made Allah, over you, a witness*” (An-Nahl: 91). The key point inferred from this verse is that the rulings on oath and covenant appear to be the same, as the term *covenant* is used interchangeably with *oath*. After stating “*fulfill the covenant of Allah,*” the verse continues with “*and do not break oaths*” (Shobeiri Zanjani, 2007, vol. 2, p. 116). Here, God commands and emphasizes the fulfillment of covenants and the prohibition of breaking oaths once made. Therefore, it can be concluded that violations of oaths should be punishable to ensure individuals adhere to their covenants.
- Second Verse: “*Allah does not impose blame upon you for what is unintentional in your oaths, but He imposes blame upon you for what your hearts have intended, and Allah is Forgiving and Forbearing*” (Al-Baqarah: 225). Exegetes have provided various interpretations regarding the term *oaths* (*aymān*), the plural of *yamīn*, in this verse and the type of oaths for which God does not hold individuals accountable. Some argue that *laghw oaths* are those made without any intent to form a covenant, such as habitual expressions like “*No, by Allah*” or “*Yes, by Allah,*” which people often utter in daily conversations without intention (Tabataba’i, 1997; Tabataba’i, 1996). Imam Ja’far al-Sadiq (AS) interpreted *laghw oaths* as habitual expressions like “*No, by Allah*” or “*Yes, by Allah,*” commonly used without

conscious intent (Al-Kulayni, 1986). Some scholars also classify oaths made to commit sinful acts or those based on unfounded assumptions as types of *laghw oaths* (Abu al-Futuh Razi, 1987).

3.1.2. *Sunnah*

There are numerous narrations that explicitly emphasize the necessity of fulfilling covenants and oaths. Imam Ali (AS) in his letter to Malik Ashtar (*Nahj al-Balagha*, Letter 53) precisely explains the consequences of adhering to commitments and the repercussions of breaching them, considering the failure to fulfill a covenant as a sign of audacity and disbelief in God. This narration is particularly applicable to professions that require an oath of office, as individuals in such positions pledge to uphold their oaths and commitments, and the public entrusts them with the responsibility of defending the country, rights, and future. This trust stems from faith in the oath and covenant taken by these officials, ensuring security and peace of mind for individuals and society. If someone fails to fulfill their covenant, they not only exhibit audacity towards God but also undermine public trust, which is essential for societal security. When trust and commitment to obligations are lost, and the public no longer accepts the word of such individuals, it negatively affects mutual relationships. This narration is not merely an ethical teaching with moral consequences; rather, it provides grounds for establishing legal measures and punishments to prevent individuals who undertake significant responsibilities and take oaths from easily breaching their commitments (Majlisi, 1989).

In another narration, the Prophet Muhammad (PBUH) stated: "He who does not fulfill his covenant has no religion" (Majlisi, 1989). According to this narration, a believer's faith is recognized through fulfilling covenants. A person who claims to be Muslim but fails to honor their commitments cannot be deemed truly religious or considered to possess complete faith. In other words, true faith necessitates adhering to one's obligations and promises. Exegetes have referenced this narration to assert that one who breaches their covenant lacks stability in their religion (Hosseini Shah Abdolazimi, 1984, vol. 7, p. 370), a point also emphasized by jurists (Amid Zanjani, 2019, p. 202).

The Quran explicitly supports this view: "But if they break their oaths after making a covenant and defame your religion, then fight the leaders of disbelief—for indeed, they have no oaths—so that they might desist" (At-Tawbah: 12). Although this verse pertains to disbelievers, its implication is that breaching an oath removes one from the fold of religion, similar to the narrations (Abu al-Futuh Razi, 1987).

3.1.3. *Judicial Oath of Non-Muslims in Imami and Sunni Jurisprudence*

According to Islamic jurists, if a non-Muslim from the People of the Book (*ahl al-kitāb*) or a non-Muslim under Muslim protection (*musta'min*) initiates a legal claim against a Muslim in Islamic courts, their right to file a claim or defense is recognized, and adjudication based on Islamic principles is obligatory for the Islamic judge (Hilli, 1993; Muhaqqiq al-Karaki, 1993). When both parties are non-Muslims, jurists, relying on verse 42 of Surah Al-Ma'idah, give the Islamic judge the discretion to adjudicate their dispute according to Islamic law or refer them to their own courts (Muhaqqiq al-Karaki, 1993; Najafi, 2011; Tusi, 1968). Some jurists believe adjudication in such cases is obligatory due to the *dhimma* contract, which mandates the protection of non-Muslims under Muslim rule and the prevention of injustice against them (Hilli, 1993).

A. Imami Jurists

While there was debate among jurists regarding the binding nature of an oath taken by non-Muslims, there is consensus among Imami jurists on the validity of a non-Muslim's oath in Islamic courts (Mousavi Khomeini, 2006; Najafi, 2011; Shahid al-Awwal, 1996; Shahid al-Thani, 1989, 1992; Tabataba'i, 1997; Tabataba'i, 1996). Shahid Thani, however, raises a concern in *Sharh Lum'ah* that an oath by non-Muslims who deny the sanctity of God might be problematic, though he concludes that the existence of textual evidence prevents such a conclusion (Shahid al-Thani, 1992). Tusi also notes that a non-Muslim's oath is valid, though it adds to their sin and deserving of punishment (Tusi, 1968).

Jurists discuss the issue of non-Muslims taking oaths without distinction between *ahl al-kitāb* and idolaters. Even idol-worshippers can be required to take an oath in court (Najafi, 2011; Shahid al-Thani, 1992). Imami jurists unanimously accept the judicial oath of non-Muslims, regardless of their belief in God (Najafi, 2011). However, this consensus is based on textual

evidence from the Quran and narrations rather than an independent juristic reasoning. The primary evidence supporting the judicial oath of non-Muslims, even idolaters and atheists, is the generality of the textual evidence on oaths (Mousavi Golpayegani, 1992).

The Quran supports this view in Surah Al-Ma'idah, verse 106: *"O you who have believed, testimony should be taken among you when death approaches one of you at the time of bequest—two just men from among you or two others from outside if you are traveling through the land and the disaster of death should strike you. Detain them after the prayer and let them both swear by Allah if you doubt [their testimony], saying, 'We will not exchange it for a price, even if the deceased was a relative, and we will not conceal the testimony of Allah. Indeed, we would then be of the sinful.'"* This verse, through its general wording, allows for the judicial oath of non-Muslims. However, exegetical sources clarify that *"from outside"* refers to the People of the Book (Fazel Moghaddam, 1983) since Islam does not recognize idolaters and polytheists in such matters (Makarem Shirazi, 1995).

Another verse cited to support the judicial oath of non-Muslims is Surah Al-An'am, verse 109: *"And they swore by Allah their strongest oaths that if a sign came to them, they would surely believe in it."* This verse refers to the oaths of idolaters and polytheists (Makarem Shirazi, 1995). However, this verse does not explicitly endorse the validity of their oaths, especially judicial oaths, as their lack of commitment to their oaths is evident in the subsequent verses. Jurists also refer to related narrations (Shahid al-Thani, 1992).

B. Sunni Jurists

The issue of non-Muslim judicial oaths is also addressed in Sunni jurisprudential sources. In some Maliki sources (Adawi, 1993; Naqrawi, 1994), Zahiri (Ibn Hazm, 2004), Hanbali (Ibn Qudama, 1968), and Shafi'i (Al-Shafi'i, 1990) texts, when discussing the judicial oath of non-Muslims, only the oath of the People of the Book is mentioned, with no reference to oaths by non-scriptural disbelievers.

The rationale for allowing the oath of the People of the Book is that they abstain from false oaths and believe in the sanctity of oaths sworn by God. Additionally, it is stated that oaths are legislated for any denier, regardless of whether the denier is Muslim or non-Muslim, as the Prophet's (PBUH) statement, *"The oath is upon the one who is being accused"*, is general and includes both groups (Ibn Qudama, 1968). Furthermore, Quranic verses such as *"So they will swear by Allah, 'Our testimony is more truthful than theirs'"* (Al-Ma'idah: 107) and *"And they swore by Allah with their strongest oaths"* (An-Nur: 53) have been cited as references to the oaths of disbelievers.

However, other Sunni sources, including Shafi'i (Al-Shafi'i, 1990), Hanbali (Al-Bahuti), and Hanafi (Al-Kasani, 1985; Al-Sarakhsi, 1993), also recognize the permissibility of oaths by non-scriptural disbelievers. The rationale provided is that polytheists do not deny the existence of a Creator, as indicated by the Quran: *"And if you ask them, 'Who created the heavens and the earth?' they will surely say, 'Allah'"* (Luqman: 25). Therefore, they revere the name of Allah and believe in His sanctity (Al-Kasani, 1985). It is also stated that polytheists revere Allah, as mentioned in the Quran: *"And if you ask them who created them, they will surely say, 'Allah.' So how are they deluded?"* (Az-Zukhruf: 87) and *"We only worship them so that they may bring us closer to Allah"* (Az-Zumar: 3). Therefore, they abstain from false oaths sworn by Allah, achieving the purpose of an oath, which is to prevent false denial (Al-Sarakhsi, 1993). However, some Sunni jurists exclude atheists, freethinkers, and libertines from this allowance due to their lack of belief in the sanctity of oaths (Al-Kasani, 1985).

3.1.4. Procedural Rules for Claims Involving Trustees

The legal relationship between a trustee and the trustor remains undisputed as long as no conflict arises between them, with minimal distinction between proving and establishing facts. This continues until a dispute emerges between the parties. Once a dispute arises, two scenarios are possible: either the trustee initiates legal action against the trustor, or vice versa. In the latter case, the trustee becomes the defendant, typically responding to the plaintiff's claims. When the trustee, in response, makes a counterclaim without providing evidence, the question arises as to the procedural nature of the trustee's response as a defendant. A defendant, upon becoming aware of a claim filed against them and participating in the proceedings, responds to the plaintiff's

claim, usually selecting means that are most effective in defeating the plaintiff's case while being least burdensome for them (Shams, 2022).

A. Necessity of the Trustee's Oath

Most jurists believe that a trustee must take an oath, whether the owner accuses them or not, based on the principle that proof of a claim is limited to testimony and oath (Najafi, 2011). Additionally, reliance on the trustee's statement must be limited to certainty, and the apparent evidence and precaution necessitate the trustee's oath (Tabataba'i, 1996).

Some authors of jurisprudential rules have discussed the principle that anyone whose statement is accepted must take an oath, regardless of whether they are the plaintiff or defendant (Hosseini Maraghi, 1996). Under this rule, trustees are also mentioned. For instance, the author of *Anawin* lists trustees whose claims are accepted, such as a mortgagee claiming expenses for maintaining the mortgaged property, a partner claiming a purchase was made for both partners or themselves, a depositary claiming expenses for the safekeeping of deposited property, a lessee claiming expenses for the leased property, trustees claiming the loss of entrusted property, or a finder of lost property claiming expenses for its safekeeping. In all these cases, the claimant's statement is accepted, but they must also take an oath (Hosseini Maraghi, 1996).

Imami jurists provide several arguments for the necessity of an oath by the claimant when their statement is accepted:

The first argument is consensus. Jurists unanimously agree that anyone whose statement is accepted must take an oath. Not requiring an oath in such cases would need specific evidence, whereas the necessity of an oath does not require further proof. This consensus is not limited to specific exceptions but is a general rule, meaning that unless there is specific evidence to the contrary, the trustee's oath is mandatory (Bojnordi, 1998).

The second argument is inductive reasoning. An examination of jurists' views and narrations on oaths reveals that individuals whose statements are accepted often have to take an oath. Exceptions are rare and typically not related to disputes but to non-disputative matters. In most cases, acceptance of a statement without an oath is supported by specific narrations or consensus. Thus, in cases of doubt without narrations or consensus, the trustee's oath is presumed necessary based on extensive investigation, leading to near-certainty (Hosseini Maraghi, 1996).

The third argument is based on the principle that when the defendant's statement aligns with the legal presumption or apparent facts, and the claimant's statement contradicts them, the claimant's statement is inherently weaker and thus must be supported by an oath. While the legal system generally recognizes only two types of proof—plaintiff's evidence or defendant's oath—the absence of these in a dispute allows for the claimant's oath as an alternative proof (Hosseini Maraghi, 1996).

Ibn Ali, Abi Salah, and other jurists believe that if the trustee is accused, they must take an oath (Najafi, 2011). Jurists like Halabi have also issued fatwas based on this view. Ibn Junaid Iskafi states that if a depositary claims the entrusted property was lost or destroyed, their statement is accepted, but if the owner accuses them, they must take an oath. This view is supported by a narration stating that a trustworthy trustee is exempt from an oath. However, some Zahiri jurists argue that a trustee is a defendant and must take an oath, as the Prophet (PBUH) mandated oaths for all defendants, regardless of trustworthiness (Andalusi, 2004).

Given the critiques of the first and third arguments, the necessity of the trustee's oath seems preferable. Accepting a trustee's statement without an oath contradicts legal principles, and strict interpretation necessitates that the trustee's statement be supported by an oath, leveraging their conscience and religious belief to ensure justice.

B. Type of Trustee's Oath

The practice of jurists is to dedicate a section to disputes at the end of chapters on contracts of trust, such as deposit (*wadi'ah*), loan (*'ariyah*), and agency (*wakalah*), in their jurisprudential works. In many cases, their assumption is that neither party has evidence to support their claim, and thus, the statement of one or both parties is accepted with an oath. However, in many instances where the trustee's claim is accepted with an oath, the type of oath and its procedural requirements are unclear. To clarify, it is necessary to briefly outline the types of oaths used as evidence in litigation, which are classified into three categories according to legal provisions:

1. **Decisive or Conclusive Oath (*beti*):** This oath is not limited to a specific subject but aims to confirm or dismiss a claim. It is performed at the request of the parties, and the court does not intervene in inviting or compelling the oath.

2. **Supplementary Oath (*takmīlī*):** This is an oath taken by the claimant to complement incomplete evidence provided in support of their claim.
3. **Exploratory Oath (*istizhāri*):** This is an oath taken by the claimant to affirm their right against a deceased person's estate.

Identifying the type of trustee's oath when they are in the position of the claimant has significant implications, including the procedural requirements for taking the oath, issuing judgments, and the possibility of appealing such judgments. For example, if the trustee's oath is a conclusive oath, it requires the depositor's request (Article 270 of the Civil Procedure Code), and the judge must base their judgment on the rules governing this type of oath. Additionally, judgments based on this type of oath are not subject to appeal (Clause 3, Article 369 of the Civil Procedure Code). Conversely, if the trustee's oath is supplementary or exploratory, different rules and effects apply.

It appears that the trustee's oath is not a supplementary oath because this type applies when the claimant lacks sufficient witness testimony. According to the Civil Procedure Code, if a claimant in financial disputes presents the testimony of one male witness or two female witnesses, their claim is proven by adding their oath (Article 277). However, in the present case, the trustee is assumed to have no witnesses.

Given this assumption, the trustee's oath is also not an exploratory oath, which requires the presentation of evidence in claims against a deceased person's estate (Article 278 of the Civil Procedure Code). Jurisprudential evidence on the necessity of the trustee's oath indicates that it is of a probative nature and falls under the category of a conclusive oath, which, according to Article 270 of the Civil Procedure Code, is contingent upon the owner's request. This view is supported by the fatwas of several jurists. For example, the author of *Jawāhir al-Kalām* states: "In the case of a depositary's claim regarding the return of the entrusted property, the owner has the right, according to religious principles and rules, to require the trustee to take an oath." The latter part of this statement implies the application of conclusive oath procedures, including the requirement of the depositor's request and the judge's permission for the trustee's oath.

However, a trustee's initial oath as a claimant, without it being requested by the defendant (the depositor), is contrary to legal principles because, under Article 272 of the Civil Procedure Code, the primary responsibility for taking an oath lies with the defendant, not the claimant. This article states: "If the claimant lacks admissible evidence and the defendant denies the claimant's claim, the defendant shall take an oath upon the claimant's request, thereby dismissing the claim." To justify this exception, it can be argued that since the trustee's oath is probative and the depositor may not have knowledge of the trustee's dishonesty, especially when the trustee claims the entrusted property is lost, they should not take an oath based on mere suspicion. Therefore, it seems the trustee cannot transfer the oath to the depositor, and failure to take the oath results in the trustee being held liable.

3.2. Developments of Oath

In the pre-Islamic era, Abu Jahl swore by the idols Lat and Uzza, following the customs of idol-worshippers in Mecca. The Arabs also swore by the names and honor of their tribes or by their swords. The most notable instances of collective oaths in the pre-Islamic era were the *Hilf al-Mutayyabin* among the Quraysh in Mecca and the *Hilf al-Fudul*, which occurred twenty years before the Prophetic mission with the participation of the Prophet Muhammad (PBUH).

The *Hilf al-Fudul* held such significance that when Walid, the nephew of Muawiyah and governor of Medina, began to act oppressively, Imam Hussein (AS) warned him that if his rights were violated, he would call for the *Hilf al-Fudul* in the Prophet's Mosque. From Imam Hussein's (AS) statement, it is understood that *hilf* refers to an oath taken to form an alliance for upholding justice and combating oppression.

Therefore, the narration "*La hilf fi al-Islam*" (There is no alliance in Islam) should be understood as referring to the collective oaths of the pre-Islamic era, which were often formed for tribal alliances involving murder, plunder, revenge, and hostility. Alternatively, it can be interpreted as referring to false oaths, as *hilf* in the Quran often denotes false oaths attributed to hypocrites. In one instance where *hilf* is attributed to believers, the expiation for breaking an oath is specified as feeding or clothing two needy persons, freeing a slave, or fasting for three days.

In Iranian statutory law, the status of the oath as a means of proof has undergone significant changes throughout the history of legislation, both before and after the Islamic Revolution. Some of these changes pertain to the probative value of the oath as evidence in criminal cases, with more substantial developments occurring in the broader realm of evidence for proving crimes.

In the history of modern Iranian legislation, the use of the oath as evidence in criminal matters had no notable precedent before the Islamic Revolution. A historical review of pre-revolutionary Iranian laws indicates that the oath was not employed as a means of proof in criminal matters. Although the Civil Code, enacted before the Islamic Revolution, enumerated the means of proof in a limited manner and allocated eleven articles (Articles 1325 to 1335) to the oath as one of the means of proof, and Article 1258 of the Civil Code explicitly listed the oath as the fifth means of proof, significant changes occurred after the Islamic Revolution, particularly with the enactment of the Islamic Penal Code in 2013.

Since 2013, two major legislative changes regarding the use of oaths in criminal matters have occurred. The first is the enactment of the Islamic Penal Code in 2013, and the second is the enactment of the Criminal Procedure Code in 2013. Although the most comprehensive legislative provisions on the use of oaths in criminal matters are found in the 2013 Islamic Penal Code, the 2013 Criminal Procedure Code also introduced numerous legislative changes, providing greater clarity and cohesion regarding the role of oaths in criminal proceedings. Provisions related to the oath in criminal matters are found in various articles of the 2013 Islamic Penal Code.

These provisions clarify that:

Firstly, a separate section on the means of proof in criminal matters is included in the fifth part of the first book of the Islamic Penal Code. This is unprecedented in the history of criminal legislation.

Secondly, this section consists of several chapters. The first chapter outlines general provisions on the means of proof in criminal matters. The second chapter covers provisions related to confessions, the third chapter addresses testimony, and the fourth chapter provides detailed regulations on oaths, spanning Articles 201 to 210. These ten articles are exclusively dedicated to oaths, with additional provisions related to oaths scattered throughout the code.

An examination of these articles reveals the distinction between oaths and other means of proving crimes, provides a legal definition of the oath, elucidates the governing principles of criminal oaths, and specifies the conditions for the validity and scope of the probative power of oaths. The articles also outline the formula and formalities of administering a criminal oath and the conditions under which an oath is invalid.

The second fundamental legal document addressing the use of oaths in criminal matters is the 2013 Criminal Procedure Code, which also contains numerous provisions related to oaths, including those concerning interpreter oaths, as specified in Articles 200, 201, 367, and 368 of the Criminal Procedure Code.

4. Conclusion

The jurisprudential foundations for the criminalization of breaching non-judicial oaths are derived from the Quran and Sunnah. God states in the Quran: “*And fulfill the covenant of Allah when you have taken it, and do not break oaths after their confirmation while you have made Allah, over you, a witness*” (An-Nahl: 91). The key point inferred from this verse is that the rulings on oaths and covenants are essentially the same. Therefore, the term *covenant* is used interchangeably with *oath*, as indicated after the command “*fulfill the covenant of Allah*” by the phrase “*and do not break oaths*” (Shubayri Zanjani, 2007). In this verse, as in previous ones, God commands and emphasizes the necessity of fulfilling covenants and not breaking oaths once taken. Thus, it can be argued that punishments and penalties should be imposed for breaches of oaths to ensure individuals adhere to their commitments.

In the Sunnah, narrations explicitly emphasize the necessity of fulfilling covenants and oaths. Imam Ali (AS) in his letter to Malik Ashtar (*Nahj al-Balagha*, Letter 53) precisely explains the consequences of adhering to commitments and the repercussions of breaching them, considering failure to fulfill a covenant as a sign of audacity and disbelief in God. This narration is particularly applicable to professions that require an oath of office, as individuals in such positions pledge to uphold their oaths and commitments, and the public entrusts them with the responsibility of defending the country, rights, and future. This trust stems from faith in the oath and covenant taken by these officials, ensuring security and peace of mind for individuals and society. If someone fails to fulfill their covenant, they not only exhibit audacity towards God but also undermine public trust, which is essential for societal security. When trust and commitment to obligations are lost, and the public no longer

accepts the word of such individuals, it negatively affects mutual relationships. This narration is not merely an ethical teaching with moral consequences; rather, it provides grounds for establishing legal measures and punishments to prevent individuals who undertake significant responsibilities and take oaths from easily breaching their commitments. In another narration, the Prophet Muhammad (PBUH) stated: “*He who does not fulfill his covenant has no religion.*”

In the pre-Islamic era, Abu Jahl swore by the idols Lat and Uzza, following the customs of idol-worshippers in Mecca. The Arabs also swore by the names and honor of their tribes or by their swords. The most notable instances of collective oaths in the pre-Islamic era were the *Hilf al-Mutayyabin* among the Quraysh in Mecca and the *Hilf al-Fudul*, which occurred twenty years before the Prophetic mission with the participation of the Prophet Muhammad (PBUH).

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Ethical Considerations

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

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Conflict of Interest

The authors report no conflict of interest.

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