

STUDY OF FALSE TESTIMONY (PERJURY) IN THE CRIMINAL JUSTICE SYSTEM OF AFGHANISTAN

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Abstract. False testimony is considered one of the significant challenges in the judicial system of Afghanistan, having widespread negative impacts on the implementation of justice.

This article explores the concept, elements, and penalties for false testimony in Hanafi jurisprudence and the Afghanistan's Penal Code. According to findings, in Hanafi jurisprudence, false testimony is regarded as a major sin, with penalties such as public humiliation, flogging, and imprisonment prescribed for it. In the Afghanistan criminal justice system, false testimony is also defined as a crime with punishments such as imprisonment, fines, and the imposition of penalties on the false witness based on its impact on the proceedings. The aim of this research is to clarify and examine the crime of false testimony in the Afghanistan's criminal justice system and to seek answers regarding what constitutes false testimony within this system. The research method employed in this article is fundamental, with information gathered using a descriptive-analytical approach and through library research. The results indicate that Afghan legislators largely follow the views of Imam Abu Yusuf and Muhammad, students of Imam Abu Hanifa, and have attempted to prevent the proliferation of this phenomenon through legal measures. The similarities of this crime in Hanafi jurisprudence and Afghanistan's criminal law include legal and jurisprudential foundations, attention to the effects of false testimony, penalties for false testimony, and the nature of the crime of false testimony.

The differences include the legal approach versus the jurisprudential approach, occurrence only in court sessions versus occurrence in court sessions and before judicial officers, differences in the severity of penalties, civil and criminal liability, and how to deal with false testimony after a verdict is issued.

Keywords: Testimony, Falsehood, Hanafi Jurisprudence, Penal Code, Afghanistan Criminal Justice System.

ИССЛЕДОВАНИЕ ЛОЖНЫХ ПОКАЗАНИЙ (ЛЖЕСВИДЕТЕЛЬСТВО) В СИСТЕМЕ УГОЛОВНОГО ПРАВОСУДИЯ АФГАНИСТАНА

Аннотация. Ложные показания считаются одной из существенных проблем в судебной системе Афганистана, оказывая широко распространенное негативное влияние на осуществление правосудия. В этой статье исследуются концепция, элементы и наказания за ложные показания в ханафитской юриспруденции и Уголовном кодексе Афганистана. Согласно выводам, в ханафитской юриспруденции ложные показания считаются тяжким грехом, за который предусмотрены такие наказания, как публичное унижение, порка и тюремное заключение. В системе уголовного правосудия Афганистана ложные показания также определяются как преступление с такими наказаниями, как тюремное заключение, штрафы и наложение штрафов на лжесвидетеля в зависимости от его влияния на судебное разбирательство. Целью данного исследования является прояснение и изучение преступления ложных показаний в системе уголовного правосудия Афганистана и поиск ответов относительно того, что составляет ложные показания в этой системе. Метод исследования, используемый в этой статье, является фундаментальным, с информацией, собранной с использованием описательно-аналитического подхода и посредством библиотечных исследований. Результаты показывают, что афганские законодатели в значительной степени следуют взглядам имама Абу Юсуфа и Мухаммеда, учеников имама Абу Ханифы, и пытались предотвратить распространение этого явления с помощью правовых мер. Сходства этого преступления в ханафитской юриспруденции и уголовном праве Афганистана включают правовые и юридические основы, внимание к последствиям ложных показаний, наказания за ложные показания и характер преступления ложных показаний. Различия включают правовой подход против юридического подхода, возникновение только в судебных заседаниях против возникновения в судебных заседаниях и перед судебными должностными лицами, различия в строгости наказаний, гражданской и уголовной ответственности и как бороться с ложными показаниями после вынесения приговора.

Ключевые слова: Свидетельство, Ложь, ханафитская юриспруденция, Уголовный кодекс, система уголовного правосудия Афганистана.

Introduction:

Testimony, as one of the most important pieces of evidence in civil and criminal cases, plays a decisive role in ensuring justice and upholding rights. In this context, false testimony is considered a reprehensible act that goes against religious, ethical and legal principles, leading to the distortion of the judicial process and the violation of individuals' rights. False testimony may arise from various motivations such as exonerating someone else, satisfying instincts, fear, emotions, obtaining money, bias and so on. In Hanafī jurisprudence, false testimony is not only deemed unlawful from a religious perspective but also carries specific punishments. Hanafi scholars believe that false testimony disrupts the execution of justice and is therefore regarded as a major sin that warrants worldly and otherworldly punishment. On the other hand, in the criminal justice system of Afghanistan, particularly in its Penal Code, false testimony is recognized as a crime, and penalties have been established for those who commit it.

Afghanistan's legislator has taken necessary measures to prevent and punish false testimony considering its negative effects on the judicial process and individuals' rights.

Research Objective:

This research explains the crime of false testimony in the criminal justice system of Afghanistan.

Research Question:

What is the definition and punishment for false testimony in the criminal justice system of Afghanistan?

Research Methodology:

The research method in this article is fundamental, and the information is gathered using a descriptive-analytical approach through library research utilizing credible Arabic and Persian sources in the form of books and articles. Data is collected through note-taking and analyzed accordingly.

The Literal Meaning of Testimony

In linguistics, testimony means decisive news, trust, and deposit (Alavi, 2014: 82), presence, examination, perception, and information (Langarudi, 2007: 396). Testimony is an Arabic word derived from the root (Shada) and has both a verbal meaning (to inform) and a nominal meaning (news) (Zar'at, 2011: 284). Testimony essentially refers to informing about what one has seen and also conveys the meaning of observation and sight.

Thus, a witness is someone who reveals everything they have learned through seeing and observing (Ibn Manzur, Lisan al-Arab, Volume 3, p. 131).

The Idiomatic Meaning of Testimony

In its common meaning, testimony refers to the act of reporting on one's presence at an event and stating what has been seen and heard (Omid, 1991, p. 1332). However, in a legal context, testimony is defined as the reporting of an event that benefits one party and harms another provided by a third person who is not a party to the dispute or the judge at the time of discerning the truth (Katouzian, 2001, Vol. 2, p. 14). Testimony consists of reporting with certainty and decisiveness about the existence of a right that is presented by someone other than the judge (Alavi, 2014, p. 82). In legal terminology, testimony is the report of a tangible event perceived through one of the senses, which is detrimental to oneself and beneficial to another (Jafarri Langarudi, 2007, p. 397). In jurisprudential terms, testimony is defined as the truthful reporting of an event intended to establish a right in the court using the word "testimony" in a judicial setting (Nazir, 2017, p. 147). According to the Civil Procedure Code of Afghanistan, testimony is the reporting of a right in court using the phrase "I bear witness" (Civil Procedure Code of Afghanistan, Article 321, Paragraph 1). Additionally, according to the Criminal Procedure Code, testimony consists of statements made by a person during the examination of a case regarding what they have perceived through seeing or hearing about the event in question, presented before a competent court under oath. Written statements and gestures regarding a mute person are considered as testimony (Criminal Procedure Code, Article 4, Paragraph 32).

The Literal Concept of False Testimony

In its linguistic sense, "false testimony" refers to something that is false or a lie. This is why it is said "deceptive speech" refers to speech that is tainted by falsehood (Samir Burhan, 2010: 95). The term "false testimony" originally means to incline, deviate, or return and it is also associated with the concepts of falsehood and deceit, as well as false statements and invalid testimony (Mortazi et al., 2013: 122).

In the jurisprudential terminology, false testimony refers to lying witness (false testimony). "False testimony" means embellishing a lie. It is also used to describe lies, invalid matters and slander (Rajaei et al., 2021: 269).

The Idiomatic Concept of False Testimony

Since the criminal system of Afghanistan is based on Hanafi jurisprudence and criminal laws (the Penal Code), the following examination of this crime will be conducted from the

perspectives of legal scholars, Hanafi jurists and the Afghan Penal Code. False testimony refers to untrue testimony, intentional false testimony, invalid testimony, testimony given despite knowledge of its falsehood, testimony without right and testimony that deviates from the truth (Mortazi, 2013: 123).

False testimony has two instances: First, someone who knowingly and intentionally testifies contrary to the truth. Second, someone who is ignorant of the witnessed fact presents themselves as knowledgeable and proceeds to testify (Jafari Langarudi, 1982, Vol. 2: 841).

False testimony is when an individual, aware of the truth, intentionally testifies contrary to it; or an individual who is unaware of the truth intentionally testifies, whether that testimony accidentally aligns with the truth or contradicts it (Mortazi et al., 2013: 127).

Sarakhsi, one of the famous Hanafi jurists, has defined false testimony as an admission of the falseness of the testimony (Sarakhsi, 2001, Vol. 16: 279). Dr. Wahba al-Zuhaili defines false testimony as follows: "False testimony is deliberately lying about another; because the very term 'zour which is an Arabic word' means falsehood" (Zuhaili, 2001, Vol. 2: 1815).

The Afghanistan Penal Code defines false testimony as follows: "If a witness, after taking a legal oath before the court or before judicial authorities, intentionally makes a false statement, denies the truth, or conceals all or part of the events related to their testimony in this case their testimony is considered false" (Afghan Penal Code, Article 481).

Based on the definitions of false testimony provided above from the perspectives of legal scholars, jurists, and the Afghan Penal Code false testimony is established as being contrary to the truth and intentional in front of the court. The Afghanistan Penal Code outlines criminal behaviors related to false testimony in greater detail, and furthermore, false testimony can be established not only before the court but also before judicial authorities, in this case, the punishment is milder.

Elements of the Crime of False Testimony

The elements of the crime of false testimony in the criminal system of Afghanistan (Hanafi jurisprudence and the Afghan Penal Code) consist of three main parts: the legal element, the material element, and the mental element. These will be examined in light of the definitions provided above.

1. Legal Element

Hanafi jurisprudence considers false testimony a major sin and a prohibited act that warrants punishment.

The verses of the Holy Quran and prophetic traditions explicitly condemn and prohibit false testimony, including the verse "And avoid false statement" (Hajj: 30), which emphasizes refraining from false speech. According to a hadith of the Prophet Muhammad (peace be upon him), bearing false witness is equivalent to associating partners with God. Articles 481 and 482 of the Afghan Penal Code address the definition and punishment of false testimony. According to these articles, false testimony is considered a crime both in court and before judicial authorities. Thus, these provisions constitute the legal element of the crime of false testimony according to the Afghan Penal Code.

2. Material Element

The material element of the crime of false testimony, based on the definition of false testimony in Hanafi jurisprudence and the Afghanistan's Penal Code, consists of making a statement that contradicts the truth in court or before judicial authorities intending to influence the court's ruling and taking a legal oath by the witness before giving testimony. It is worth noting that the material element of this crime is described more broadly in the Afghan Penal Code compared to Hanafi jurisprudence (Asia Foundation, 2019: 69-68).

3. Mental Element

Based on the definition provided for the crime of false testimony in Hanafi jurisprudence, the existence of intent and deliberation in giving false testimony is a prerequisite.

Therefore, if a witness testifies out of ignorance and without intent to deceive they will not be punished. According to paragraphs 1 and 2 of Article 482 of the Penal Code, the mental element of false testimony consists of knowledge and intent. This means that a person who knowingly makes false statements despite being aware that their statements are lies does commits false testimony. It is also important to note that according to this article only general intent is required for this crime to be established and specific intent is not necessary (Asia Foundation, 2019: 69-68).

Punishments for the Crime of False Testimony

The punishments for false testimony in Hanafi jurisprudence are diverse including public humiliation, flogging, blackening of the face, shaving of the head and imprisonment. According to Imam Abu Hanifa a false testifier must become well-known and notorious by the government in the city but is not subjected to punishment. The reasoning behind this is based on the actions of Judge Shurayh ibn Harith al-Kindi, who would only make the false witness famous and would not flog him as this public humiliation serves as a sufficient deterrent.

If excessive punishment is imposed for false testimony, people may refrain from testifying out of fear of punishment, which could lead to the violation of people's rights (Ayni, Volume 9, 855: 196). It is reported that Judge Shurayh would publicly humiliate a false witness if they were a merchant in the market, and if they were not a merchant, he would do so after evening prayer when people gathered. He would announce that Judge Shurayh sends his greetings and states that this person has been found to be a false witness, urging others to avoid him. Furthermore, it is reported that Judge Shurayh would take a false witness to the tribal mosque if they were Arab or to the slave market if they were a slave for public humiliation (Al-Zaylai, Volume 5, 1416: 104). Imam Abu Hanifa asserts that the punishment for false testimony is public humiliation, warning people in the market or tribal mosque to stay away from this false witness (Kasani, Volume 6, 587: 289).

Regarding witnesses retracting their testimony before and after the issuance of a verdict, Hanafi jurisprudence provides different rulings. If a witness retracts their testimony before the verdict is issued or after it but before its implementation, there is no liability on them. However, if a witness retracts their testimony after the verdict has been issued and if flogging has already been applied to the accused, there is no liability for the false witness. If the accused dies as a result of the flogging, according to Imam Abu Hanifa, there is no blood money owed by the false witness. In contrast, according to Imam Abu Yusuf and Muhammad, blood money is required from the false witness. If the accused is stoned to death based on false testimony, the false witness must pay one-fourth of the blood money (Kasani, Volume 6, 587: 290).

In Hanafi jurisprudence, if a witness retracts their testimony regarding a murder, even if the sentence has been carried out, there is no criminal liability for the witness; only civil liability arises, which consists of paying blood money (diyat). When witnesses retract their testimony in cases of qisas (retribution), they are responsible for paying the blood money and cannot be subjected to qisas themselves, as they did not directly cause the murder but rather contributed to it, similar to someone who digs a well. Thus, causation does not necessitate qisas. If the testimony was given in favor of pardon from qisas and then the witness retracts, they are not liable because qisas is not a financial matter (Mousili, 1426, Vol. 2: 167-166). Article 1728 of the Majalla al-Ahkam al-Adliyya states: When witnesses retract their testimony in the presence of the judge after giving their testimony and before the verdict is issued, their testimony is annulled, and they are subject to ta'zir (discretionary punishment).

According to the followers of Imam Abu Hanifa, Imam Abu Yusuf and Muhammad, a false witness is flogged and imprisoned. This view aligns with that of Imam Shafi'i, and their evidence is a narration from Umar ibn al-Khattab, who flogged a false witness forty times and blackened their face. Another narration from Imam Abu Yusuf and Imam Muhammad from Ibn Abi Shayba in his *Musannaf* in the section on limits states that Umar wrote to his governors in Syria to flog a false witness forty times, blacken their face, shave their head, and give them a lengthy imprisonment (Ayni, Vol. 9, 855: 198). Additionally, Abdul Razzaq narrated in his *Musannaf* that Ibn Jurayj reported that Makh'lud said Umar ibn al-Khattab flogged a false witness forty times and blackened their face. According to Sarakhsi, the punishment for a false witness is public humiliation and imprisonment (Zaylai, Vol. 5, 1416: 104). According to Imam Abu Yusuf and Muhammad, a false witness is flogged and imprisoned until their repentance becomes evident, and the punishment does not exceed seventy lashes; there is also an opinion that Imam Abu Yusuf believes in seventy-five lashes. They refer to the narration of Umar regarding the punishment of a false witness being forty lashes and that their face should be blackened. There is evidence that blackening the face has been abrogated because it constitutes mutilation, which the Prophet prohibited (Sarakhsi, Vol. 16, 483: 146-145).

If a person confesses to giving false testimony while not being negligent or mistaken, as Ibn Kamal has written, and if proving it through evidence is not possible because it falls under the category of denial, then the consensus is that flogging and imprisonment are applicable. It is also mentioned in *Bahr al-Ra'iq* that the judge may politically obscure this. It has been said that if false testimony is repeated, flogging is unanimously applied, and if the person repents, it is not applied (Aben Abidin, Volume 5, 1407: 503).

The Afghanistan Penal Code defines the crime of false testimony in three sections, establishing three levels of punishment: ordinary false testimony, false testimony that leads to the conviction of the accused, and false testimony in a civil case or before judicial authorities.

The penalties provided in the Afghanistan Penal Code for false testimony include imprisonment, fines, and penalties imposed on the convicted party. As stated in Article 482 of the Afghan Penal Code:

(1) A person who gives false testimony in favor of or against an accused in a crime shall be punished with medium imprisonment for up to two years or a fine ranging from sixty thousand to one hundred twenty thousand Afghanis.

(2) If, as a result of false testimony, the accused has been convicted, the witness shall be punished according to the penalty provided for the crime for which the conviction was issued against the accused.

(3) A person who gives false testimony in a civil case or before judicial officers shall be punished with short imprisonment or a fine ranging from ten thousand to twenty thousand Afghanis.

Considering the penalties for false testimony in the Afghanistan Penal Code mentioned above, it appears that the approach of the Afghanistan's legislator is largely based on the views of Imam Abu Yusuf and Muhammad, students of Imam Abu Hanifa. The penalties for committing this crime depend on the circumstances and include imprisonment, fines, and penalties imposed on the convicted party after the issuance of a judgment, especially if the false testimony is retracted after the judgment has been issued. It is important to note that false testimony in Hanafi jurisprudence is only punishable when it occurs in a court session; however, according to paragraph (3) of Article 482 of the Afghanistan Penal Code, false testimony before judicial officers is also punishable in which case a lighter penalty is provided for the perpetrator.

Conclusion:

By examining false testimony in the criminal system of Afghanistan (Hanafi jurisprudence and the Afghanistan Penal Code), the following results were obtained:

1.False testimony is severely condemned and criminalized in both systems, as it leads to injustice and the violation of individuals' rights.

2.Hanafi jurisprudence considers false testimony a major sin and prescribes punishments such as public shaming, flogging, imprisonment, blackening of the face and in some cases payment of blood money.

3.The Afghan Penal Code also categorizes false testimony as a crime and depending on the severity of the offense, stipulates punishments such as imprisonment, fines, and in some cases, the imposition of penalties on the false witness based on the judgment issued against the accused.

4.The main difference between these two systems lies in the implementation of punishments. Hanafi jurisprudence emphasizes public shaming and discretionary punishments, while the Afghan Penal Code adopts a more systematic approach by determining the level of punishment based on the impact of false testimony on the issued verdict.

5.The penalties provided for this crime in the Afghan Penal Code are more aligned with the views of Imam Abu Yusuf and Imam Muhammad, students of Imam Abu Hanifa.

6.Both legal systems have sought to support the integrity of judicial proceedings by criminalizing false testimony and preventing the misuse of this tool. It is recommended that, in addition to existing punishments, preventive measures such as legal and religious awareness for citizens be strengthened to ensure justice.

In conclusion, although Hanafi jurisprudence and the Afghan Penal Code share similarities in criminalizing false testimony, the Afghan Penal Code adopts a more precise and legal approach to this crime, expanding its scope.

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