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**The Obligation to Give Witness in Criminal Proceedings: a Fiqhi
Perspective**

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Abstract

The laws of many countries oblige witnesses to and those aware of the event of certain crimes to make their information available to the criminal justice system and provide sanctions in the case of non-fulfillment of the obligation.

This article examines this issue on the basis of fiqhi principles. It first analyses such concepts as “obligation to bear witness”, “necessity of giving witness”, and the “prohibition of concealing witness” which are more familiar to fiqhi literature. In this section the author supports the approach according to which in case of there being a mandatory obligation (to act or refrain, prescribing or proscribing), and there being no harm to or unreasonable hardship for the witness, it is allowed to oblige the individuals to bear witness and it is justified by the rule allowing for obliging the people to fulfil their obligations.

Then, the issue is studied in the light of the concept of “expediency” or public interest and the derived conclusion is that if there is a social interest in detecting the crimes and in effectively suppressing the criminal phenomena, abstaining from witness bearing may be criminalized.

Obliging the individuals to appear before a court to give testimony or offer information must be free from any physical or mental pressure so that they can freely choose to assist the court. Coercing or forcing the individuals to state special things against their own conscience is no way permissible; indeed such submissions may not be invoked as witness or testimony. Required guarantees must also be provided so that the individuals’ liberties face the least deprivation in the process of bearing witness or offering information.

Key words: bearing witness, giving witness, summoning to the court, obliging to give witness, the principle 38 of the constitution of The Islamic Republic of Iran.