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The Basics of Discovery and Disclosure in Civil Procedure of Iran and America

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ABSTRACT

In order to be successful in litigation, it is necessary to identify and prove the relevant issues; That's why the ways to access evidence are so important. The mechanism of discovery and disclosure may be effective in proving the subject matter; This means that either party to the dispute may request the disclosure of documents and any other evidences related to the dispute from the other party or third parties, while in litigation it is the responsibility of the litigants to propose relevant facts and the claimant is responsible for proving these matters. It remains to be evaluated that on what basis the other party or a third party may be required to provide evidence in favor of another. Concerns about discovering the truth and the need to observe good faith in proceedings require that litigants and even third parties be required to provide evidence in favor of another.
Keywords: Disclosure, Discovery, Good Faith, Fair Trial, Discovery of Truth.

Introduction

In the past, litigants had limited means of obtaining and preserving evidence in order to be submitted in the proceedings; There were no wide-ranging ways of forcing a competitor to present evidence that he

owned or possessed. Then a process called "Discovery and disclosure" was envisaged in some law systems; This means that either party can ask the other party or a third party to present the evidence in its favor.[1]

In fact, it is up to the plaintiff to provide the subject matter and prove it, and this has been accepted in many legal systems with different interpretations, such as what is called the rule of " The burden of proof lies with the plaintiff " in jurisprudence or the rule of "burden of proof" in the common law. Is known. However, in some cases, the litigant cites evidence that is in the possession of a competitor or a third party, in which case the said persons will be obliged by law to provide evidence, even if it is to their detriment.

In some legal systems, such as the United States, the disclosure process is explicitly provided for in law. The United States is one of the major and most important countries under the Common law system, whose rules and jurisprudence regarding the disclosure of up-to-date evidence are precise and extensive; It can be said that the United States has the most advanced law and procedure in this field, and the disclosure of evidence in this country is guided by two sources: the rules of civil procedure and judicial procedure.[2] Sections 5 and 6 of the US Federal Rules of Civil Procedure (Rules 26 to 37) address Discovery and Disclosure.

In the Iranian Code of Civil Procedure, unlike the US Federal Rules of Civil Procedure, the issue of disclosure of evidence is not explicitly addressed and an separate chapter is not devoted to this issue, and only occasional examples of cooperation in disclosure of evidence can be considered. For example, Article 209 of this law, in the event that the litigant admits to the existence of the document cited by the other party and refuses to express the document, considers the refusal to express the document as positive evidence of the other party's statement. Article 210 of the same law has the same effect on the trader refusing to express his commercial offices without a good cause. According to the latter article, if one of the parties cites the commercial office of the other party, the said offices must be presented in court and no businessman can refuse to express or present its offices for the excuse of not having an office; If he refuses, it can consider it as one of the positive evidences of the party. Also, Article 212 imposes the obligation to provide documents and information related to the litigation on third parties (public legal entities only) and guarantees the implementation of temporary suspension from government services for violating this requirement. Even elsewhere, the secrecy of the documents and the subsequent discovery and expression of the above reasons have been considered as grounds for retrial (paragraph 7 of Article 426).

Regarding the above cases, it should be acknowledged that although the obligation to disclose the evidence can be briefly deduced from them, but in terms of how to disclose evidence and the guarantee of actions applicable in case of non-cooperation in disclosing and discovering, there are not enough tools in Iranian civil law and its legal mechanism. It is incomplete.

In fact, the question must be answered as to what is the position of the Iranian Code of Civil Procedure regarding the disclosure of evidence, and can the same mechanism be used to substantiate the claim, as in the American civil proceedings? In addition, what is the basis for obliging a person to provide proof in favor of another? To this end, we will first examine the concept of disclosure of evidence and then the basics of disclosure of evidence and related theories to explain the existence or absence of the basis of the disclosure process in civil proceedings in Iran.

1- The concept of discovery and disclosure

[1] *Oakley, Jhon.B, Amar, Vikram.D, American Civil Procedure: A Guide to Civil Litigation U.S Courts, (2009), p524*

[2] *Moloudi, Mohammad and Rasoul Farahani, "A Comparative Study of Disclosure of Electronic Documents and Information in Evidence of Proof in American, British and Iranian Law", Journal of Comparative Law Research, Volume 19, Number 2, (2005), p.147.*

In this section, we want to explain the concept of disclosure of evidence, and considering that the legal term is not explicitly provided in Iranian law and there is not much legal literature in this field, so to better explain the first issue should be examined in English equivalent. :

Disclosure is equivalent to the English word "Discovery". In the Black law dictionary, the word means:[3]

1. The act or process of discovering or knowing something that was previously unknown that the inventor can apply for registration after registration.

2. Compulsory disclosure at the request of one of the parties to information relevant to the dispute; Such as Articles 26 to 37 of the Federal Code of Civil Procedure.[4]

What is intended and more relevant to this topic is the second meaning, which refers to two important aspects of disclosure evidence, namely the request of one of the litigants and the relevance of the evidence. As can be seen from the recent definition of rules 26 to 37 of the Federal Rule of Civil Procedure as an example, it should be noted, however, these rules are entitled "Discovery and Disclosure". Therefore, it is necessary to pay attention to the meaning of the word "Disclosure".

In the Black law dictionary, the recent word means: "1. The act or process of knowing something that was unknown. "Mandatory disclosure of information to the competitor in accordance with the rules of procedure."

As in the previous case, what concerns the issue of discovery and disclosure is the second meaning, and as can be seen, both terms are used in the same sense, as in the above-mentioned legal dictionary, the word "Disclosure" refers to the word "Discovery". Therefore, both terms are synonymous in meaning and function in federal rules of civil procedure.

American writers have offered relatively similar definitions of disclosure, some of which are discussed below:

One definition of disclosure states: "Disclosure of reason is a process of forced exchange of information between the parties to a legal dispute."[5]

As can be seen in this definition, only the litigants are required to provide evidence in favor of the other party, while in many cases the disclosure of evidence also involves the "third party" and he is required to provide evidence in favor of one of the parties. .

Another definition states: "Disclosure is the reason for the pre-trial whereby one party provides specific information to the other."[6] The problem with this definition, as in the previous case, is its lack of comprehensiveness; This means that only the parties to the dispute are required to disclose the reason, while the said task is sometimes imposed on third parties. The pre-trial refers to a cross-section of the proceedings in which a meeting is convened between the litigants and the judge, with the aim of identifying disputed legal issues and determining non-contentious and certain matters, and generally encouraging the parties to resolve the matter through Peace and reconciliation is enshrined in Article 16 of the Federal Code of Civil Procedure.[7]

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[3] *Black Law Dictionary,p.533*

[4] *Ibid,p.559*

[5] *Glannon, Josephow, The Glannon Guide to civil procedure, 7th edition, Wolters Kluwer, New York, (2019), p365.*

[6] *Glannon, Josephow, The Glannon Guide to civil procedure, 7th edition, Wolters Kluwer, New York, (2019), p365.*

[7] *Bevan, Neal. R, civil law and litigation for Paralegal, Publisher: Wolters Kluwer; publisher: Linda Schreiber, (2008), p230.*

Carefully considering the above definitions and considering the defects in each of them, we propose the following definition to reveal the reason:

Discovery and disclosure is a process by which, at the request of one of the litigants, the other party or a third party is required to provide evidence and information related to the dispute that it owns, possesses or controls in favor of the applicant.

In discovery and disclosure , both parties can know basically everything about the case before trial. Both parties can ask questions through the exchange of information or request the submission of documents that the other party intends to use. Indeed the new approach to disclosure is broad and wide free, requiring the parties to provide almost every information they need during a hearing.

Paragraph one (1)(b) of rule 26 of the Federal rules of Civil Procedure sets out a broad standard for disclosure of reason; In fact, any matter that relates to the claim or defense of either party and that logically leads to the disclosure of evidence and acceptable evidence in the proceedings, can normally be disclosed and presented by the litigant or the third party who has the relevant evidence. , At the request of the applicant will be required to submit it for the benefit of another. What is the basis for obliging a litigant or a third party to provide evidence in favor of another?

2-The Basics of discovery and disclosure

In discovery and disclosure process, the other party or even sometimes the third party is required to provide the evidence that are relevant to the lawsuit and in his possession, in favor of the applicant. The question is, when a person is not interested in providing evidence, on what basis is he obliged to help advance the litigation process and provide evidence? Regarding the basis and why of imposing this task, cases such as the need to observe good faith in the trial and the concern of discovering the truth as the final goal of the trial can be raised and examined.

2-1- Purpose of the trial

The Code of Civil Procedure, like other laws, pursues certain goals, which derive from a particular school according to the thinking of the legislator as well as the basis of the legislation. Regarding the legal system of Iran and, consequently, the code of civil procedure, in general, it can be said that it is inspired by the school of Islam and jurisprudential ideas are seen in the formation of its rules and goals. One of the issues that has been raised among jurists for a long time is the purpose of trial, so what is the ultimate goal of judgment? Some jurists believe that the Islamic judiciary's main goal is to ensure justice and achieve the truth.[8] On the other hand, the definition of the judiciary as a resolution of disputation by some jurists has led to the view that the main purpose of the trial is the resolution of disputation and not to discover the truth.[9]

There is a similar difference of opinion in American law, which is based on the adversarial system ; According to one opinion, the judge should be an impartial and passive observer of the proceedings, and it is the responsibility of the litigants to provide evidence. The judge has no right to interfere until the end of the competition between the litigants and will only sentence at the end. Therefore, it does not have the authority to search to find out the truth. In contrast, there is the view that the ultimate goal of the trial is to reach the truth, and the judge plays a role in this process while observing impartiality and overseeing the process of hearing and providing evidence. Therefore, in this country, there are dual theories of truth discovery and the resolution of disputation. Before examining these theories, let us note that the purpose of

[8] *Najafi, Mohammad Hussein, Jawahar al-Kalam fi Sharh Sharia al-Islam, Volume 7, Beirut: Darahiyah Al-Tarath Al-Arabi, Ch 7, 1404 AH, p. 40*

[9] *Tabatabai Yazdi, Seyyed Mohammad Kazem, Completion of Al-Urwa Al-Wathqi, Volume 1, (Qom: Maktab al-Dawari, 1414 AH) p.3*

the trial is important because it can justify a person's obligation to disclose evidence; This means that if we consider the purpose of the trial to be the discovery of the truth, then the judge has wider authorities, and the obligation to disclose the evidence can be justified in order to discover the truth.

2-1-1- Theory of Dispute resolution

The word "resolution" means "separating, ending hostility", "barrier between two things" and "dispute" means "enmity, struggle, enmity and strife"[10]. In legal terms, dispute resolution means the end of a dispute between the parties without the matter being settled[11].

According to this view, the main purpose of judgment is the resolution of contention , even if it does not lead to the discovery of the truth. The roots of this idea should be traced in the definition of jurists; This group seems to have considered the idiomatic meaning of jurisprudence to be derived from its literal meaning in such a way that among the various meanings of judgment, the most important one, namely chapter, cut and verdict, has been considered, as if the ruler ruled between the two parties. Cuts off the dispute and the quarrel.[12] The literal meaning of jurisprudence is also the resolution of enmity between the adversaries and the verdict to prove or not prove the right to the plaintiff's lawsuit.[13] The late Seyyed Yazdi, in completing Al-Arwa Al-Wathqi, has considered judging between people in case of disputes and conflicts and resolving hostilities between them. The definition of jurisprudence in the resolution of disputation is the subject of those who accuse the Islamic judiciary of negligence in discovering the truth and believe that the purpose of the trial is the resolution of disputation and not to discover the truth. These examples have been used in such a way that the purpose of Islamic jurisprudence is the resolution of disputation and the discovery of the truth is not the main purpose of the trial. But is the main purpose of the trial really the resolution of disputation? In explaining this idea, it should be said that merely considering one of the purposes of the trial as the resolution of disputation does not create problems, but the objection is when we make the main purpose of the trial the chapter on hostility. If we consider one of the functions of the judiciary as the chapter of hostility, not only is there no objection, but it is correct and logical; When a lawsuit is filed in court, the judge is obliged to decide on it. In some cases, the citations of the parties are not enough and the court investigation does not clarify all aspects of the case and ultimately reveal the truth. In this case, the judge is obliged to issue a verdict based on duty, while it is really difficult and even impossible to get it. Here the function of the judiciary can be considered a resolution of disputation ; It is not as the main purpose but as the secondary purpose of the trial. Article 3 of the Code of Civil Procedure, which refers to the chapter on hostility, seems to have been drafted on this basis, stating that "judges of the courts are obliged, in accordance with the law, to hear cases, issue appropriate judgments or the resolution of disputation."

Therefore, if the proponents of this theory mean that the judge, realizes the truth and discovers the trueness, the theory is correct.where there is no way to find out the truth, the judge is obliged to sentence based on the available evidence. Here, the judge sought to discover the truth, but because he found it impossible to reach it, he inevitably decided based on the appearance of evidence, which is the only distance between strife and hostility. It is also not logically and rationally acceptable to consider the main and primary purpose of the trial as the resolution of disputation ; No one agrees to sentence based on chance and lottery as long as it is possible to search and find the truth, because if the purpose of judging is only to eliminate differences and hostilities at any cost, it should be possible to draw and toss coins as well. Issued

[10] *Amid, Hassan, Farhang-e Moayed Persian, Volume One, (Tehran: Amirkabir, Fifth, 1985) pp. 864 and 1541*

[11] *Mokhtari,Rahim, Judicial Evaluation of Evidence, (Tehran: Majd, Ch. 1, 2015) p.80*

[12] *Seyyed Mohammad, Hosseini, "Discovering the Truth or the Season of Hostility, the Function of Judgment", Quarterly Journal of Islamic Sciences, Fifth Year, No. 19, (2010), p.157*

[13] *Seyyed Abolghasem, Khoei, Fundamentals of Completion of the Curriculum, Volume 1, translated by Alireza Saeed, (Tehran: Khorsandi, Ch. 5, 2013) p. 25*

a verdict. Common sense does not accept this either, because mere sentencing does not mean the end of hostility; Without the realization of the right to the substance of the dispute, the dispute is not eliminated and the consent of the litigants is not provided.

The theory of the resolution of disputation in American law has also accepted by some doctrines, and proponents of this theory hold this view because of the adversarial system that it is the judiciary. In this system, the trial is based on the evidence gathered by the parties, and the process continues in the presence of a passive judge, and the court makes its decision only on the basis of the arguments presented by the litigants. In fact, the trial is conducted by the parties and their attorneies, and the judge is neutral and passive, and the purpose of the trial is the resolution of disputation, not necessarily the discovery of the truth.

Criticizing the resolution of disputation, it should be noted that the adversarial system in the common law, especially American law, has changed over time; In fact, the system has moved somewhat toward an investigative hearing, although they have adhered to the requirements of an indictment. In line with these changes, the trial has been divided into two stages, which include "pre-trial" and "trial" sections; During the pre-trial period, which is briefly the stage of gathering evidence, the judge, while observing impartiality, oversees the meet and confer, the presence of the parties to provide evidence, and dialogue to resolve disputes. Under the new federal rules of Civil Procedure, judges can control the trial process and court hearings without disrupting the adversarial system, which imposes fast, decisive and fair rulings on the parties, lawyers and witnesses. It also maintains a regular and consistent trial and eliminates and prohibits unnecessary evidence. Because of these purpose and the extension of the judge's authorities that the United States Supreme Court ruled in 1966 that the main purpose of the court was to discover the truth. Therefore, according to the objections to the theory of the resolution of contention, so we should look for another theory, which is called the theory of truth discovery.

2-1-2- Theory of truth discovery

The word "truth" means "truth", "correctness" and "the principle of everything", they also said: "Truth is something that is definitely fixed". The English equivalent of the word "truth" is the word "Truth", which has a similar meaning to the above definitions; In the Black legal dictionary, the opposite of the word is stated: "A very accurate account of events;[14] the truth". It remains to be seen what the discovery of the truth in the trial means; To this end, we examine the theory of truth discovery in Iranian and American law.

2-1-2-1- Theory of truth discovery in Iranian law

Judicial role is an important social role with a wide range of influences. As it has been said, the role of jurisprudence in a religious society can not be separated from the role of religion in society.[15] Numerous verses and hadiths, as religious sources, emphasize the implementation of justice and the realization of truth and the attainment of trueness.[16] In addition to the Holy Quran, in the tradition of the Imams, the right to judge and fulfill has a special place; In particular, the judgments of Emam Ali , who is the most important system-building figure for the Islamic judiciary, and his judgments form the foundation and structure of the Islamic judicial system. In one of the covenants that Emam Ali received from the Prophet (PBUH) and sent directly to Malik Ashtar, the observance of justice in the process of judgment for the realization of truth and receipt of truth is emphasized, and in another place he says: "I do not want to, except to establish the right or bury the false."[17] From the collection of verses and narrations, it is inferred that the spread of justice,

[14] *Garner,Ibid,p.1657*

[15] *Mohaghegh Damad, Seyed Mostafa, Rules of Jurisprudence, Judicial Section (3), (Tehran: Islamic Sciences Publishing, 3rd ed., 2004) p.16*

[16] *Verse 25 of Surah Al-Hadid, verse 26 of Surah PBUH, verse 58 of Surah Al-Nisa '*

[17] *, Ghavami,Seyyed Samsamuddin, "The Judicial System of the Amir al-Momenin (AS)", Islamic Government Quarterly, No. 18, (2007), p. 159*

the realization of truth, the repulsion of falsehood and the resolution of disputation are among the goals of Islamic jurisprudence, but what has been emphasized so much is the realization of truth and the administration of justice. Regarding justice, it can be said that justice is the way to the realization of the right and the realization of the right requires the discovery of the truth. In the verses of the Holy Quran and narrations, these two concepts have been emphasized a lot.

In jurisprudence, too, many theorists believe that the ultimate goal of any trial is to assert the truth, not the resolution of disputation; Therefore, it is better for the rightful owner to win the lawsuit instead of the smarter and more efficient party. Of course, the judge should not ignore the principles of trial under the pretext of discovering the truth; For example, to conduct a covert investigation or not to expose the evidence reached to the dialogue and objections of the two parties and to violate the principle of the right to be heard.[18] In fact, although the judge should always be impartial, he is in favor of justice, and the search for truth is at the core of the trial process.[19] Although the "principle of sovereignty of civil litigants" has left it to the litigants to provide and prove evidence, the legislature has nevertheless allowed the judge to resort to investigations and actions in parallel with the principle of sovereignty of civil litigants. It is necessary to discover the truth. A clear example of this approach is Article 199 of the code of civil procedure of Iran: "In all legal matters, in addition to the evidence cited by the litigants, the court will conduct any investigation or action that is necessary to discover the truth." In fact, by passing the traditional theory of litigation to the resolution of disputation anged the goal to discover the truth, and by giving the civil judge broad discretion to discover the truth, the resolution of contention as the last resort and if it is not possible to find the truth. , Has been accepted to resolve the dispute. Therefore, the dispute resolution is never considered as the ultimate goal of the trial.

2-1-2-2- Theory of truth discovery in American law

The indictment was said to have changed over time; Although in the traditional approach of this system the judge was largely passive, today it can not be said that the judge is indifferent and passive to the proceedings. Many American jurists believe that the primary task of litigation and the rules of evidence in litigation is to find the truth, and that the basic purposes and norms of this law cannot be achieved without finding matters that are true.[20] In addition, without access to truthful judicial judgments, it will not be possible to measure, evaluate, and ultimately improve the effectiveness of the law, as a rule of law must be applied judicially and in practice to real events and matters, and The accuracy of each statement should be tested in order to identify its strengths and weaknesses and lead to the overall development of the legal system. Also, without judicial findings from lawsuits and cases that are true, people will eventually lose confidence in judicial proceedings as a fair, credible trial, and an effective means of resolving disputes. That is why American jurists have considered finding the truth at the end of the trial as the main goal, not just the resolution of disputation ; In fact, legal findings in litigation should be consistent with reality and lead to the discovery of the truth.[21] The idea of truth-seeking was also accepted in the jurisprudence of this country, and the idea began in 1966, when the United States Supreme Court in "Thehan, Sheriff V. United States Ex Rel.Shot" explicitly stated that the main purpose of the trial was to find out the truth.[22]This idea is also seen in the relevant laws of this country; As rule 102 of federal rules of evidence explicitly states that the purpose of a trial is to find out the truth, stating: "Truth and confidence in a fair decision."

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[18] *Katozian, Nasser, Proof and Reason for Proof, Volume 1, (Tehran: Mizan, sixth edition, 1390) p. 46*

[19]*Mohseni,Hassan, Office of Judicial Procedure, p.52*

[20] *Summers,Roberts,Formal Legal Truth and Substantive Truth in Judicial Fact-Finding.Their Justified Divergence in Same Particular Cases,Cornell Law Faculty publication,(1998),p.497)*

[21] *Ibid,pp.498-499*

[22] *Friedland,Ibid,p102*

This rule sets out the general purpose of the law and the applicable interpretation of the regulations, as in rule 1 of the federal rules of civil Procedure states: "These rules must be interpreted, applied and applied in such a way as to ensure justice, speed and economy in litigation." It can be said that observing the principles of fair trial, speed and saving in the trial, although it is very important, but it is useful when it is done with the aim of discovering the truth and leading to the realization of this important. Therefore, the discovery of truth and the administration of justice are the formal goals of the trial, which must be considered from the initial investigation to the final stages of the trial.[23] In fact, the interpretation of the law on the evidence must be done in such a way that the application of the law is in line with the truth. In this judicial system, based on the "theory of truth", the purpose of civil proceedings is to obtain the truth, and if it is proved that the failure in the lawsuit was due to ignorance of their rights and arguments, a solution must be found to compensate for the inequality of the parties. Equal dispute between the parties should be provided and "equality of defense power of the parties" should be guaranteed.

In this system of proceedings, the judge, while observing the principle of impartiality, must have control and administration of the proceedings and interference with the "benefit of fact-finding" should not be considered a violation of impartiality. The principle of impartiality does not prevent the court from Disputes regarding the evidence that is definitely with the third party or the other party, order the said person to express it.[24]

Many federal rules of evidence seek to advance the probability that the court's outcome is consistent with fact and truth. That is why the witness is required to state all the facts and to do so he must take an oath. According to the rule 603 of the said law, a witness must take an oath to testify properly before testifying; In this regard, in order to obtain honest testimony, these rules relies on the "cross-examination" mechanism, and false testimony is threatened with prosecution, and if it is determined that the testimony was incorrect, it will be punished. It is to discover the truth that the cross-examination system of the witness is foreseen and the parties have the right to ask numerous questions to the witness in the context of the case in order to clarify the truth of the case. Pursuant to rule 611 of the Federal Rules of Evidence, the court oversees the process of questioning a witness and presenting evidence in general, and one of the purposes of this review is to find out the truth. The rule states: "The court shall exercise reasonable control over the manner in which witnesses testify and provide other evidence in order to make these methods effective in establishing the truth, to avoid wasting time, and to protect the witness from undue harassment."[25]

As can be seen, the presentation of evidence and the evaluation and questioning of witnesses must be monitored and controlled by the court in order to clarify the truth; In fact, the court should not only play an active role in the litigation process, but it is necessary to apply the rules in such a way that the final result of the trial is the administration of justice and finding truth for awarding litigant's right to him.

2-2- Observing the principle of goofaith in the proceedings

"Goodfaith" is composed of two words "good" and "faith"; In Persian culture, the word "good" means kindness, beauty and goodness" and the word intention means "intention, will, thought".[26] Therefore, goodfaith can be considered a good thought or the equivalent of a more familiar phrase, a good idea. Contradictory goodwill is the term "malice" which is prohibited in some legal articles. Article 30 of the US Federal Code of Civil Procedure is an example of such a provision.

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[23] *Risinger,Michael,Searching for Truth in the American Law Evidece and Proof,Georgia Law Review,Vol.47,(2013),p.803*

[24] *Ashraf Al-Kitabi, Avisha, A Comparative Study of Forced Expression of Reason in Iranian Civil Procedure, (Tehran: Javadaneh, Vol. 1, 2012), p. 168*

[25] *Klein,Kenneth.S,Truth and Legitimacy,(In Court),Loyola University Chicago Law Journal,Vol.48,2016,Ps.11-13*

[26] *Moin, Mohammad,Farhang-e Farsi, (Tehran: Zarrin, Ch. III, 2007) p. 366*

The English equivalent of the word "goodwill" used in American and British law is "Good Faith". In the Black Legal Dictionary, the term is used interchangeably: "Righteousness is a sincere intention to avoid the unlawful misuse of legal techniques."[27]

According to this concept, a person is required to enter into legal acts and actions with the right intention and intention, and in applying legal techniques and methods, he must also observe this issue. Therefore, even if he uses the technical rules in a way that is accompanied by malice and harm to another, he has acted against the law. Good faith in litigation means that all persons involved in the litigation process must be honest in their intentions and actions and have no fraudulent will so that the proceedings can proceed fairly.

In American law, the principle of good faith is specified in some laws. The (U.C.C.)[28], for example, emphasizes the principle of good faith in contracts; Part c of Article 103-2 of this law, in the definition of good faith, states: "Good faith is truth and honesty in relation to the relevant trade.[29]" Article 203-1 of the same law then states: "Any contract or obligation imposes a duty of good faith on the parties in the implementation and enforcement of performance guarantees." The Federal rules of Civil Procedure also explicitly provides for the observance of the principle of good faith in court, and in this section we will examine the manifestations of the principle of good faith in the said law.

2-2-1- The place of good faith in American civil procedure regulations

In this section, examples of the duty to observe good faith in the US Federal Code of Civil Procedure and the relationship between this principle and disclosure are examined.

2-2-1-1- The need to comply with good faith in suing or motion or defence

Filing a case and submitting it to the court is the official beginning of a civil lawsuit. Rule 3 of the Federal Rules of Civil Procedure provides in this regard: "Civil proceedings shall be instituted upon the filing of a lawsuit with the court." This petition marks the beginning of the proceedings. The Federal Rules of Civil Procedure governs all process of litigation, and rule 11 deals specifically with how to file a civil lawsuit.Rule 11 of the Federal Rules of Civil Procedure, entitled "Signing of Bills, Petitions and Other Papers; Appearance before the court and guarantee of performances "is regulated and paragraph b of the mentioned article stipulates:" Representation before the court: the litigant or his lawyer by submitting a bill, written request or other documents to the court, whether it is signed or submitted or Registered or represented in it, to the extent of his knowledge, information and belief that has been formed after a reasonable examination, acknowledges the following:

1- His action was not done with a wrong intention (bad motive) such as harassing the party, creating unnecessary delay or unnecessary increase of court costs.

2. Claims, defenses and other legal considerations raised under the protection of a valid law or based on a valid argument put forward for the development, amendment or deletion of an existing law or the enactment of a new law.

3. The subject matter is based on evidence or, if specifically stated, can be substantiated after giving a reasonable opportunity for further investigation or disclosure;

"The denial of a matter is based on reason or, if specifically stated, is reasonably based on his belief or ignorance." Paragraph c of the said article, entitled "Enforcement Guarantee", provides: Apply the appropriate to a lawyer or law firm or a party who has violated or is liable to violate the rule. "Except in

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[27] *Garner,Ibid,,822*

[28] *Uniform Commercial Code*

[29] *Jafarpour, Kourosh, "Goodwill in International Trade", Encyclopedia of Law and Politics, First Year, No. 3, (2005), p.151*

special and exceptional cases, the law firm will be jointly liable with a partner, colleague or employee who has violated the rule." Paragraph 4 of Section c adds the title of the nature of the performance guarantee: "The performance guarantee applied in accordance with this rule shall be limited to an extent sufficient to prevent the perpetrator or other persons in a similar situation from repeating the conduct. The guarantee of such execution can be such as non-monetary orders or an order to pay a fine to the court or, at the request of the beneficiary and in order to prevent a recurrence of the action, an order to reimburse all or part of the proxy fee and other costs directly from violation of the rule. "It has been given." At the same time, section d of rule 11 stipulates that the provisions of this Article shall not apply to requests, responses and objections raised under rules 26 to 37 regarding the disclosure of evidence.

Rule 11 serves as a model for dealing with illusory and malicious claims. According to this article, whenever a lawyer files a petition on behalf of another person, he must thoroughly examine the claim and, by placing his signature below the petition or petition, somehow confirm these cases. All persons should take part in litigation or defense with sufficient knowledge and good faith. Otherwise, they will face penalties; The rule also provides for enforcement guarantees against lawyers and other persons who file false, harassing or unfounded lawsuits, which include enforcement costs, including the payment of court costs and damages to the other party. This rule stipulates that the representatives and lawyers of the judiciary are obliged before the court to refrain from conduct contrary to the purposes mentioned in rule 1 of the Code of Civil Procedure.[30] In fact, lawyers are obliged to file all lawsuits in good faith. There have even been cases where a lawyer has been removed from the legal profession for gross breach of good faith.

If it is determined that the case presented by the lawyer is unrealistic, he will be guaranteed enforcement; Also, fraudulent claims that only fill out the court schedule are guaranteed and dismissed. rule 11 deals with the responsibility of lawyers for signing and preparing petitions, petitions and other documents that are realized with his signature. Signature indicates that the lawyer has read the petition or request and signed it with the best knowledge, information and opinion formed after a proper and reasonable investigation, thereby acknowledging that the lawsuit or request is in accordance with the law and it has been based on good faith and does not pursue any malicious intent. A federal court can dismiss a lawsuit that is against good faith or is unfounded under the law in question.[31] Rule 11 can be used as a very effective tool to dissuade persons from making fraudulent and malicious claims.

2-2-1-2- Participate in good faith in the meet and confer and plan to exchange evidence

The parties to the dispute must cooperate with the judge in good faith and honesty so that the dispute can be resolved quickly and within the normal time; Out-of-court rivalry, however, may not have good relations with each other and may not cooperate willingly. Therefore, by anticipating legal ways and applying appropriate enforcement guarantees, fraud and dishonesty of the parties can be prevented.[32] In the federal rules of Civil Procedure, the parties are required to cooperate with each other in the pre-trial; Also, according to paragraph (f) of rule 26, the parties to a civil lawsuit must attend the negotiation session and prepare a plan for the exchange and disclosure of information and evidence. After preparing the said plan, the parties must attend the court hearing; A meeting is held between the parties and the judge to identify disputes and agreements on non-contentious matters as well as to encourage them to compromise. This rule allows the judge to instruct lawyers to attend the pre-trial hearing. Discuss issues and limit disputes, as well as the number of witnesses and exchange arguments.

Pursuant to paragraph (f) of the rule, the litigants or their lawyers must attend the planning meeting or other necessary meetings in good faith and act according to the set schedule. Therefore, if they do not

[30] *Yeazell,Stephen.C,Schwatz,Joanna.C,Federal Rules of Civil Procedure,Wolters Kulwer Publishing,(2018),p46*

[31] *Vail,Andrew.w,Derosa,Colleen.G,Illinois Civil Practice Guide, Jenner & Block publishing,(2012),p8*

[32] *Rostami Chalkaseri, Abdollah,Matin, Baziar, "Theory of cooperation between litigants and litigation in dispute resolution", Journal of Comparative Law Studies, Volume 7, Number 1, (2016), p. 126*

participate in this stage or if they participate and do not have good faith, they will be subject to the performance guarantee provided for in rule 37 of the Code of Civil Procedure. As a strategy, paragraph (f) of rule 26 gives the parties the opportunity to prepare themselves for the pre-trial hearing and to show the court that they have made an effort and attempted to do so in good faith, and as a result , Deserve the trust of the court. The following part (1) of paragraph (f) of rule 16 regarding the failure to submit a disclosure plan is provided: If one of the parties or his lawyer did not attend the preliminary hearing or in good faith in drawing up the proposed disclosure plan in accordance with paragraph (f) of rule 26 If he does not cooperate, the court may, after giving him the opportunity to be heard, order the party or his lawyer, or both, to pay reasonable costs, including the attorney's fee, to the other party.[33]

2-2-1-3- Possibility of motion to compel discovery non-cooperation honestly[34]

Pursuant to paragraph 1 (a) of rule 37 of the Federal Rules of Civil Procedure, either party to the dispute may notify the other party and all persons who may be affected may request a compulsory disclosure order. The request must include acknowledgment that the applicant has requested the disclosure of the evidence in good faith from the other party, but due to the negligence of the party, he has not been able to obtain the said result without the intervention of the court. It should be noted that both parties are required to observe good faith; In fact, not only the person required to disclose but also the applicant for disclosure must comply with the requirements of good faith. Payment of reasonable costs will be required by the applicant in connection with the request for mandatory disclosure of evidence (including attorney's fees). However, this requirement will be waived if it turns out that the applicant did not make a well-intentioned attempt to request disclosure of the other party before filing the application, or that the other party's refusal to disclose the evidence is justified, or for other reasons, a compensation order. The costs are unfair. Conversely, if the application is rejected, the court will require the applicant, his or her attorney, or both, to reimburse the reasonable costs of responding to the application (including attorney's fees) after granting the applicant an opportunity to defend himself or herself. Of course, this obligation will also be waived if the court finds that the request for compulsory disclosure of the reason is substantially justified or that, depending on the circumstances, the issuance of a sentence to reimburse the costs is unfair. If the request for compulsory disclosure of evidence is not in good faith and, for example, the applicant has participated in the meet and confer in bad faith or if it is clear that the purpose of the request is to disclose the evidence for the other party's harassment, even if the latter fails to provide such reasons Has no responsibility and will not face sanctions.[35] Because of the applicant for disclosure must have a good cause for his request and request the disclosure of evidence in good faith. Otherwise, and despite the negligence of the other party, the court will not impose sanctions against the disenfranchised person after hearing him.

This is also the case for requesting testimony as a means of disclosing evidence; According to rule 30 of the Federal Rules of Civil Procedure, a person wishing to use testimony as a disclosure order and to cross-examine must give reasonable notice to the other party to the dispute. If during the testimony it is determined that the applicant is malicious or causes irrational harassment and embarrassment to the witness or the other party, then the witness or the litigant can request the completion of the testimony or its limitation. Rule 30(b) is provided and states that if the witness or the litigant shows that the examiner is not in good faith, they can object to this issue. In this case, the judge can order the officer conducting the hearing to change the scope and method of the questions.

[33] *Scheindlin,shira.A,Electronic discovery and digital evidence, west academic Publishing,2th edition,(2009),Ps.109-110*

[34] *Motion to Compell Discovery*

[35] *Bevan,Ibid,p186*

2-2-2- The importance of good faith in the civil procedure regulations of Iran

Observance of good faith and honesty in conducting court proceedings and judicial actions is of great importance and all persons involved in the litigation process are required to observe good faith. Despite the fundamental importance of the principle of good faith, the Iranian Code of Civil Procedure does not explicitly address this issue. However, in the articles of the said law, the legislator's attention to the principle of good faith is palpable and the necessity of observing this principle can be deduced from some articles of the Code of Judicial Procedure:

Fictitious litigation is one of the violations of good faith. In order to prevent the imposition of undue damage resulting from a fictitious lawsuit on the defendant, the legislator, while anticipating the possibility of resorting to the objection of securing a fictitious lawsuit in Article 109, stipulates in accordance with the same article: "Delay in fulfilling the obligation or harassment or intentionality, the court is obliged to sentence the plaintiff or the plaintiff to pay three times the cost of the proceedings in favor of the government." Thus, one of the appropriate solutions to establish the need for good faith in the proceedings and to prevent fraudulent acts and biased actions of individuals, is to prevent the entry of false and fraudulent claims into the proceedings.

Separating related or out-of-court lawsuits that are out of order and with the wrong intent is another way to control the actions of individuals based on good faith rules and to prevent the abuse of rights and litigation with improper thinking. By merging lawsuits and complicating the case, some people may pursue malicious goals such as procrastination, harassment, deviation from the trial, and so on. Therefore, it is necessary to properly monitor and control the conditions of aggregation of claims and, if necessary, to separate and separate the claims or claims.[36] Article 133 of the Code of Civil Procedure, regarding the separation of the main lawsuits and the entry of a third party, where the third party intends to prolong the trial or collusion with one of the parties by filing an entry lawsuit, states: Separates the third party lawsuit from the main lawsuit and deals with each one separately. The same procedure is provided in the following part of Article 139 regarding the lawsuit of third party.

The litigants during the proceedings must cooperate in expressing the documents related to the litigation. Refusal to express a document despite a person's confession of its existence is not only contrary to the principle of good faith, but the court can consider it as one of the positive evidences against the seized person (Article 209). The refusal of the trader to disclose his commercial offices requested by the other party can be one of the positive evidences in favor of the other party, and the refusal of a third party (such as a public law entity) to disclose documents and information related to the dispute can be Temporary dismissal of the responsible official shall result (Articles 210 and 212). Also, the destruction of documents or their secrecy is a matter of good faith, which is considered as a matter of retrial in paragraph 7 of Article 426 of the Code of Judicial Procedure; In this way, if after the issuance of the verdict, documents are obtained that are the reason for the legitimacy of the petitioner and it is proved that the mentioned documents were secret during the hearing and were not in the possession of the applicant, then one of the aspects of retrial Will be a researcher.

In view of the above, it can be said that although the need to observe good faith as a general rule is not explicitly provided in the rules of civil procedure in Iran, but some of the provisions of this law can be inferred the need to observe the principle of good faith. One of the duties that is based on the need to observe the principle of good faith; Cooperation is in presenting and discovering of information that a party has; In fact, it can be said that the need to observe good faith in court requires a person to present and disclose a evidence that he owns, controls or possesses. Failure to disclose may also result in certain and limited performance guarantees. Therefore, it can be argued that good faith is one of the foundations of the duty to disclose evidence in the spirit of some scattered civil procedure regulations, but unlike US civil litigation,

[36] *Dehghani, Hossein, Goodfaith in Civil Procedure, PhD Thesis, Kharazmi University, (2016), p.143*

there is no sufficient and effective enforcement sanctions to ensure good faith in Iranian civil proceedings. It seems necessary to adopt clear and detailed regulations in this field.

Conclusion:

In civil proceedings, it is the responsibility of the plaintiff to provide evidence. However, in the form of a disclosure mechanism, at the request of one of the litigants, the other party or a third party is required to provide evidence and information related to the dispute that it owns, possesses or controls in favor of the applicant. Under the provisions of the Federal Rules of civil procedure, not only litigants but also third parties are required to participate in the disclosure process and to cooperate in the discovery of the truth; According to the Supreme Court, the main purpose of the trial is to find out the truth. The task of disclosing the reason, especially where it is imposed on a third party, needs a proper basis and justification, which seems to be the need to achieve the truth and the need to observe good faith as the main principles of this task. The Federal rules of Evidence also emphasizes that the rules of evidence must be interpreted and applied in a way that leads to a fair trial and the avoidance of unnecessary costs and unjustified delays, and the use of evidence rules to discover the truth and ensure a fair decision.

There is no separate chapter in the Code of Civil Procedure of Iran dedicated to the issue of discovery and disclosure, and only on a case-by-case basis, examples of the obligation to cooperate in disclosing evidence can be considered. For example, the provisions of Articles 209, 210 and 212 concerning the obligation to disclose documents and information relating to litigation seem significant in this respect. However, it can be argued that the main principles of the task of disclosing evidence, including the need to observe good faith in the proceedings and the concern of discovering the truth, have been considered to some extent in the Iranian civil proceedings and its jurisprudential principles. The provisions of Article 199 of the Code of Civil Procedure and the developments related to its predecessor in the previous laws show the change of the role of the judge from passive and neutral to active and dynamic, which is mainly done to manage the trial with the aim of achieving the truth. However, it must be acknowledged that there are not enough tools in the Iranian Code of Civil Procedure, both in terms of how to disclose evidence and in terms of enforcement, and it is appropriate to devote an separate chapter to this issue in order to accurately assess the various dimensions of the task. Disclosure of the evidence to be organized. Accordingly, it is suggested that an separate chapter in the Code of Civil Procedure be devoted to the issue of disclosure of evidence and explain issues such as the obligation to disclose evidence, methods of disclosing evidence, the scope of discovery and disclosure of evidence and, finally, the guarantee of performance of duty to discovery and disclosure.

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