

A Comparative Study of Rights of Culprit in Islamic Jurisprudence, Codes of Legal Procedure of Iran and International Documents

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Abstract

Attention to rights of culprit has instances in divine religions as well as Islam but in the past few decades, especially after establishing and approval of charter of the United Nations and global documents such as Universal Declaration of Human Rights and Covenant on Civil and Political Rights, this subject has drawn more attention to itself. Rights of defense by culprit as one of the items of fair judgment is a set of advantages and rights assigned to the culprit to secure his rights and benefits. The obvious fact is that establishing judgment justice is one of the long-term wishes of humankind the realization of which becomes possible through creating fair trial based on provision of right of defense and justice. Among these rights, one can items such as equal tribunal, fair and public judgment in a competent, independent and impartial court, right to counsel, right of immediate to silence, right of immediate trial and the prohibition of torture and coercion to confess. In the present study, the author seeks to comparatively study this subject from the viewpoints of Imami Jurisprudence, new code of legal procedure passed in 2014 and international documents.

Keywords: rights of culprit, Islamic jurisprudence, international documents, universal declaration of human rights, covenant on civil and political rights, law of criminal judgment

1. Introduction

Culprit is someone regarded as the agent of crime whose guilt is not yet proven (Langarodi, 1999). In legal code of procedure, the culprit is somebody who is suspected to have committed a criminal act but attributed criminal act is not proved. Proving the crime is the responsibility of someone who accused the culprit. The culprit is not supposed to prove innocence because in international documents accepted by Iran such as Universal Declaration of Human Rights, Covenant on Civil and Political Rights and laws of Islamic Republic of Iran, the supposition is innocence of everybody unless the guilt is proven based on legal rules, legally valid reason and presence in an impartial court (Universal Declaration of Human Rights, Article 11). So, it should be noted that the main condition of realization of a crime is not commitment of a crime against social order but a criminal act which is regarded as an anti-social action against which some legal punishments have been defined (Norbaha, 2003). All criminal schools and legal judgment systems including accusative, inspective, French and Islamic agree on necessity of trial but there are disagreements on how to do trial and method of judgment (Ghasi, 1990).

In general, one can summarize the instances of culprit's rights in the following: Right of innocence presumption till issuing final sentence, communicating charges, right to silence, right of freedom and prevention of culprit's custody, prevention from torture of the culprit to get confession and right to council as well as publicity of trials, impartiality between both parties of a law case.

2. Right of Innocence Presumption till Issuing the Final Sentence (Principle of Innocence)

This principle is one of the progressive principles of long history which is accepted by all systems of penal judgment although there are opponents and followers of positivism criticized the principle of innocence and believe that no principle of innocence should be assigned to dangerous criminals or those arrested during committing explicit instances of crime (Zeraat, 2004). In this regard, articles 19 and 11 of the Universal Declaration of Human Rights emphasize this fact and in the Sixth Meeting of the International Criminal Law held in 1953, different aspects of this issue were discussed. Participants announced their consensus regarding the

effects of innocence principle in the following:

- Somebody is deemed as innocent until he/she is sentenced based on absolute court sentence.
- Each culprit is authorized to defend him/herself with freedom and to discuss all reasons of custody and associated evidence.
- Attainment and provision of evidence is the responsibility of investigator. In penal affairs, limited interpretation is allowed and uncertainty is interpreted as an evidence of culprit's innocence (Ashuri, 2007). But this principle has a long background in Islamic and jurisprudence rules. For the first time, Islam established the principle of innocence through Dra' Rule and abstain from skeptic notions (Note 1). Based on this rule, human beings possessed the right of immunity and social security for the first time, rights of the individuals in the society are strictly protected and secured through government and public entities. This rule has a serious and practical application not only in normal trials but also in social scene as an instance of divinely sanctified rights so that presence of any doubt will cancel the execution of divine sentences (Note 2) (Damad, 2003).

In this regard, article 37 of the IRI Constitution emphasizes the principle of innocence and in article 4 of new code of penal judgment, it is stated that: "It is based on principle of innocence that any kind of limiting act, depriving people of freedom and privacy intrusion is allowed only through legal decree and satisfaction of rules of surveillance over legal authorizes. In any way, this actions should be done in a way so as not to damage the respect of individuals".

In article 91 of this law, it is stated that: "Preliminary investigation should be done secretly unless in some case, another procedure is legally authorized. All individuals involved in the process of investigation are deemed to keep this as secret and any case of ignorance and disclosure leads to appointment of punishment against disclosing job secrets and words of the culprit" and in article 96 it is emphasized that spreading images and other features of the identity of the culprit in all stages of preliminary investigation by media, legal and disciplinary entities is forbidden. Article 192 states that talking with culprit and plaintiff is private and article 262 states that the investigator can announce to culprit or his/her lawyer, if sufficient evidence exists regarding the occurrence of the crime, that he/she can present the last statements to prove innocence or to help in finding the truth. When the culprit or his/her lawyer states a fact in the last defense or presents an evidence which might be effective in finding the truth or proving innocence, the investigator is presumed to analyze them.

So in the new penal law of 2014, in addition to following international and jurisprudence document, it is endeavored to consider the principle of innocence within the law at least theoretically, although some challenges might occur during execution.

3. Communication of the Charge

One of the most important guarantees of culprit's rights which covers his right of defense in the beginning of trial is awareness of the subject and reasons of charge. It means that the culprit should be aware of crime or crimes attributed to him/her and all associated reasons and evidence so as to defense (Akhondi, 2006). Regarding this right in Islamic Laws, there is no explicit evidence have been presented by jurists because what is common in Islamic code of judgment, due to single phase of judgment, is that the plaintiff should present a claim in the presence of the judge and in the same meeting, subject and reasons of the charge should be introduced and announced at the presence of the plaintiff but necessity of this right for the culprit is rationally proven. This is because communication of charge is the essential introduction to resumption of judgment and the culprit can defend him/herself by knowing what needs to be known (Larimi & Darafshan, 2011). In this regard, paragraph 2 of article 9 in Covenant on Civil and Political Rights states that: "Any arrested person can be immediately made aware of reasons of arrest and charges against him/her during custody". Paragraph 2 of article 11 of the same document states that: "The arrested person and his/her lawyer should be immediately aware of arrest and its cases". The main objective of necessity of knowing the reason of arresting the culprit is to give him the opportunity to question the legitimacy and legality of detention. Therefore, information presented to him/her should be complete, detailed and precise including actual and legal bases of his arrest. For example, The Human Rights Committee states that mere act of telling the culprit that his/her arrest is necessary for maintaining the security without presenting items of complain is not correct and sufficient. So in a case in which the culprit is informant on the moment of arrest that he/she is arrested because.

In article 195 of the same document, authorities of the interrogator are defined in the following: "The interrogator should inform the culprit of his/her rights before the beginning of the investigation. He/she should be careful about what is uttered. Then, the subject of the crime and associated evidence should be explicitly communicated. The culprit should be informed that confession and effective cooperation can lead to

commutation of sentence in the court. Then the interrogator is authorized to ask. The questions should be to the point, clear and associated with the charge. Later in this article, it is stated that: “Emphatic question or asking with deceit, duress and coercion is forbidden”. The guarantee of enforcing this article is defined in article 196 which states that: “Transgression of the rules included in article 193-195 might lead to disciplinary sentence up to level four”.

And finally, article 351 of the new law of penal judgment passed in 2013 states that: “Plaintiff or private prosecutor and culprit or his/her lawyers can come to the court and collect necessary information by studying the case and get a copy of the documents after notification to judge and paying associated costs”.

4. Right to Silence

The right to silence is based on principle of freedom of expression and the presumption of innocence which is directly associated with right of the culprit to answer the questions of the judge. In fact, the culprit’s right to silence during interrogation and trial originates from presumption of innocence and prevention from coercing him/her to confess. Legal authorities always try to deprive the culprit of this right because it makes their endeavors lead to nothing. Most of the legal systems of acknowledge this right in national domain. Although human rights treaties don’t explicitly mention this right but Europe Convention accepts this right implicitly and this right is acknowledged in Covenant on Civil and Political Rights. Court of Europe stated that although the right to silence is not explicitly mention in article 6 of Europe Convention but this right is undoubtedly accepted in international standards and it is the basis of fair trial (Sharifi, 2008).

The bases of culprit’s right to silence can be found in Islamic laws, especially by consideration of laws of judgment. When jurists talk about responses of the culprit, they state that: “whenever the plaintiff presents a doubtful claim, the culprit can react through admission, denial and silence” (Sani, 1989). However, one can point to a solution by some jurists who state that: “If the culprit abstains from answering, one can coerce him/her into replying by slapping or invitation to good deeds” (Hali, 1988). Therefore, one should note that based on ideas of a majority of jurists, silence of the culprit can’t be interpreted as a reason for delinquency. Silence should not be followed by slapping and imprisonment but it should be conceived as an evidence beside other reasons and documents to satisfy the consciousness of the judge and contribute to finalization of the sentence. In other words, the final thing which silence of the culprit can show is the fact that if there are reasons for sentencing the culprit which have been explicitly presented and the culprit abstains from answering and defending him/herself, one can say that this issue beside of other reasons can be the necessary condition for proving the guilt. It should be noted that this right is a fundamental one for the culprit and it lacks continuance as it is the case in common laws (Larimi & Darafshan, 2011). In the new law of penal judgment, the lawmaker predicts this advanced and valuable right and in article 197, it is stated that: “The culprit can remain silent, in such a case, his/her refusal to reply or to sign the statements is registered in written form”.

5. Right to Liberty and Prohibition of Detention of Culprit

Every human being has the right of personal freedom. In penal laws of Islam, the principle of illegitimacy of temporary detention and preventive custody is a vivid issue based on written jurisprudence texts because in Islam, there is no sentence that can terminate the liberty of individuals without any reason. This claim is supported by searching through sayings of jurists although there is an exception in a case in which accusation of murder leads to confinement and arrest of culprit in a definite length of time. Based on stories about Prophet Mohammad (Peace be Upon Him) and on some others about the life of Imam Ali (Blessing be Upon Him) did such an act. The way of acting has become an evidence for comments of jurists (Shiite & Sunnite) so that the authorize detention license of culprits only in this case. For example, Imam Khomeini in “Tahrir Al-Vasile” regards the imprisonment of somebody accused of murder as acceptable for the next six days (Larimi & Darafshan, 2011).

Article 3 of Universal Declaration of Human Rights states that: “Every individual has the right of living, freedom and security”. Paragraph 1 in Article 9 of Covenant on Civil and Political Rights also states: “Every individual possesses the right of freedom and security. Nobody should be illegally arrested or imprisoned. Nobody’s liberty can be deprived unless it is previously codified in the law”. What seems evident is that supporting the prevention of illegal arrest is the main consequence of right of liberty. International standards including article 9 of Universal Declaration of Human Rights states the following to support the right of individual liberty: “Nobody should be illegally arrested or imprisoned”.

Paragraph 1 in article 5 of European Convention states that: “Every Individual has the right of personal freedom and security”. No one can deprive human being of freedom unless deprivation of freedom is done in one of the following ways defined by law:

- A- Legal arrest of somebody after issuing indictment by a competent court
- B- Legal arrest or custody of somebody due to ignorance of legal sentence of a court
- C- Legal arrest or custody of somebody which is a rational suspect of committing a crime to summon him/her to court of justice
- D- Custody of an immature individual based on a legal indictment to put surveillance over his/her study or to finalize legal adaptation as set by a legal authority
- E- Legal arrest of individuals to prevent distribution of infectious diseases or insane, addict or alcoholic individuals
- F- Legal arrest or custody of an individual to prevent from escape or letting another person's escape from a legal entity where he /she is (Sharifi, 2008).

So, based on principle of liberty, the culprit shouldn't remain in custody till the day of trial arrives. However, international standards predict a condition in which arresting the culprit is the only solution. For example, when there is danger of culprit's escape, endangering his freedom by others or any possibility of harm. Article 39 of the above document states that: "The culprit shouldn't remain in custody until the time of trial unless it is predicted by law for definite conditions and confirmation by legal authority due to necessity of arrest" (Sharifi, 2008).

Temporary arrest indictment is a document by which the culprit is imprisoned till the time of proving the accusation. It is among issues which is inconsistent with basics and principles of culprit's rights and disrupts his principle of liberty because on one hand, principle of liberty necessitates lack of any deprivation and act against the culprit till the time of issuing final sentence of the accusation and on the other, it is the most important and most severe security act to deprive somebody's freedom (Larimi & Darafshan, 2011).

In this regard, the new law of penal judgment has mentioned and emphasized this right. In article 4 of this law, it is stated that: "Any kind of limiting action is deprivation of freedom and privacy intrusion except in cases which is authorized legally, verified through consideration of laws and under surveillance of legal authorities. In any case, this actions shouldn't be applied in a manner that might damage dignity of individuals". But lawmakers limit this case to this limit and in article 80 and 81, it predicts that in imprison crimes of 7th and 8th degrees, if there is no plaintiff and if he/she gives up the law case, lack of significant criminal sentence helps legal authorities to abstain from arresting the culprit and order the archiving of the case after communicating the charge and based on consideration of culprit's social status and history as well as conditions which led to the crime and obtaining a written commitment. This indictment can be revised in criminal court for the next ten days after time of issuing. On the other hand, for imprisonment crimes of 6th, 7th and 8th degree the punishment of which can be suspended, if there is no plaintiff and he/she has given up the case or if the damage has been compensated or is going to be paid in a definite length of time, judge can suspend the arrest from six months to two years in the case that culprit has no significant criminal record and after obtaining proper financial guarantee.

But legal value of the new law is evident in article 189 where surveillance over the culprit for more than 24 hours without interrogation and finalization is regarded as illegal custody and the person-in-charge is sentenced to a legal punishment. Article 237 also emphasizes the fact that issuing temporary arrest indictment is not allowed unless for the following crimes for which there are sufficient evidence and reasons to assign a crime to the culprit:

- A- Crimes the legal punishment of which lead to causing death, limb amputation and for intentional crimes against life, crimes the atonement of which is the total blood money or more.
- B- Criminal crimes of 4th degree and more
- C- Crimes against national and foreign security the punishment of which is 5th degree and more
- D- Harassment and abuse of women and children, boast of power and harassment of individuals by knife or any other type of arm
- E- Theft, fraud, bribery, embezzlement, malversation, falsification and forgery of documents if not included in paragraph (B) of this Article and the culprit has a history of one case of absolute sentence due to committing each one of the above crimes.

Finally, to limit and to create exceptions of temporary arrest, article 238 states: "Issuing temporary arrest indictment for the mentioned cases of above article depends on one of the following conditions:

- A- Liberty of the culprit cause removal of evidence of the crime, conspiracy with other culprits or witnesses or coercion of witnesses to present their observations
- B- Fear of escape or hiding which can't be prevented in any other way

C- Release of culprit disrupts public order, endangers the life of culprit, witnesses, family and the culprit

Therefore, in legal system of Iran, attention to international documents led to codification of lack of temporary arrest of the culprit while the associated exceptions are detailed, too.

6. Forbidity of Torture of Culprit to Obtain Confession

Torture as the simplest method to obtain the confession of the culprit is a mechanism of severe and improper behavior towards dignity of human being which disrupts the bases of legal security in a fair trial.

The evident fact is that no human being can be tortured and cruel and inhuman actions is not allowable for any human being. The following rules point to this fact:

Article 5 of Universal Declaration of Human Rights states: "Torture, cruel and inhuman punishment and action is not permissible towards any human being". Article 7 of Covenant on Civil and Political Rights states: "Torture, cruel and inhuman punishment and action toward human being is not allowable. Also, scientific and clinical test on any person without his/her permission is not permissible". Article 6 of Principles of Human Rights states: "Torture and inhuman actions are not permissible against anybody and they can't be justified for any condition". This right is absolute and applies for all humankind. These type of actions are not justifiable at time of war, instabilities of national politics and emergencies. Even if the top authorities order such actions, doing them is not justifiable because these actions are against international standards. Torture and inhuman actions include physical and mental actions which lead to mental harassment and disruption of mentality of an individual. Human Rights Committee announced that in prison or where the arrested individual is kept, no tool of torture of medium by which inhuman actions can be done should be used. The culprit shouldn't be kept in dark cells because imprisonment in individual cells is regarded as inhuman action which is against article.7 of Covenant on Civil and Political Rights. Inter-American Commission accepts this idea. In sum, international standards criticize using coercion by legal authorities against culprits (Sharifi, 2008).

In this regard and due to dignity of humankind, Islamic Sharia absolutely forbids torture and harassment of individuals which cause disruptions and regards any kind of behavior which is against this dignity as religiously forbidden (Shirazi, 1988).

In some jurisprudence texts, a distinctive concept of torture is provided and it is stated that: "The general concept of torture refers to any kind of harassment or pain which is accompanied by continuous pain" (Tosi, 1988).

But in the new law of code of judgment passed in 2014, this important point is also mentioned. In article 60 of this law, it is stated that: "During interrogations, coercion or deception of the culprit, using ambiguous words, asking emphatic, deceptive and irrelevant questions is forbidden and statements of the culprit in response to such questions as well as statements made by force are not valid. Date, time and duration of interrogation should be registered and signed or verified by finger print of the culprit".

But unfortunately, enforcement guarantee of article 63 (three months to one year suspension of service) which is defined for some actions of officials ignores the present article.

7. Right to Counsel

In Islam, lawyering in trials as legal institutes which has rational basis in primeval human civilization is respected like any other rationally verified concepts because in Islam, not only this method is not rejected but accepted in associated thoroughly in written texts (Larimi & Darafshan, 2011). Sheikh Tosi in a book regards lawyering as permissible for Islamic nation and considers its rejection as equivalent of denial of Imam's tradition. He mentions this concept in all aspects of jurisprudence and after regarding some cases such as lawyering of cleanliness, prayers, fasting and usurpation, he names remaining cases of lawyering as permissible. About the lawyering license, he states: "Getting a lawyer is proper for trials and any action for which a representative can be chosen can have a lawyer, too" (Tosi, 1973). In general for Islamic jurisprudence, one can say that based on sources such as reason, tradition of the wise, principle of legal justice and practical conduct, reference to lawyering is made (Larimi & Darafshan, 2011).

This right is also highly significant in international documents. The first principle of Fundamental Rights of the Role of Lawyers states that: "All human beings have the right to select a lawyer to protect their rights and defend them in all stages of penal judgment". Paragraph 1 of Article 17 of Fundamental Rights also mentions that: "The arrested individual should use the right of having a legal lawyer and a qualified authority should make him aware of this right and provide proper tools to realize this fact" (Sharifi, 2008).

Covenant on Civil and Political Rights, America Convention and Europe Convention don't explicitly state the

right of using a lawyer before judgment but Committee of Human Rights, American Commission and Court of Europe all explicitly state that right of having a fair trial necessitates access to a proper lawyer during arrest, interrogation and primary researches. Committee of Human Rights states that all arrested individuals should have immediate access to lawyer. On the other hand, article 3 of Fundamental Rights of the Role of Lawyers obligates states to attribute sufficient budget to assign lawyers to financially weak individuals. Following the Paragraph 2 of Article 17 of Fundamental Rights, it is stated that: "If the arrested individual doesn't select a lawyer, a legal authority or any associated official should select a lawyer for him/her and if the culprit can't afford to pay the wages of the lawyer, a state lawyer is appointed for him/her". But article 8 mentions that all arrested or in-custody persons should be given necessary opportunity, time and conditions to immediately choose their lawyer and obtain consultation with sufficient certainty. On the other hand, article 22 of Fundamental Rights on the Role of Lawyers necessitates that states should respect and acknowledge the relationship between lawyers and defendants which is based on respect. Paragraph 5 in Article 18 of the Fundamental Rights on the Role of Lawyers states that this type of relationship can't become the evidence against the culprit (Sharifi, 2008).

In new law of Penal Judgment passed in 2014, Iran considers this right and it is included in different cases.

In article 5, it is stated that: "Culprit should become aware of the subject and evidence of the charge in the first possible moment and use the right of access to lawyer and other defensive rights." To complete this article, the two paragraphs in article 190 states: "Culprit can have a lawyer in all stages of preliminary interrogation. This right should be communicated by interrogator to the culprit. If the culprit is summoned, this is registered in the summon paper. The advocate can obtain information of charges and evidence to state information necessary to find the truth, defend the culprit or enforce the law. Advocate's statements are written in records."

Waver.1- Depriving somebody of the right of having a lawyer or lack of communicating this right to the culprit leads to invalidity of interrogations.

Waver.2- In crimes the punishment of which is death or permanent imprisonment, if the culprit doesn't introduce a lawyer in initial stages of interrogation, the interrogator can select a lawyer for him/her.

In Waver 2 of Article 13, rights of the insane are mentioned: "If the culprit becomes insane before issuing the final sentence, arrest and judgment are suspended till insanity is over unless evidence of the crime shows that an individual is unable to prove innocence when the sanity is over. In this manner, his/her parent or guardian should introduce a lawyer in the next five days. If a lawyer is not introduced, without concern for the type of crime and level of punishment, a lawyer is appointed and interrogation will continue".

In article 48 of the same law, it is stated that: "By initiation of surveillance, the culprit can ask for a lawyer. The lawyer should visit the monitored individual based on secrecy of interrogations and negotiations. At the end of the meeting which can't exceed an hour, the lawyer should deliver written observation to be included in the file. In the same waver, it is stated that if somebody is arrested with charge of organized crimes or crimes against national and foreign security, robbery, narcotics and psychotropic drugs, he/she is not allowed to visit a lawyer in one week after the arrest".

This length of time can be criticized as the weakness of the new law.

In addition to the above critique, there is another point criticized in the new law is that ability of selecting lawyer by the culprit in some crimes might lead to ignorance of some rights of the culprit because on one hand, some security crimes such as violence (i.e. Moharabe in Arabic) and corruption on earth (Efsad Fi-larz in Arabic) is sometimes accompanied by pressures against the culprit not to choose lawyer. On the other hand, despite of lack of pressure to abstain from selecting a lawyer, the culprit might abstain from getting a lawyer and mightn't be able to defend him/her self due to lack of awareness of the laws.

8. Principle of Publicity of Trials

In Islam, there is no vivid discussion of holding a trial in public but a review of legal conduct of Prophet Mohammad and Shiite Imams shows that there are many trials done in the public so that Prophet Mohammad (Peace be Upon Him) and Ali (Blessing be Upon Him) judges their trials in public within a part of the masque called "Dakat Al-Ghasa" (Najafi, 1977).

In a letter by Imam Ali (Blessing be Upon Him) to a judge who hold trials in her house, it is stated: "Sit in the masque because this seems more just for the public but judging in your house will make you humiliated".

Based on what was mentioned above, it becomes vivid that although there is no requirement for publicity of trial based on rational premises or quotations by jurists, one can prove it legitimation based on the principle of "Whatever is rational is religious" (Note 3) in Islam unless legal security to satisfy the rights of both parties

especially where the state plays the role of plaintiff demands that count shouldn't be held in public (Larimi & Darafshan, 2011).

The evident fact is that one of the important ways of securing legal security and keeping the rights of the culprit is publicity of trials because the judge sees his judgment and sentence as exposed to public judgment and acts more carefully. The subject of publicity of trial is stated in article 10 of the Universal Declaration of Human Rights in the following manner: "Everybody is equally eligible to be summoned into an impartial court and to be publicly judged". A similar theme is emphasized in paragraph 1 in article 14 of Covenant on Civil and Political Rights while some exceptions are mentioned which might lead to an opposing case. In all or part of judgment, based on moral goods, public discipline or public/national security in a democratic society, if the conditions of private life of both parties and in cases which definite characteristics of publicity of missions disrupt the procedure of judgment the court can make the sessions of the court private. As an instance, one can point to trials of marital discord and adaptation of children.

For example, Commission of Europe announced that based on paragraph 1 of article 6, trials the subject of which is sexual crimes against children should be private (Sharifi, 2008).

Experts of international laws believe that the limitation based on national security is justified unless the main objective is supporting essence and integrity of the country against national and foreign threats (Sharifi, 2008).

The constitution of Islamic Republic of Iran regard holding public trials as a principle but private trials are regarded as exceptions in special cases. Article 60 of the constitution states: "trials are done in public and presence of individuals is permissible unless the court perceives that publicity of the trial is against public discipline and dignity or when one or both parties of the trial ask for private trials as in public prosecutions".

Based on Paragraph 2 in Article 9 of code of procedure of courts and revolution trials, it is emphasized that trials are public when the judge believes in the necessity of doing so.

In new law of penal judgment, article 352 states that: "Trials are public with exception of unforgivable crimes which both parties or the plaintiff asks for a trial". After listening to statements of prosecuting attorney, privacy of trials is announced for the following items:

- A- Familial issues and crimes which are against moral goods and dignity
- B- Publicity disrupts general security, tribal attachments and religious beliefs

In the waver of the same article, the law-maker describes the intention of trial in the following manner:

Publicity of trials means resolution of difficulties against presence of people in sessions of trial.

On the other hand, article 305 emphasizes that: "In regard to political and media crimes, based on article 352 of the same law, these crimes are publicly held in penal court of the center of province in which the crime has occurred and while the jury is present".

Of course, it should be noted that using ambiguous terms in the constitution and law of penal judgment is one of the important problems in this regard. In fact, using general terms such as against moral codes, general security and religious feelings lacks definite and clear definitions and this might lead to biased interpretations and officials which can ignore the rights of the culprit.

9. Equality between Parties of Trial

In religious laws, jurists refer to this principle (Note 4) as a part of formalities and conduct necessary for the judge which make him/her to watch over his behavior with both parties of a trial during trial by apparent impartiality and to prevent from doubtful behaviors and actions which generate bias against one party. In this regard, the judge shouldn't distinguish between parties of trial and should maintain equality in using types of greetings such as saying hello, watching, speaking and all types of showing respect (Larimi & Darafshan, 2011). In general, famous Imami jurists regard this issue as necessary (Naraghi, 1998) and state that keeping equality between parties of the trial by the judge is essential and no difference should be observed between speaking, saying hello and answering, watching and hearing the statements so that none of involved parties is preferred to another.

It is evident that one of the essential elements and conditions of fair trial is the principle of judge's impartiality during the procedure of judgment. Observing equality between both parties means that judge should investigate the case with impartiality and without any support of one or another party of the trial. He/she should not distinguish between reasons and evidence which favor one party of the trial. Observation of this principle in a wide level can attract public trust towards performance of the judge and in limited level, it can provide legal coverage to satisfy the rights of both parties.

So, all human beings possess equal rights against law, courts and trial. The following rules in international documents point to this law:

Paragraph 7 of Universal Declaration of Human Rights states: “All human beings have equal legal support against the law and away from bias. All have identical position against any infringement of this declaration”.

Paragraph 1 of Covenant on Civil and Political Rights states: “All participating countries should respect private rights without distinguishing among them based on color, ethnicity, sexuality, religion, politics, national and social roots, properties, birth and other personality and social characteristics”.

Also, paragraph 1 in article 14 of Covenant on Civil and Political Rights states that: “All human beings are equal before the courts and trials”.

Committee of Human Rights points to the fact that paragraph 1 in article 14 of Covenant on Civil and Political Rights obligates states to support urban and political rights of all male and female individuals. Foreign nations should also have equal rights.

In new law of penal judgment passed in 2014, this subject has been emphasized by law-makers. Article 2 of the same law states that penal judgment should be law-oriented and the associated rules should be equally applied towards individuals who are under arrest in identical conditions for committing similar crimes.

On the other hand, article 93 emphasizes that interrogator should look for facts with ultimate impartiality and based on legal authorities without distinguishing between finding evidence or conditions which is for or against the culprit. The significant point is that the main disadvantage of this new law is that enforcement guarantee is not prediction to satisfy this issue.

10. Conclusion

Most of international documents, as globally accepted laws, pay attention to rights of the culprit in different stages of judgment. As a result, different countries seek to define and to interpret their national rules and laws based on these standards. Islamic Republic of Iran has endeavored to pay attention to rights of the culprit in the new law of penal judgment passed in 2014 based on the fourth article of the constitution, stating that all laws should be consistent with Islamic principles, and international treaties as codified in article 77 of the constitution. Although there is more alignment with international laws and this subject should be discussed in wide jurisprudence viewpoints, some legal gaps and lack of enforcement guarantees exist. For example, regarding the concept of equality of both sides, enforcement guarantee ignorance of this right is not defined. In regard to publicity of trials, using ambiguous and general terms such as general security and goods—which lead to privacy of court sessions—and defining this issues by the judge might leave to ignorance of culprit’s rights.

References

- Akhondi, M. (2006). *Code of Penal Judgment (Thoughts)*. Tehran: Majd Press.
- Ashuri, M. (2007). *Code of Penal Judgment* (Vol. 2, 7th ed.). Tehran: Samt Press.
- Barari, L. M., & Ghaboli, D. M. T. (2011). Rights of Culprits with Jurisprudence Approach. *Journal of Studies in Islamic law and jurisprudence*, 2(2), 23-51.
- Ghasi, A. (1990). *Fundamental Rights and Political Entities* (1st ed.). Tehran: Tehran University Press.
- Helli, J. H. (Unknown). *Sharae Al-Islam Fi Masael Al-Halal va Al-Haram*.
- Hosseini, S. S. M. (1988). *Al-Fiqh*. Beirut: Dar-Al-Oloom.
- Jafari, L. M. J. (1999). *Terminology of Law* (9th ed.). Tehran: Ganj Press.
- Mohaghegh, D. S. M. (2003). *Principles of Jurisprudence: Penal Section* (Vol. 3). Tehran: Islamic Science Publication Press.
- Mohaghegh, H. J. H. (1988). *Shara Al-Islam Fi Masael Al-halal va Al-haram*. Research by Sayed Sadiq Shirazi, Altaba Alsani. Tehran: Esteqlal Press.
- Najafi, M. H. (1977). *Javahir Al-Kalam Fi Sharh Shaie Al-Islam*. Research by Sheikh Abas Ghochani. Tehran: Islamic Library.
- Naraghi, A. (1998). *Mostanad Al-Shii, Al-taba Al-Avla*. Qom: Matba Setare.
- Norbaha, R. (2003). *General Criminal Laws* (Vol. 6). Tehran: Ganj Danesh Press.
- Shahid, S. Z. A. (1989). *Alroze Albahie Fi Sharh Al-ma Al-Damashghie*. Research by Sayed Mohammad Kalantar, Al-Matba Al-Avla, Qom.

- Sharifi, M. (2008). Rights of Culprit in International Documents. *Club of Lawyers journal*, 198-199, 127-158.
- Tosi, M. H. (1988). *Al-Tabian Fi Tafsir Al-Quran*. Research by Ahmad Habib Ghasir Alalmeli, Altaba Al-Avla, School of Islamic Sciences.
- Tosi, M. H. (1973). *Al-Mabsot Fi Fiqh Al-Imami*. Research by Mohammad Bagher Behbodi, Almortazavi School.
- Zeraat, A. (2004). *Principles of Codes of Penal Judgment* (Vol. 1). Tehran: Majd Press.

Notes

Note 1. “ قبح عقاب بلا بيان ” in Arabic

Note 2. “الحدود تدرء بالشبهات” which means limitation is skepticism

Note 3. “كل ما حكم به العقل حكم به الشرع ” in Arabic

Note 4. “وجوب التسوية بين الخصمين” in Arabic

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