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THE ROLE OF JUDGES' VIOLATIONS IN IRAN

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ABSTRACT

Until the first mid-century of 20th century, the judges were among the individuals whose immunity was appeared as an unexceptionable affair and the principle of immunity was gradually criticized through the created speculative movements and this wish penetrated in legislation movement little by little. The 171st principle of the constitution and the 58th article of Islamic punishment law have explained the judges' personal responsibility through being inspired by jurisprudential and narrative texts if they commit fault and mistake, but ambiguities due to some applied vocabularies in the mentioned principle caused people injured by judicial decisions not to achieve their claims which is compensating the loss and harm due to fault and mistake. This way became smooth through approving the law of control on judges' behavior approved in 2011. The author figures on explaining the method of proceeding to disciplinary violations and judges' crime and their civil responsibility if fault and mistake are committed with thinking on the recently approved law. The aim of this investigation is to recognize the angles of the role of public prosecutor's office and judges' supreme disciplinary court in judges' aggression to citizens' rights. The investigation method is library and using the practical method of disciplinary authorities is provided through researching in two authorities (public prosecutor's office and judges' disciplinary court). The result is that if the judges infract the citizens' rights whether during duty accomplishment or in duty accomplishment, have civil and penal and disciplinary responsibilities. The public prosecutor's office and the excellent court play the role of proceeding to violations about disciplinary violation and the role of prescription to proceed to penal competent authorities.

Keywords: Responsibility, Civil Responsibility, Judge, Judicial Decisions, Fault, Mistake

INTRODUCTION

Since long ago, the aspect of all divine prophets and social peacemakers efforts have been to attempt to modify the morality and individual and social behavior and its promotion in the most excellent style and degree in order to achieve human fortune and perfection so that the holy prophet of Islam, Muhammad (praise be upon him and his tribe) said: "I was sent to complete the favors of morality", i.e. the final purpose of my prophetic mission is to complete the moral values. Whenever the morality enters the wide domain of society from the tightened and limited domain like the family and its included range encompasses a great number of individuals, its importance and effect become tangible in individual and social affairs equally. Among the individuals in societies, governors' and rulers' behavior had not been also limited to a small limitation because of the span of their duties and tasks and it encompasses and affects all citizens' positions.

Also in the conventional and Islamic thoughts, the internal judges are classified among this special group. In the Islamic thoughts, judging is one of the positions of divine prophets and innocent Imams (praise be upon them) which is the responsibility of the fully qualified religious jurist in the time of absence and nowadays and after the

victory of Iranian Islamic revolution leaded by the founder of Islamic republic of Iran, Imam Khomeini and establishment of the Islamic government and collection of the fundamental constitution of the Islamic republic of Iran in which the absolute imperium on human is God's and the government applies this divine right through the triple powers, this important affair is among the duties and tasks of the judiciary power and the 159th principle of the fundamental constitution states that: the official authority of complaining and complaints is the administration of justice. Therefore, the judiciary power and its judges have wide power and authorities to perform their duties and tasks which are implementing the justice and resolution of hostility based on the law. The judges are inevitable to have these authorities to perform their missions which sometimes these authorities have the aspect of protecting the judges against the authorities and preventing the influence and recommendation of auri-argentiferous in society and on one hand, in order to prevent the judges abusing their power and authorities for performing the assigned duties or exceeding the judicial character and behavior and procedure, some regulations are collected which the author proceeds to judges' crimes about the career

duties and also their disciplinary violations and finally he has proceeded to judges' civil responsibility which is the subject of 171st principle of the fundamental constitution and 85th principle of the fundamental civil constitution and the procedure evaluates it.

1-1- **Problem definition and issue explanation**

Because of judges' importance and position and the necessity to supervise the judges' behavior, the 171st principle of the Islamic republic fundamental constitution and also the articles 58, 570, 575, 578 and 598 of Islamic punishment law and the law of supervising the judges' behavior approved in 2011, the judges' crimes and disciplinary violations and the need for compensating the loss and harm due to the judge's fault and mistake are investigated.

The judicial justice necessitates that the behaviors against the law and due to judge's intention, fault or mistake associated to their career duties and positions do not remain unanswered and they are compensated and demanded through conventional and legal methods.

If a loss occurred for the individuals through judges' duty due to committing crime and violation by him, where can the wronged person refer to? Is a particular reference predicted in laws to proceed to the issue or not? Which conditions should the wronged person supply to compensate

and demand his rights? Which are the substantive and procedural principles, rules and criteria dominating them? How the nature of the elements of intention, fault and mistake is explained and to which limitations does it refer? Which is the criterion to recognize it and which are the limits and boundaries of the judge's responsibility and the responsibility of the judicial power if the judge's fault and/or intention and mistake are authenticated in the process of proceeding to a judicial record?

The present investigation intends to proceed to write the shortcomings and predict the solutions to help increasing the efficiency of legislator's position through using the theories of the professors of laws, reviewing the literature and available judicial procedure and the position of Iranian legislator in the past days while thinking on the legislator's last position.

The principle of judges' removability has been noted with its special wisdom with the aim of correct service and executing the justice. According to this principle, nobody has the right to depose the judges for no reasons. In this way, the judges will be able to perform their duties without any fears, worries and frights. Other judicial officers like assistants to the public prosecutors and prosecutors are actors in procedure and elementary researches and judicial

management although they play no role in issuance of judgment. Perhaps they may be subjected to the deprivation of the job security. Therefore it seems that they are included by the prohibition of discharge and deposal and they are relieved to perform their serious task. The negotiation of the 59th session of the final studying confirms this conception (2).

Control on judicial behavior in the international documents

An elementary session consisted of a group of excellent judicial authorities and excellent judges of countries, was established in relation to preventing the criminals' crimes and correction in Vienna. The aim of this session is to present a solution about the problem of distrust and lack of fortune for public thoughts of the judicial system, because the people imagined that the judicial system is depraved or acts in partiality. This conception and result is obtained from the thoughts carried out or the reports of investigational commissions which are created by the government.

Although some proceedings are performed in order to amend the affairs, the problem remains likewise. This was the first time that United Nations invited the national and international judges to state with respect to an important subject (1).

In the first step, it was decided to limit to the legal system of the Common law. For this reason, the initial participants were 91 Asian, African and Oceania and had a common legal tradition. The first session of the judicial group associated to improving the judicial health was held in the bureau of UN in 15 and 16 April 2000.

In this session, two decisions were made, at first, it was agreed that the national judicial system must play an active role to improve the health of the judicial system through execution of the mentioned principles in its competence and capacity level.

Then, they emphasized on an immediate need to issue a statement encompassing a global capability and acceptance containing judicial and respectable standards and the participant judges confirmed that the collection of the laws and rules of the judicial behavior should be analyzed in some jurisdictions and the report should be prepared by Dr. Nihal Jayovic's judicial health group (2).

It was agreed in preparing the judicial behavior draft that using various utilization sources like national collections, regional and international corrupting which are referred, serious steps should be taken to complete and modify the draft in the next sessions and they agreed on the principles of the judicial behavior in the direction of the program of counteracting the pressure

of the organization in order to develop the effective criteria and policies to improve the judicial health with the attendance of judiciary authorities and excellent judges held in Bangalore city, India at the beginning of the year 2002. For this reason, it was known as Bangalore principles.

1) Shah Heydarpour- Mohammad Ali- description of the principles of Bangalore judicial behavior- Khorsandi publications- p. 21

2) Shah Heydarpour- same- p. 28

The resolution no. 33/2006 of the economic and social council of UN approved as the title "The fundamental principles of the judicial behavior" in 27 July 2006 requested the member countries to review or develop the judicial statements or behavior for modifying and/or developing the rules associated with morality according to the internal legal system, to envisage the principles of Bangalore related to judicial behavior, and additionally, it requested the United Nations Office on Drugs and Crimes to provide an unlimited inter-governmental expert group in association with the judicial health group in order to provide a description on the principles of Bangalore.

In enforcing the recent paragraph of the mentioned resolution in the date 1 and 2 March, 2006, the mentioned session was

concluded with the attendance of experts from several countries like Islamic republic of Iran and the members of judicial health group and other invited persons at the center of International organizations in Vienna and the draft of Bangalore principles description which was authorized by the invited persons before, was read paragraph by paragraph and the suggestions and the corrective cases were included in it which its detailed principles and description that is the production of the common and written law in countries, are as following:

First value: independence

Principle:

The judicial independence is the precondition of law sovereignty and fundamental guarantee for proper investigation. Therefore, every judge must stabilize the judicial independence from both personal and methodical aspects and manifest it.

Application:

1.1. The judge should apply the judicial acts independently and on the basis of his assessment of realities and according to his moral understanding of the law and he should be free of the direct or indirect external effects, factors, pressures, threats or interferences from any sources or for any reasons.

- 1.2. The judge should have independence with respect to the society in general and with respect to the particular parties involved in a dispute he investigates.
- 1.3. The judge should not only be free of inadmissible communications and impressibility by the legislative and executive districts of the government, but he should also sound free and released in a conventional supervisor's viewpoint.
- 1.4. The judge should be independent from judicial colleagues in executing the judicial duties about the decisions he is responsible to adopt independently.
- 1.5. The judge should encourage the principles of assurance to execute the judicial duties and keep and promote the fundamental and practical independence of the judicial system and he should act it.
- 1.6. The judge should manifest and promote the excellent criteria of the judicial behavior in order to stabilize the public trust in the judicial system which is considered as an infrastructural affair to maintain the judicial independence.

Second value: Impartiality

Principle:

Impartiality is necessary to fulfill the duties of the judicial system correctly. This principle is not only applied on the principle of decision, but it is also applied on its adoption process.

Application:

2.1. The judge should apply his judicial duties away from any discriminations, fanaticisms or prejudices.

2.2. The judge should attract and promote the public reliance, legal job owners and lawsuits master towards the impartiality of judge and the judicial system.

2.3. The judge should conventionally behavior in a way that minimizes the cases which necessarily result in judge's lack of competence to hear an action or in making a decision about them.

2.4. The judge should not state knowingly about the actions which is ongoing or would be proposed to him and are considered as influential on the result of the action conventionally or tarnish the equitability of its event.

2.5. The judge should refuse to investigate the actions in which there is no possibility to make an impartial decision about it or actions he is not able to make an impartial decision about it in every conventional supervisor's view and he should declare lack of jurisdiction. These actions consist of but not limited to these cases:

2.5.1. Cases in which the judge has had a bias and prejudice about one of the litigants or he has personal knowledge about the issues which are presented as reason and place of difference.

2.5.2. Cases in which the judge has already performed duty as the main attorney or witness in the contentious issues.

2.5.3. The judge or one member of his family has economic profits as a result of the contentious issue.

In the cases in which no other law courts are able to be established or that lack of investigation on the issue results in injustice because of emergency conditions, the declaration of the judge's incompetence is not necessary.

Third value: Integrity

Principle:

The integrity to perform the proper and appropriate duty for the judicial system is necessary.

Application:

3.1. The judge's behavior should be in a way that is considered free of criticism from a conventional supervisor's viewpoint.

3.2. The judge's behavior and action should strengthen the reliance of people on the integrity of the judicial system. The aim is not merely to execute the justice, but this affair should also seem justly.

Fourth value: Propriety

Principle:

Propriety and manifesting it in all practical actions of a justice are necessary.

Application:

4.1. The judge should abstain from the incorrect behavior and manifesting it in his activities.

4.2. The judge who is always under the magnification of public thoughts should accept the personal limitations which seem burdensome and onerous from an ordinary citizen's viewpoint as a person. Especially, he should behave in a way which is accordant to the dignities of the judicial system.

4.3. The judge should abstain from creating the situations which conventionally cause creation of suspicion or manifesting the state of discrimination or partiality in his personal communications with the individuals who are involved in play their roles in judicial jobs regularly in the court.

4.4. The judge should not participate in a decision which is about the action in which one member of his family is on one side of the action or it is related to that action somehow.

4.5. The judge should not allow the owners of the judicial jobs to use his domicile for entertaining the clients or other individuals who are occupied in the judicial profession.

4.6. The judge has the rights for freedom of speech, belief and participating in formations and rallies, but he should not

behave in a way that the dignities of the judicial system and the impartiality and the independence of the judicial system become altered through applying these rights.

4.7. The judge should be aware of his personal and credit financial profits and he should also attempt to obtain this information about the members of his family conventionally.

4.8. The judge should not allow his family, society or his other affiliates to affect his judicial behavior and his judgment inadmissibly as a judge.

4.9. The judge should not exploit the credit of the judicial system to acquire the personal interests for himself, one member of his family or any other person and he should not also create this imagination or allow the others to create this imagination that a person has such position to him who is able to affect him inadmissibly in executing the judicial duties.

4.10. The career information which the judge acquires it as a result of his judicial capacity should not be used or divulged in the cases which are not associated to the judicial duties.

4.11. Every judge can do the followings in the area of propriety of judicial duties:

4.11.1. Writing, lecturing, training and participating in the activities associated to

law, judicial system, executing the justice or other related issues.

4.11.2. He should appear in a general session related to an official organization which is assigned to the issues of law, judicial system, justice execution or its related problems.

4.11.3. He should serve as a member of an official organization or a governmental commission, advisory committee or institution, of course if this membership is not contradicted to the issue of impartiality and lack of judge's political orientation.

4.11.4. He should take part in the activities which are not resulting in reducing the dignity of the judicial system or they have not any interference with executing the judicial duties.

4.12. The judge should not act as a lawyer so long as he is employed in the judicial system.

4.13. The judge may constitute some council for the judges or join them or take part in other organizations which are gonfaloniers of the judges' interests.

4.14. The judge and his family should not request or accept any gifts, wills (about the assets), loans or scores about the affairs he had accomplished or should accomplish or should abstain from its accomplishment.

4.15. The judge should not knowingly allow the court staff or the persons under his control, supervision or authority to

request or accept any gifts, wills (about the assets), loans or scores about the affairs they had accomplished in the path of performing their duties or their judicial acts.

4.16. The judge may receive keepsakes, rewards or a profit fitting the status occurred with observing the law and any legal standards supervising the information divulging; provided that this gift, reward or profit should not be considered conventionally that its purpose is to affect the judge to accomplish the judicial duties or it causes a type of partiality in judge.

Fifth value: Equality

Principle:

Equal and same behavior to all individuals in the courts is the essential condition for proper performance of the judicial system.

Application:

5.1. The judge should be aware of the varieties available in the society and the differences due to some criteria like: race, color, gender, religion, nationality, social class, inability, age, marital status, sexualities, social and economic status and other similar backgrounds (unrelated backgrounds) and he should comprehend them. These cases are not limitative.

5.2. The judge should not manifest partiality or a bias about a person or a group with his quotation or act in the cases

he proceeds to accomplish the judicial duties.

5.3. The judge should accomplish his judicial duties with an appropriate attention in front of all individuals like the litigants, witnesses, attorneys, the court staff and the judicial colleagues without considering unjustified difference between them though negligible.

5.4. The judge should not knowingly allow the court staff or other persons under his control, guardian or supervision to differentiate unduly between the individuals who are related to the issue being investigated in the court.

5.5. The judge should bound the attorneys not to manifest any partiality and unreasonable bias in the course of investigation in the court, unless this affair is associated to the investigated subject legally and considered as a part of the legal defense.

Sixth value: Competence and diligence

Principle:

Ability and perseverance are required for proper performance of the judicial system.

Application:

6.1. The judge's judicial duties should have priority to his other actions.

6.2. The judge should assign all his professional activities to the judicial duties he is responsible for. This affair does not only include the execution of all judicial

actions and the responsibilities inside of the court and issuance of the votes, but it encompasses other duties which are associated to the judicial system or the administration of the court.

6.3. The judge should take steps in order to maintain and increase the personal knowledge, skills and qualities which are essential for executing the judicial duties properly and he should benefit from the training opportunities and other facilities which might be prepared for the judges under the control of the judicial system.

6.4. A judge should be aware of the advances in the international rights including the international conventions and other tools which are represented as normalized in the context of human rights.

6.5. The judge should accomplish all his judicial duties in an efficient, justly and conventionally rapid which include the decisions which are made with delay (delivery of reserved decisions), i.e. a kind of suspension in entering the judgment in the appropriate cases (translator).

6.6. The judge should keep his order and peace in all his investigations and he should be patient, serious and polite with respect to litigants, trial jury, attorneys and other individuals who he meet them correspondent to his profession. The judge should have the same behavior to the legal representatives, court staff and all the

people who are under his control, supervision or guardian.

6.7. The judge should not involve the behaviors which are contradicted to executing the judicial duties continually.

The judges' crimes about their career duties

In this topic, at first, it is discussed about the judges' crimes through investigating the investigator competent authority and then the topics of the criminals which are expressed about the judicial staff' career duties.

History:

As it is given in the topic related to the history of constituting the disciplinary office (refer to the page), the complaining of judge's way of acting in investigation on the contentious issues of the companions in the ancient Iran and Rome was in the way that the King character or the emperor was sitting in a place called oppressions court in particular days and they investigate the complaints of people against the judges. It is quoted that they were acting in such way in the era of the Islamic government of the Abdulmalik Ibn Marvan and Haroun Al-Rashid (1). In Iranian rights of the year 1929, Ali Akbar Davar, then minister of the administration of justice established the special criminal court for civil property through the scores resulted from the single clause bill approved in 1929 and

investigation on all crimes the governmental employees were committing because of their jobs was set in the competence of that authority.

The name of this authority was then changed to special criminal court for civil servants and the criminal court was disbanded as a result of the legal bill of removing the courts of special jurisdiction in the year 1952 and the bill of forming the criminal court was renewed again by parliamentary in the year 1954.

As a result of the article 2 of the criminal court law, all the crimes governor-generals and assistants of the ministries and all judicial staff were committing a crime due to governmental job were investigated in the criminal court. And if the judges committed an intentional crime which was not related to their career duties, it was also investigated in Tehran public prosecutor's office and public courts.

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- 1- Salehi Mazandarani-Mohammad-civil responsibility due to judicial decisions- Islamic culture and sciences publications, year 2012, p. 443.

After the victory of the Islamic revolution and approval of the legal bill of forming the public courts approved in 1979, the mentioned law of the criminal court was dissolved and investigation on judges'

crimes was assigned to Tehran public prosecutor's offices and the public courts.

The mentioned law states in the article 8: "The public courts are formed since the date the ministry of justice declares and since that date, the courts in the county and province and the criminal court are dissolved and the duties of the provincial courts and the criminal court is the responsibility of the public prosecutor's office.

Note 1- it is investigated on the crimes which their investigation is the competence of the special criminal court for civil servants in criminal courts of the province center. One or more divisions of the mentioned courts might be assigned by the ministry of justice to investigate on the mentioned crimes. It is investigated on all crimes of the governor-generals and governors and the people having judicial degree and the representatives of the Islamic consultative assembly in Tehran criminal prosecutor's office and courts.

By approving the law of constituting the public courts and revolutionary courts approved in July 6, 1994 and its next modifications and annexations, the investigation on the committed public crimes from the area of the judges due to their job and duty or other cases is of competence of the province criminal court.

The note of the article 4 of the above-mentioned law states: "and... the investigation on all accusations of the members of the State Exigency council, council of guardians, representatives of the Islamic consultative assembly, their ministers and assistants, assistants and consultants of the chiefs of the three power, public prosecutor and chief of the audition court, persons having judicial degrees, governor-generals, governors and the public crimes of the disciplinary officers' crimes from brigadier to upper degrees are in the competence of the criminal court of Tehran province except the cases which are in the competence of the other judicial authorities.

The elementary investigation (prosecution and research) on the committed crimes is investigated by the judges in Tehran public and revolution prosecutor's office which is carried out in terms of the assigned task related to judges and governmental staff in Tehran prosecutor's office, region 28.

3-1-1- the method of investigation on judges' public crimes (intentional)

Currently, the investigations on judges' crimes are carried out in two ways:

In the first method, the file is proposed first in judges' disciplinary prosecutor's office with the declaration of the competent authorities or the beneficiary's complaint (refer to page...). At first the respected

assistant prosecutor of the judges' disciplinary prosecutor's office of the judges should begin to investigate as a matter of reference and after the reasons are completed, if he believes in the criminality of the complained judge, he presents the suggestion for the suspension of the suspected judge to the disciplinary prosecutor of the judges and the respected prosecutor also requests the requisite for judge suspension if there are sufficient reasons to execute the article 39 of the law of the excellent disciplinary court. The disciplinary prosecutor of the judges is "charged with the duty that before declaring about the judge suspension, he should declare him that he can declare his declarations through writing or with attendance in the prosecutor's office during one week."

The disciplinary prosecutor of the judges states, adopting the suspected judge's protections while consulting with the assistants of the disciplinary prosecutor's office with regard to judge suspension. The article 39 of the law states:

"If the judge is put in the suspect of the commitment, the prosecutor investigates the issue and if he has reasons and indications to mention the accusation, his suspension is requested by the competent authority from the judicial position until the

issuance of the final judgment and its execution."

Dear chief of the first branch of the excellent disciplinary court of the judges

Hello

While sending views of Messrs.' and dossier..... , this public prosecutor office, with all due respects inform that, because Mr..... the director of public court of district..... is suspected to act against the right and out of malice, and regarding the fact that the accusation to aforementioned is seemed to have reasons and evidences, and view to the fact that summoning him and investigating him is preconditioned by enforcement of article 39 of law of supervision of judges behaviors, therefore according to mentioned article it is suggested to suspend the aforementioned from juridical services until the end of investigation and issuing the final verdict.

The Request, suspension of the judge and issuing the indictment and posing the enforcement suspension is only in the responsibility of the public prosecutor. At the absence of the public prosecutor or in the cases of prosecutor rejection, his first assistant is in charge. It is stipulated in the article 29 of draft of executive code of supervision law on the judges' behavior that: "the public prosecutor can entrust the examination of the matter of article 39 of

the law to its assistant or to one of its assistant prosecutors."

also in the article 30 of mentioned code it is stipulated that the public prosecutor can entrust the mentioned responsibility of clause 2 of article 39 of the law to an assistant or prosecutor assistant to which the case had been referred to for investigation and disciplinary expression. Here is a sample of proposition of suspending the suspected judge by the public prosecutor:

In the enforcement for article 39 it is stipulated as follows:

in case that the prosecutor do not recognize the conditions and reasons of the dossier for proposing the suspension of the suspected judges, it issues the order of putting it as archives and if the evidences are so that the accusation may be attributed to the suspected judge, the disciplinary supreme court issues in extra time the investigation and the decision of suspension of defendant or suspected judge. The manner of communication of decree:

Relying on the clause 2 of article 36, the issued decrees from branches of disciplinary Supreme Court stipulates that the communication of decree should be by indictment communication.

And the legislator stipulates in article 34 that:

.... a copy of indictment is communicated to the prosecuted judge by the general director of province administration of justice at the earliest convenience and the second communicated copy is returned back and it is reminded in clause 1 of the mentioned article it is stipulated that the communication except the posed items in this law should be complied with civil legal procedure.

When disciplinary Supreme Court investigated the subject and issued the decision of suspension of suspected judicial clerk, it sends the case to the competence authority that at present time it is public prosecutor office and special revolution of government personnel that is located in Tehran. a sample of decision of supreme disciplinary court is transcription.

Considering the above orders and the fact that the accusation matter of Mr. relying on article 575 of Islamic punishment law approved in 1994 having criminal description and being prosecutable, and view to the fact the evidences and reasons is in the extent that urges its summoning and investigating on it in competence juridical reference, this court while is agreed with proposition number Of public prosecutor office of judges declares the suspension of Mr..... the director of branch.... of public court with reliance with article 39 of supervision law

on judges behavior approved in 2011 until the end of investigation for matter of its accusations and issuing the final decree in this regard.

The latter authority (state personnel special prosecutor office) in case of belief in criminality of the defendant regulates the indictment and sends it to province penal court.

In the manner that the plaintiff complains directly its claim to competence authority (the State personnel special revolutionary and public prosecutor office) against the judicial clerk, the complaint depending on the case may be referred to interrogator or assistant prosecutor of State personnel prosecutor office, the investigation authority comes into collecting reasons and evidences. But the investigation should be in such manner that does not impair the judicial reputation of the defendant judge. After accomplishing the investigation if it recognized that it is necessary to summon the judge, after agreement of prosecutor office director it declares the orders to the judges' disciplinary prosecutor office for the suspension action. As soon as the defendant judge dossier reached to judges disciplinary prosecutor office if the dossier is not complete in terms of reasons and documents one of assistant prosecutors of the related office collects and evaluates the evidences.

And if the sufficient reasons for the accusation and prosecution of the suspected judge is prepared, it suggests the suspension of suspected judge to disciplinary prosecutor and in case of agreement of the prosecutor with applying the article 39 of supervision law on judges' behaviors as it is explained before.

if the disciplinary prosecutor defies with the request of penal authority in order to suspend the defendant judge, the case may be returned back to the requestor institution, the penal authority can put in the archives the case with the issuing of decision of inhibition of prosecuting the case and if some new reasons have been achieved one can again request the matter of suspension from the prosecutor. the clause 3 of article 39 of law of supervision of judges' performance stipulate that: " if the request of suspension of the judge is rejected form public prosecution office or from supreme court and afterward some new evidences is discovered, the competence penal authorities may request the re-investigation of the suspension from the prosecutor office. The suspended judge can enjoy one third of all its rights and benefits and in the case of acquittal or inhibition of prosecution may receive its remnant.

Islamic punishment law:

The article 58 of Islamic punishment law with a little variation is the repetition of principle 171 of constitution. This article stipulate:

whenever due to deficiency or mistake of the judge in matter or in adjustment of the sentence any material or spiritual damage inflict some certain person, in the case of material damage in the case of fault, the guilty is in charge according to Islam regulations and otherwise the damage should be compensated by the State and in case of spiritual damage if the fault or mistake of the judge caused the impairment of someone's reputation, one should take action for returning its reputation back.

in this article the legislator by following the principle 171 of Iran constitution in the case of the fault the judge is in charge against the damaged one and due to mistake, the civil liability of the State is taken into account, because the probability of mistake in the crucial task of justice is greatly predictable and if judges are responsible for their vocational errors they lose their judicial independence and certainty in their decisions and furthermore the volunteers of this profession may decrease.

But in Islamic punishment law regarding spiritual losses according to the constitution just the reputation is considered and its

quality and ability to compensate it with property have not taken into account.

Concept and benefits of judge civil liability:

Judge civil liability concept:

Regarding the concept of civil liability there are a lot of definitions and one has expressed its difference with penal and ethical and contractual liability, and for the same reason it is not necessary to mention all its definitions and its difference with other responsibility.

What is necessary to briefly state is that in any case that the person has to compensate the damage of someone else, it has civil liability against it.

Therefore the civil liability of the judge can be defined as follows:

The judge has civil liability if it is recognized as responsible of compensating loss done to a person due to its judicial decision whether sentence or decision about a claim.

the decision of the judge though is taken place in line with accomplishing its judicial duty and by its will-power, but since within decision making and issuing the decree it has not the intention of accepting the liability of the victim, this decision should be known in the class of accidents and events that as soon as occurrence, its results are not determined by person's willpower but the law considers the judge as the

responsible of that event and it specifies the quality of its compensation and enforcement.

According to the law, there exist a religious relation between victim and judge that makes victim as creditor and the judge as debtor; the debt issue is loss compensation. In addition, judge also has criminal, liability in most cases and legislator predicts additional penalties.

The civil liability of judge is acceptable just in cases of fault, ill will, and big mistakes, and not for faults committed unintentionally and without ill will.

2. Criminal liability law

Before establishment of system of Islamic republic of Iran, article 11 of civil liability law approved in 1960 was the only legal text about responsibility of judges; of course, this article was adjusted in such a way making capability of citation difficult to prove civil liability of judge and/or government in case of bureaucratic system failure. Therefore, there was never a file opened against judges and/or a decision based on judge's civil liability against losses inflicted on persons.

However, this article appoints that:

Employees of government, municipality, or other related organization are responsible for loss compensation in cases of incaution when performing duties; but whenever losses are not related to their action, then

mentioned organizations or institutions are responsible to compensate losses. In case of government acts, if proceedings are due to necessity of supplying social benefits but in contrast causing loss then government will not be forced to pay for losses.

Conclusions

According to what was said, judiciary is responsible for adjudication, justice, and providing security for people. Judges are also main protectors of people's rights and freedom and the main condition of their job would be reliance on justice and virtue; but they as human beings are not error-free on one hand, and on the other hand, the principle of independency and judicial immunity is a necessity of their important task.

Legal systems had accepted personal liability of judges and government in some directions as limitative and exceptional in their legislative policy making a balance between authority and power of judicial function on one hand and authorities outside the criminal system on the other hand.

Though juridical background in accepting judge's personal liability due to his/her fault and error is emphasized in valid juridical textbooks, but it has not penetrated in law of our country; therefore, the victim had proceeded to gain his/her loss from the perpetrator based on public principles and

civil liability law approved in 1950 but was not successful because of lack of clarity in legislation.

After victory of Islamic evolution and with approval of constitution and accepting equality and freedom for all people and its enforcement, the legislator clearly announced legal personal liability in articles 171 or 58 of constitution; it perceives fault equal to fault and defines error just as intentional mode. It also states that judges have personal liability only in case of intention to harm.

Some others perceive fault as a vocational one with typical parameter, i.e. criterion of judge refers just to condition of that event. It seems that the second theory is more adaptive with legal principles and rules.

They also perceive the heavy fault infected with illegal act –which is interpreted as intentional sentence- in category of judges' personal liabilities such as deceit, fraud, or receiving bribe in order change pronouncement.

Also, according to article 171 of constitution, it is not possible to say that judges are free from personal liability against all aspects of their fault since they have personal liability in some examples of faults such as ignorance of law, deficit of investigations or leaving the decision to the discretion of the Secretary. Finally, a

question arises that: to what judicial system the victim must refer litigating his/her loss?

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