



Investigating the Finality Principle of the Criminal Judgments with the Attitude of the Head of the Judiciary Authority

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ABSTRACT

Generally regarding the revision discussion and the finality of judgments in Iran, it can be said that after years of struggle for being religious or non-religious of revision discussion, the legislator finally however it emphasized on the finality of decrees but by allowing review for most of the cases uses the exception in a way which practically leaves on single decree but a review possibility for that. Hence, in the year of 1381 in a move to make amends past mistakes they eliminated different review possibility and detection but it didn't succeed again because of establishing detection branches in country's supreme court and degrading this institute to a simple court. In the year of 1385 and after that in the years of 86 and 88 by using the amendment article of 18 reduced the deficiency of the law of 1381 but yet by giving the right to review for final decrees which are against sharia to head of judiciary not only contradicts the law but questions the finality of decrees. The way used in this study is based on practical goal and an analyzing – descriptive approach. In information collection is based on library resources and by using real document. This study starts by finality definitions and after that investigates the historical course of finality and decrees violating in Iran legal system and also investigate the legal deficiency in this regard and at the end presents some suggestions for improving criminal system to achieve justice.

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Introduction

The world of law is a matter of credibility and this entity with credibly nature along with growth in social thinking and development in mankind's life changes and develops accordingly. With passing of years, world of law developed and changed in a way that we can say nowadays the concept of an accused one differs to that concept in past. Some new matters such as right of accused ones have been established in most country's constitutions with goal of protecting and maintaining of law. When a decree is issued and then finalized the case is a closed one and review of that can be done only under some conditions. Law scholar called this "the validity of the closed case" which is the most discussed subject in legal systems. In all legal systems this is based on common sense and has got a great importance in protecting and maintaining the right of accused. Regarding the criminal procedure in Iran, lawmaker after Islamic revolution acted in a way which leads to a lot of contradiction and disagreement. Before Islamic revolution we see a common approach to different matters and after that in order to make laws even more Islamic we see new approvals time to time which in most of the cases contradict each other. In this regard criminal regulations related to objection to decrees and request of review has been changed a lot in a way which leads to damage the validity of court decree and the concept of finality.

Broaching and the Necessity of the Study

The world of law is a matter of credibility and with growth in social thinking and developing in mankind's life, this entity with creditably nature changes and develops accordingly and continuously. In existent constitutions there's no definition of final decree, what we see in this constitutions is just matters about issuing final and no final decrees and appeals, reviews and investigable decree. But from a law doctrine perspective and experiential procedure a final decree is a court decision about a

case that have been heard and passed all the different steps in first and review courts and that can't be processed again for a review by a customary practice. Anyway lawmaker assumes a way to make amends to misjudgment, restorative of justice as a single way for objecting a final decree always has been approved and used by civilized and judicial systems. Hence, after years of discussions lawmakers in response to the question of legality and illegality of a review, while emphasizing to unchangeable nature of final decree airs that there is no way of reviewing a final decree. Meanwhile all of this seems extending exception on the concept of final decree in a way that practically there is no final decree anymore and by letting head of judiciary accept appeals to final decree made the subject a matter of paradox and still questions the concept of finality in decrees. In this regard, according to the importance of the subject this article tries to investigate the course of development in legislation relating to comply or noncomply final decree and in particular investigate the probability of abrogating a final decree by a senior judge and at the end presents some suggestions for achieving justice in.

Substance and Methods

The way we used in this study is based on practical goal and an analyzing descriptive approach. For information collection and analysis of hypothesis we used different technique and resources (library resources, real business documents and other documents of courts). With using different definition of the subject and analyzing different outlook on matter researchers tries to look at the subject by a comprehensive and general analysis from a different angles and perspectives. At the end, with using parameters and reasoning gets its targeted results and investigate criticism and legal shortages relating to the case.

The Nature and Concept of Finality in Decrees Subject Definitions from a Common and Legal Perspective

Legal scholars As masterminds of legal system in the country have got a great and decisive role in growth and development of judicial system. Taking into consideration their minds and view about different matters of law is a necessity. According to their views and minds about finality propound different definition that all of them despite having a different face saying a similar fact. In this regard Akhondi professor of criminal procedure propounded most comprehensive definition a classic and scientific definition based on modern teaching in criminal procedure he assumed final decree as an court decision that can't be objected except with restorative of justice.

This definition is based on the knowledge that according to general principals of criminal procedure objection to an decree has a limited time and if there is no objection within this limited time or after objection and review former decree has been cancelled and new one issued or initial decree approved the decree would be a final one. But restorative of justice is the only way in reviewing a case that has no prescribed time and it could be broached whenever its reason is justified based on legislative conditions hence he assumes a exception for restorative of justice in his definition of final decree. So according to this definition Akhondi assumes following decrees as an final decree:

1. decrees which according to law can't be appealed reprocessed or reassessed.
2. Decrees which have been approved in country's supreme court.
3. Decrees which its appeals have been rejected.
4. Default judgments which have been issued and there was no request for appeals reviews and reverse.
5. decrees which its time for appeals and review have been expired .

Although aforementioned definition is based on criminal procedure law and its 473 article approved in the year of 1290 RIC but generally speaking is a very clear and helpful one. in this regard katouzian in his definition of final decree defines it as a decree which " passed its time for review and approval and the one that could be enforced at this stage of procedure ." following to this he refers to 330 section of civil procedure saying " decrees of general and revolutionary courts in legal matters are final except in cases that according to law could be reviewed. " This definition is a definition depending on result and katozian in his definition looks at effect and result of final decree and its capability of enforcement in his point of view final decree is a decree which can't be reviewed by a customary way. What strikes us by examination of these definition that are most comprehensive definition of finality is that from a law doctrine perspective a final decree is a decree that passed its first and review court and can't be reviewed again by a customary procedure .in this regard a decree could be a final decree at the time of issuing or become final because there was no objection to it within prescribed time or after passing its review stage . in this definition the first one is a final decree and second one is called certified final decree.

Legal Definition of Finality in Criminal Decrees

Following the path of rules relating to criminal procedure in the course of lawmaking from the constitutional(Mashrotiyat) times until now leads us to this fact that there is no definition of final decree in the constitutions what we see in them is just matters about issuing final decrees and non-final decrees appeals reviews and investigable decrees. But bear in mind that our sole source to get a essence of lawmakers point of view

about final decree are these constitutions .in this regard we can refer to 473 article of criminal procedure act approved in the year of 1290 RIC which is now followed by judges and criminal courts .this act includes some definition and matters which includes and covers final decree too. These matters are as :decrees with no objection within prescribed time decrees which confirmed in supreme court or cases which its appeals have been rejected .nevertheless not only in this constitution but even in criminal decree's reviews regulations approved in the year of 1373 we can't find a definition of final decree and just in its 8 and 9 section which now is subjected to clause 223-233-235 of revolution and general courts criminal procedure regulations approved in the year of 1378 we can find some eludes to the possibility of reviewing some decrees in review courts in addition, there is no prescribed time to reviewing a case which resulted by a judge mistake that in fact this last clause was eliminated by reforms of 1381 RIC. Anyway since the 1372 law had some uncertainty and deficiency general assembly of supreme court according to order of uniformity numbered 538 prescribed that : "mentioned final decree in article 25 of the act of reforms in part of judiciary rules approved in the year of 1356 that is issued in suspended crimes of non- renewable includes decrees issued in first court as non – renewable or decrees which is renewable and after its review are done became a final decree". so this order highlights the similarity between final and non-final concepts to renewable and non – renewable concepts. It should be said that the content of the mentioned order are in article 278 of criminal procedure regulations of 1378.

So by looking at the regulations and rules of different criminal authorities we get that final decree is a decree which passed all different steps of criminal procedure and has a credibility of a closed case. Then final decree is a decree which may have been a final from first or after passing its review or its prescribed time for reviewing had become a final one.

Checking Islamic laws approach to finality in decrees

Islamic law is based on religion which its principals more than anything got a ethical and spiritual origins. Islamic law look at the fact not face and judges tries to find truth .hence if a decree is against gods rules or clear facts could be breached and if a decree doesn't correspond with facts it has no credibility and the concept of finality wouldn't prohibit its annulment. judgments in Islam is under authority of prophet and in Shiite religion judgment is preserved to prophet innocent imams and those who have been selected by imam for judgment. At the time of imams absence those who have a good knowledge in religious matters and achieved a degree of discretion (Ejtehad) must take the responsibility of judgment . as a matter of fact from Shiite perspective those who take the responsibility of judgment in absent time must be mujahidin those who is able to extract the gods law from Koran tradition and common sense. Such person's decrees must be obeyed.

Late Mohaghegh says: judgment must be taken by person who is learned and can make decision and give fatwa just knowing and quoting other scholars opinion wouldn't be enough for installment as a judge. "As we see by examination of these religious opinions first and primary order of Islam about judgment gives this responsibility to mujahidin and says that his order and decrees are final and must be obeyed but unanswered question is whether a non – mujahidin could judge or not. Some jurist (Faghih) believes that judgment by a non-mujahidin is not acceptable .

In contrast some believes that non- mujahidin should be let judge on the circumstance in particular when there is no mujahidin available necessity of dealing and solving people's

problems makes it inevitable. Mohammad Hasan Najafi or Saheb-ol-javaher rejects this claim that those who knows a little about Islamic ordinance or imitates other mojtahids cant be a judge. He says existence of traditions which mentions using of mujtahids as judge at the time of absence doesn't mean non – mujahidin can't judge.

The past and Historical Course of Final Decree in Iran Legal System

(The Course of Legal Developments before Islamic Revolution)

The first legislation of criminal procedure in modern form named the principals of criminal trials was submitted to the parliament in the year of 1290RIC which its approval wasn't completed due to finishing of parliament period. Then this law as a temporary law has been implemented by ministry board approval .this law was a combination of French German and Switzerland laws and has been implemented simultaneously by laws of formation of justice office (the old centre for dealing criminal matter in Iran) .The law has been reformed in the years of 1311 ,1325, 1337, 1339 ,1341, 1351 and1356 .criminal procedure law approved in the year of 1290 and its following extensions emphasized on finality of decrees and lawmaker in spite of guarantying a two phase procedure emphasized on finality in decrees and saying after expiring time for appeals request for a review can't be accepted except by restorative of justice .after that in the year of 1352 with approval of expediting in trial procedure act and reform in some of the criminal procedure rules which includes totally 23 article a lot of changes happened . the most important aspect of this was formation of detection branches in countries supreme court for first time in history something that happened again in the year of 1381 with broader authority for these detection branches .the job responsibility and authority of detection branch has been mentioned in article 441 of criminal procedure act approved 1352.last changes in criminal procedure before Islamic revolution was in the year of 1356 and with approval of reforms in some part of terms of justice . this amendment law included 41 clause and 10 chapter which in some part of it we can find some paragraph regarding to the matter of change in criminal procedure laws .in this law there is no mention of overriding a decree and just last paragraph of it saying that :” since the time of implementing of this law rules and regulations which are contrary to the ruling of this law are abolished.” and the person who uses this law must detect the matters which contradict with the contents of this law. The most important innovation that lawmaker assumes to this law is in section 18 and 19 of it which gives right to appeal against a decree within a prescribed time to attorney general and ministry of justice. In section 18 the right to appeal against a law was given to attorney general and section 19 saying :”whenever ministry of justice or attorney general face a decree which is against constitution or common sense they can request investigation of the case from general assembly of country's supreme court even if the decree is non – renewable one or accused didn't appeal against it within prescribed time.” After receiving request general assembly starts investigating and if the mentioned reason justified abolish the decree or if there is no reason the case would be delivered to a competent authority and this authority is obliged to follow general assembly's order .”as we mentioned in the first paragraph of the study according to the section 434 attorney general for the preservation and maintenance of justice can appeal against a decree but the law specifies that supreme courts decision affects no parties involved in the case and also assumes no prescribed time for attorney general to appeal against a decree.” But in article 19 of

amendment law to reforms in some part of terms of justice both minister of justice and attorney general can request a review or a violation decision about a decree which is against law within a month from the time of issuing .and decision made in this case in contrary to Article 434 would be effective to parties involved. Actually these two kind of appeals one subjected to article 434 and other subjected to article 9 have been originated from French criminal procedure rules.

Investigating the Course of Legal Development after Islamic Revolution

Along with Islamic revolution and structural change in different aspects of governmental system from the very first days of revolution common mentality was that along with formation of Islamic government its rules should be based on Islam and Shiite way of thinking too. However even before Islamic revolution by virtue of the second principal of amendment to the country constitution of mujtahids and jurists of the first period of legislation had emphasized matching of the laws to sharia and Islamic rules. In first days of Islamic revolution with revolutionary's leader order revolutionary council has been established to set up a temporary law framework until formation of principals for branches of government. council rules at the time has been assumed as official law and one of the most important approvals of this council that in which we see Islamic approach clearly is regulations related to revolutionary courts. immediately after Islamic revolution and formation of Islamic government revolutionary court was established to trial the heads and leaders of Pahlavi regime. At first revolutionary courts didn't follow any statute and their delivering of the cases was based on Islamic law but after a while some regulations regarding to how to form courts and dealing with cases has been codified by revolutionary council named regulations of revolutionary courts which in session of 27 / 58 was approved by this council and published in an official newspaper. Then after approving some regulations relating to formation and criminal procedure the think of collecting islam laws regarding to criminal procedure stroke the mind of members of revolutionary council and following to that a legal bill of general and revolutionary courts formation has been approved on 20/6/58 that after publication in an official newspaper on 26/7/58 has been implemented. The important point of these regulations mentioned in second paragraph article 11 of it saying “ revolutionary courts decrees are final and no review is assumed to them. “Regarding to this matter another bill which has been approved by revolutionary council was legal bill of formation extraordinary courts dealing anti-revolutionary crimes .this bill was approved simultaneously with former but has not been implemented . Article 14 of this bill saying “ sentences issued by the courts subjected to this is final unless in cases involving execution or life imprisonment. In these cases condemned one can appeal against within five days. Appeals would be investigated in the country's supreme court out of turn.

As we see in these two laws from the very first days of Islamic revolution lawmaker tried to express Islamic perspective and use jurist opinion as a reference for legislation even if this opinion doesn't reflect Islamic definite approach. Hence by violating the natural and inalienable right of an accused to object or request a review saying that “ courts decrees are final and there is no right for accused to request a review to them”.

Despite great changes that have been made to the Iran's criminal procedure by revolutionary council approvals in the year of 1361 judicial supreme court in order to make rules even more Islamic submitted a bill including 318 article to the parliament. This bill was meant to modify criminal procedure

law of 1290 still used at the time .parliament criminal commission by using the principal 185 of constitution approved this sections to be used in an experimental stage for 5 years. According to this law there is no classification of crimes in this category to misdeed ,misdemeanors and felony any more in order to create a better base for criminology replaced it with classified crimes based on religious principles : retribution ,atonement and suspension and by elimination of supreme court branches and former courts , new branches of supreme court named criminal courts number 1 and 2 was replaced.

On the 14/7/1367 a law named regulations of renewable decrees and the kind of respective dealing in 12 article was approved by Islamic consultative assembly (majlis) which by virtue of it even accused ones could object to the decrees of first court. Approval of such a law has been a sign of an evolution in lawmakers approach towards respect to accepted principal of criminal procedure and the right of accused ones. According to this law in addition to general courts decrees , military and revolutionary decrees would be renewable too. On the 31 /3/1368 The law of criminal courts formation ,1 and 2 branches of country's supreme court approved by legal commission of parliament (majlis) as an experimental plan. Goal of this law was correcting and eliminating the difficulties and uncertainties related to the reform of some regulations of criminal procedure.

In Mordad month , year of 1372 RIC a new law named review regulations of courts decree was approved which while maintaining the title and expressions of Islamic style clearly approached the review concept and its respective procedure of pre- revolutionary period. We see two great change in this law . first , noting the decrees which are renewable which means no mentioned decrees of this list are not worth to be reviewed and are final. Second , determining a prescribed time for review which for Iran's resident is twenty days after issuing decree and for overseas resident is two month provided no coercive obstacle making review case impossible and if so this time would be counted from scratch after elimination the obstacle. In the course of developments in the criminal procedure after Islamic revolution lawmakers always have tried to make laws Islamic as much as he could and it caused a lot of contradictory laws and regulations. One of the regulations that have been approved and later became a background for much trouble was the regulation of formation general and revolutionary courts and its respective criminal procedure which after that , have been reformed for several times. This two law have a lot in common with our discussion which in this part are explained:

a) on the 15/3/1373 regulation of formation revolutionary and general courts in 38 article and 21 provision have been approved by parliament and it was the most important development in criminal system after Islamic revolution. This law by elimination of independent court from the criminal system used a single name for all the legal and criminal courts , and this single name was general court. The most important part of this law was the return of provincial court to the country's judicial system.

b) after approval of regulation of formation revolutionary and general courts in the year of 1373 we have seen a great approach to the Islamic way of thinking in constitutions. Gradually the lack of a comprehensive regulation which could replace the former criminal procedure was felt. Hence , ministry of justice set a bill which included 158 article and submitted this to the parliament. This bill which called bill of criminal procedure of revolutionary and general courts was objected strongly by jurists which after some reforms and extensions which increased its articles to 308 was approved by parliament as an experimental law on 22/1/1378. in fact this law was second complete law after

criminal procedure law of 1290 which until now is the main law in the field of criminal procedure despite extensions added to reform some of its rules.

After approval and implementation of regulation of formation revolutionary and general courts and its respective criminal procedure , its deficiency and uncertainties became clear after some years and criminal authority found that its goal of formation general courts and elimination of independent court have not been achieved and country judicial system has become a weak one. In this regard and after some changes to the head of judiciary system course of development has been accelerated . in the year of 1381 law of reform to regulation of formation revolutionary and general courts has been approved by parliament which meant returning of independent court in Iran judicial system .

Investigating Article 18 of Regulation in Revolutionary and General Courts Formation

First Speech : History of Violating Courts Decree by Highest Judicial Authority

The amendment law of article 18 of general and revolutionary courts formation regulations approved on 4/11/85 which is main subject in this study , is the only extraordinary way for violating a final decree .according to the section 18 this right is preserved to head of judiciary and this violation is done based on the assumption of decrees contrast with sharia and this right to violate not only questions the principal of finality in decrees but the credibility of concept of sealed punishment. This rule somewhat has its roots in religious principals and opinions which prevailed after Islamic revolution. In some of these approved laws some authority was given to head of the judiciary to violate final decrees of courts. However even before Islamic revolution in some of the constitutions there was laws which gave such authority to highest people in judicial system to be able to abolish a decree or accept appeals to a decree in order to maintain order and protect the aggrieved rights. Since this mentioned laws could help us to understand the amendment law of 18 section in the following chapter we express some of them in detail.

First Paragraph: Investigating the Subject of Legal Approvals.

first time we face an amendment clause in reforms of criminal procedure laws is in the 434 section in the year of 1337 saying : "whenever a criminal court investigating a case issues a decree and none involved parties of the case don't appeal against it within prescribed period or in a case that a decree issued by criminal courts can't be appealed against according to rules ,attorney general himself or on request of judicial minister could appeal if finds that that decree is against law .supreme court decision in such case wouldn't be effective for none of the involved parties and attorney general's detection of a mistake in a court decree is not limited to a prescribed time and whenever he detects a wrongdoing or mistake could appeal against it". This section has roots in French constitution of laws and as we said in before paragraph the kind of appeal in this case is a appeal to maintain law and according to responsibilities and authority given to attorney general and minister of justice by lawmaker. So for maintaining and protecting law this right was given to attorney general and ministry of justice and lawmaker with the aim of maintaining the concept of finality and credibility of a sealed case emphasized that the result of this appeal wouldn't be effective .

the second example of amendment in approved laws before revolution is reforms to parts of criminal regulations approved in the year of 1356 that in which according to its 19 section

mentioned right was given to ministry of justice and attorney general as follows:” in criminal cases whenever there is a decree that can't be appealed against or attorney general or accused don't appeal against it at the prescribed time ministry of justice or attorney general could request investigating of the case from the supreme courts panel within one month after issuing. After receiving the request supreme courts panel investigate the case and if above reason justified the decree would be abolished and in cases not resulted to abolish panel delivers the case to a competent authority and this authority would be obliged to follow supreme courts panel orders. ”this clause which hadn't history in country's criminal system gives right to ministry of justice and attorney general to whenever in a non-appeal cases or cases that haven't been appealed against facing a decree that according to their mind is against law they could within a month from its issuing, request from the country's supreme court panel to abolish or order a reviewing of the case. The decree issued by general assembly would be effective for parties involved. This article is originated from French constitution and its article 620 which is known in French legal as the right of appeal for abolishing a decree by ministry of justice. as we see in two cases it is just legal approvals before revolution that gives highest person in judicial system a right to request review of the case from country's supreme court that it means a damage to the concept of finality in decrees.

Second Paragraph : Investigating Article 2 of Law of Limits and Responsibility of Head of Judiciary

After Islamic revolution along with fundamental changes in governmental system regarding to the dissociation topic of Islamic republic constitution judiciary faculty was completely separated from legislation faculty and unlike before judicature minister didn't chair country's criminal system from first days of Islamic revolution until reforms of 1368 judiciary faculty's presidency was given to criminal supreme council and since 1368 until now this responsibility was given to a (jurist) mujahidin. In regarding to the right of abolishment a final decree by highest authority in criminal system at first in criminal courts formation regulation numbered 1 and 2 and supreme courts formation laws approved in the year of 68 and in its 34 and 35 the right to request a extraordinary review of the case was given to the supreme court boss and attorney general. Also in courts decrees review regulation approved in the year of 1372 and its 17 section this right in a limited framework was given to attorney general and in formation of general and revolution courts and in criminal procedure regulation this right was given to attorney general too while in none of this regulation the highest person in judicial system who is the boss of judiciary faculty has not been given such a right. after reforms in constitution revolutionary council was eliminated and replaced by head of judiciary .according to the principal of 156 the responsibility of head of judiciary are as follows: “all the authority and responsibility of revolutionary council except the authority subjected to the provision of single article of choice of judges approved on 14/2/1361 was given to head of judiciary. ”Since this law wasn't a comprehensive the law of responsibility and authority of head of judiciary on 8/12/1378 in 5 article has been approved by parliament that in which lawmaker assumes a rule which is an innovation in Iran judicial system after revolution. According to this authority of abolishing final decrees was given to highest people in judicial system.

Article 2 of regulation of responsibility and authority of head of judiciary says:” presidency of judiciary faculty is a judicial position and whenever the head of judiciary detects that

a courts decree is against sharia he can deliver the case to a competent authority.”

This approval in Iran's criminal system was a new one and despite some similarity with article 19 and article 1 has got a fundamental difference with them. According to the article 2 of this law head of judiciary can deliver a case to a competent authority whenever he face a decree which is against sharia. In this article for the first time we face the term “ against sharia “ an unclear word that later made a lot of difficulties and also in this article there is no clear definition of competent authority. There is an disagreement about the reason for giving such a authority to the head of judiciary and at the time of approval in parliament the reporter of legal and criminal commission in his reports about this matter said: “the head of judiciary's job is an administrative or judicial one which we see its effect everywhere? .one of example of this is here .in judicial case the head of judiciary as a person who is elected by supreme leader can approve the execution decree and there is some cases in which head of judiciary detected that the decree is against sharia and it made the decree a decree that has no clear fate . No order for execution and on the other hand the decree is final and nothing can be done. In such a case permission is given to head of judiciary to violate the decree and deliver the case to a competent authority.”

Legal assistant of ministry of justice also expresses that:” sometimes he faces some difficulties in some cases and since he doesn't know himself a judge and can't judge and more than that if he judge would be faced respected judges objections all of this leads to a problem. For solving this problem in one of the paragraphs the permission was given to head of judiciary to judge when he face a decree which he thinks is against sharia .”as we see in this law the reason for giving such a right to head of judiciary was the need of making decision at this stage .since the head of judiciary has got a Ejtihad position by giving this judicial position permitted him to prohibit a decree when he thinks that is against law.

Third paragraph: uncertainty and difficulty in implementing article 18 of reforms in regulations of general and revolutionary courts formation Is due to not determination of any prescribed time to request for a review in it. This situation results in a lot of cases to be investigated and sometimes made a procedure a long and onerous process .hence dissatisfaction with this law increased among judges attorneys and even individuals. More than that this article by giving the substantive right for investigating referred cases to detection branches acted in contrast to dignity and authority of supreme court because this entity basically and in special terms is not a court and we can't assume a criminal nature to it .according to principal 16 of constitution this is a watchdog system with responsibility for maintaining and protection of law. Therefore countries judicial authority in the year of 1385 in order to decrease respective problems of article 18, submitted amendment bill of article 18 to the parliament. This bill that included /article and 6 proviso was approved by parliament on the 24 / 10 / 1385 and then approved by guardian council on the 4/11/1385 .this amendment article that would be seen as an evolution in possibility of violation of final decree is a main subject of this study . Then let's see its text content first.

Single article: the article 18 of reforms in revolutionary and general courts regulation approved in 27/7/1381 would be corrected as follows.

Article 18: non final decree and decrees that could be reviewed or appealed against is the one mentioned in criminal procedure act and review and appeal could be proceed according to the

respective criminal procedure. Final decree of revolutionary and general courts (military and supreme) can't be reviewed except by restorative of justice or by third objection in a way that assumed in its law or otherwise in cases that according to head of judiciary detection are against sharia that in such a case the detecting would be seen as a reason for restorative of justice and investigation would be delivered to competent authority.

By virtue of this amendment article lawmaker by elimination of detection branch and changing in the way of review that was based on the contrast of decree to sharia and returning it to the method of 1381 decreased the degree of uncertainty and difficulties of article 18.

In this regard The provision 5 of article 18 saying: "decree which became final before approval of this law at the maximum time of 3 month and decrees which became final after approval of this law at the maximum time of one month can be reviewed according to the articles of this law." According to this provision and in order to decrease the number of cases which is been sent for extraordinary review lawmaker by setting a prescribed time of month somewhat takes steps in the path of increasing the credibility of criminal system. But this provision has got some deficiencies too.

Other than law writing weakness by using two maximum terms in this law the main problem of it is counting the time of 3 month from the time of issuing not from the time of notification of decree to accused which is against him or her right. The other problem of this law is fact that head of judiciary can violate a decree which is against sharia not decrees which is against law or constitution. Although this problem existed at past according to the amendment article 18 but at that time such a approach had a base but in the year of 1381 and according to the article 18 of this law the credibility of a decree and the right of violation that by a head of judiciary is based on matching of that decree to law and constitution in addition to sharia. While now by virtue of provision 4 of amendment article 18 approved 1385 detection branches are eliminated and there is no way other than normal procedure for request a review and claiming a decree's contrast to law.

Implementing of article 18 in legal matters causes no problem because in legal matters there is a broad base for reference but in criminal cases which acts according to common sense and classic way of dealing matters (using a sharia approach not only undermine the credibility and the concept of finality but question the rule – based approach of judicial system. This situation was seen clearly in the Islamic revolution which constant changing of regulations of criminal procedure has damaged the judicial system. For example according to the article 18 content (head of judiciary can violate a decree when he detects that the decree is against sharia and if the mentioned decree is clearly against established law or rules but not against sharia no violation is needed. The another problem of this article is that the detection of head of judiciary is enough reason for violating a decree which is by his detection against sharia and after his detection case would be delivered to the respective branch to be investigated. It means lawmaker added a new reason for reviewing a case which is head of judiciary's detection.

Explanation of the Meaning of against Sharia

As we explained in last chapter Iran lawmaker in reforms of 1385 and by virtue of the article 18 of regulations of revolutionary and general courts formation expressed that only reason for violating a decree is its contrast and conflict by sharia that after detection by head of judiciary would be delivered to the respective branch. Then determination of sharia and its

relation or contrast by law is very important. Specially because there is no mentioning of this fact in constitution. In the following chapter we investigate a case that in which the head of judiciary's opinion is in contrast by clerics or most known jurist opinion. And at the end investigate a case that in which clerics opinion is different from most known jurist opinion.

What is the Meaning of "against Sharia"

Amendment law of article 18 of regulations of general and revolutionary courts formation approved on 24/10/1385 which is the newest approval regarding to the subject of possibility of violating a final decree says whenever head of judiciary detects that a decree is against sharia (his detection would be seen as a reason for restorative of justice and the case would be delivered to respective branch. First provision of single article in its definition of illegality of a decree (that decree is against sharia) says "anti-sharia concept means that mentioned decree is against principal of religion and in time of uncertainty we must refer to clerics point of view or the most learned (faghih) one". The principals are ones which are clear and there is no doubt about them. For example in case of murder (execution is its sharia law and any decree other than that is an anti-sharia law. Paragraph 1 of article 18 of reforms approved on the 28/7/1381 states that: "meaning of anti-sharia is that a decree is clearly against Islamic law and when there is no referring to it in law that decree must be determined whether it is against fiqh or not." Now it is a question that must be answered (what is certain fiqh? whether is it something that are agreed upon by jurist? no (it's not. Because in Shiite perspective there is a disagreement about every aspect of religious. Thus maybe there is a different view about a matter between jurist and still all of this different opinion be seen as certain sharia. Then when a opinion is expressed by a jurist (Faghih) that is not in line with these view that decree is against certain sharia. This fact is expressed in provision 1 of amendment article 18: "in disagreement times must be referred to clerics or most known jurist." This subject in judicial center for research has been expressed which after discussions resulted to this "certain sharia might be implemented out of expediency or without it (in cases which is used without expediency may be seen as a consensus matter or higher than that (then a consensus of opinion can be like a certain sharia but a certain sharia doesn't need a consensus of opinion. For example Koran's order doesn't need a consensus of opinion. Now what is the meaning of certain law from lawmaker perspective. Thus we can say that certain religious matters are matters that has got a clear and definite reference (Quran (tradition or matters which are agreed upon by jurists.

Conclusion

According to the presented topics about the subject of finality in Iran's criminal system and responsibility and authority of head of judiciary (after examination of different questions and uncertainty matters in this regard following results are expressed:

1. At first it must be said that with examination of the approved laws before Islamic revolution we see a unity and common approach in laws of criminal procedure regarding the respect to courts decree and prohibiting of any damage to the principal of finality in decrees and lawmaker of the period by following the customary methods in criminal system in Europe specially France tries to maintain the principal of finality of decrees and by limiting the objection procedure to septet methods of restorative of justice not only close the way for implementing any wrongful and illegal decree but meanwhile tries to maintain the credibility of a closed case. After Islamic revolution numerous changes were implemented in the criminal procedure

laws and according to the extent of Islamic jurist (figh) and different views among different jurist (faghih) caused a constant and great change in laws which sometimes reflects a conflict and inconsistency when they are compared to each other. IN the first days of Islamic revolution the common approach was based on this assumption that mujahidin are the their order and decrees are final and any objection to their approach are unlawful. Hence in primary laws of Islamic revolution any review or objection is forbidden and delivering of case resulted in final decrees. But after some years and gaining experience authority found that due to great extent of country and its population which causes a flood of cases in courts there is an inevitable need for non-mujahidin judge then with jurists order (fatwa) and specially revolutionary leader order non mujahidin had been permitted to judge. So following approved laws by assuming a two phase procedure and also assuming right to object and review in most of the court's decision returned somewhat to the customary methods of pre revolution period. According to this new approach not only interested parties but other parties involved in a case (for example judges or attorney) have the right to object. This process which sometimes leads to violating a decree at first was based on Islamic and figh approach but in the year of 1381 and with approval of reforms in regulations of general and revolutionary courts formation this assumption was eliminated from Iran's criminal system.

2. After reforms to Islamic republic constitution in the last years of the decade of 1360 and change of head of judiciary from a council entity to an individual state and putting a competent mujahidin at the top of the faculty this thinking stroke the mind of Islamic lawmaker that due to this fact that most of the judges aren't mujahidin and based on the jurist (faghih) opinion that decrees of non-mujahidin wouldn't be final . Then with this approval head of judiciary as a mujahidin and as a person who's been elected by supreme leader and clericals can violate a final decree which is assumed to be against sharia. And it was the beginning of damage to the concept of finality in Iran's court decree and credibility of a closed case. In this regard article 2 the law of responsibility and authority of head of judiciary has been approved in the year of 1378 which not only determines the entity of head of judiciary but gives the head of judiciary this right to violate or review whenever or wherever he detect a wrongful decision which the content of this article presented in this study. In this regard we see the peak of authority in the year of 1381 with approval of reform act to revolutionary and general court formation and in its 18 article which gives the right to deliver case to a competent authority if he (head of judiciary) finds that a decree is against sharia. The process was on until by accumulation of cases and due to this fact that head of judiciary couldn't deal with this great volume of the cases it was decided that this kind of extraordinary objection would be ended and by setting a prescribed time for objection the mechanism of a request for a review depending on the respective reference would be determined. So in the year of 1385 with approval of a

single article named amendment law of article 18 of revolutionary and general court formation which is explained in this study a prescribed time of one month has been assumed to this law.

Suggestions

Finally it seems that according to the result of this study an extraordinary review procedure is not the only way for prohibiting and avoiding a wrongful and illegal decree. the experience in this long years show us such a procedure not only doesn't close the way of making mistake in criminal procedure but limits the review of the case to the restorative of justice. According to the septet items of article 772 included in the current criminal procedure law right of claiming blemish fix in criminal mistakes is justified according to the article 171 of the constitution and also article 58 of the Islamic penal law. It seems that following this mentioned rules is a better way for achieving a justice than article 18 and alike. Another solution in this regard is the using of experienced judge and an all-out support of them and a comprehensive control on them in order to achieve justice and suitable criminal system , a system that protects lives properties and dignity of civilians and people can trust to.

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