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The principles of fair Justice in Iran's constitution and the International System

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ABSTRACT

During the course of the history of societies and social living, there has been a question as to what measures to take against those who violate social rules and regulations? In this direction, the violator faced a lot of tests and injustices. There was a time that torturing the accused was legal. What mattered was to find an accused that would confess and had the burden of proving his/her innocence. France's Great Revolution was a turning point in these struggles. The time had come for the principle of exoneration to come into existence and find its place in people's minds. It was also time for the words of revolutionaries such as Montesquieu, Rousseau, Becharia and Bentham to flex their muscles when it comes to the law. Torture was not only abolished, there were also guarantees that those convicted of doing so were punished. Justice was based on respect for human rights. As it is stated, "Recognition of undeniable equal rights for all the members of the society is the basis of freedom, justice and peace in the world." When someone as a result of some criminal accusation attends the courts of law, he will face the entire ruling system. The way an accused is treated reflects the respect the government has for human rights.

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INTRODUCTION

Article 1: the concept of Legal Procedure Standards: It seems that legal procedure standards is another dimension of the same general principles of human rights which have been accepted in all the modern legal systems and they are the bases of fair assessment of legal procedures.

Legal procedures standards are the ones that clarify the main concepts of justice in resolving disputes. Some of the professors have also brought up these standards in a collection named, "the strategic principles governing legal procedures which reflect the theoretical foundations governing legal procedures.

Fair justice is one of the most important indicators for the assessment of social and legal development in any society. In some cases, some people, use fair and just terminologies interchangeably. The reason for distinction between fair legal procedures and the just one goes back to the distinction between justice and fairness. Fairness and Justice are not the same. Fairness deals primarily with the moral aspects, but justice is based on the legal principles. The approach for analyzing the principles guaranteeing fair legal procedures is to analyze the rights of the accused in the legal process.

The rights of the accused include a set of benefits and facilities which are to be enjoyed by an accused in a fair court of law in order to be able to defend him for charges brought against him. The accused is not a convicted criminal and for as long as the verdict against him has not been issued, he is no different from other members of the society and he is respectable.

Before taking into account the rights of the accused from the discovery of the crime until the issuance of the verdict, it is necessary to study some of the principles governing a fair justice (legal proceedings' standards which are as follows:

A) *The Principle of Innocence:*

This issue has been discussed in principle number 37 of Islamic Republic of Iran's Constitution. Based on this principle, it is the prosecutor who should prove the guilt of an accused by presenting reasons and evidence; the legal authority does not have the right to arrest the accused unless there is evidence against him/her. Whenever, there are doubts against the guilt of the accused, he/she will be exonerated. The importance of this

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right is as such that we can say without it, having fair justice is not possible. Article No. 4 of the country's Legal Procedure ratified in 1992 and also the single article of the law protecting the rights of the citizens and respecting legal freedom have paid attention to this issue in paragraph no. 2. The principle is based on the assumption of the accused's innocence and everybody has the right to enjoy the necessary security under the protection of the law.

B. The Principles of Equal Ammunition:

Equal ammunition means the existence of equal facilities for both parties of a legal or criminal case. Both parties of the case should have equal facilities. The principle of equal ammunition has been at the center of attention in both national and international documents.

The civil and political rights convention has analyzed fair legal procedure in article No. 14. The government of Iran has joined the convention by making it a part of Iran's domestic laws.

Paragraph 1 of article 14 in the civil and political rights convention indicates: "everybody is equal in the court and the courts of justice..."

; Lawyers such as Dr. Akhoondi in connection with the principles of "equal ammunition" have this belief: Equal ammunition is an old technology and it is outdated. Either party of a legal case has the right of having a lawyer. However, these rights are not ammunition because they are supposed to be used in wars. This terminology which is extracted from France's; was and has been used by some legal experts is not right and instead the so-called defense should be used.

Paragraph2: The Rights of the Accused in the Current Laws.

A) The Rights of the Accused in the Process of Crime Discovery :

Crime discovery includes procedure for collecting information related to the crime after it has happened in order to save the evidence, reasons, the accused's arrest and prevention of his/her escape.

These procedures are conducted under the supervision of court's authorities. The accused, at this stage of investigation, has the following rights and advantages to be protected against any police aggression:

1-Arrest of the accused by using subpoena:

One of the rights of the accused according to article 180 of the Country's Legal Proceedings Law ratified in 1378 is that the interrogator cannot issue an arrest warrant without sending a subpoena (article 170 of CLPL ratified in 1392). This means that the accused should be summoned first and if he/she does not show up, then he/she should be apprehended. According to CLPC ratified in 1392, a person who is summoned has to know the reason so that he can defend himself/herself, However, in case of violations whereas according to the detection of the legal authority, the social reputation of the accused or the security of general public is in danger, the reason for sending the subpoena will not be mentioned and the accused can go to the office of the legal authority to find out the reason for being summoned (amendment to article 170)

The second right of the accused in regards to the subpoena is the duration between the issuance of the subpoena and the time the accused is to attend the interrogator's office which is supposed to be no less than five days (article 171).

2-Arbitrary Denial of Freedom Forbidden:

No one can be arrested arbitrarily [article q of international declaration of human rights, article q of Civil and Political Legal Treaty, Article 5 of European Convention of Human rights and basic Liberties, article 7 of American Human Rights, and Article 55 of the International Penal Court Charter]

Islamic Republic of Iran's law maker also, in addition to the affirmation of article 32 of IRI's law has adopted articles 572 and 583 of Iran's civil law, ratified in 1375 as the guarantee for the execution of this right. Also, in paragraph 1, 2 and 5 of the single article of citizen's rights, there is a reference to respecting the laws in regard to the arrest, discovery and prosecution of violations and also sentencing's. paragraph 1 requires that "discovery, prosecution of violations, conducting investigations and issuance of temporary arrest warrants should be based on following the laws imposing personal choices and abusing the power and or imposing any (physical) violation and or additional and unnecessary arrests".

3-Respecting Human Dignity:

The accused has the right to enjoy logical treatment based on the principles of human dignity. It is stated in article 39 of the Constitution: violation of someone's reputation and dignity that has been arrested, imprisoned or exiled, in any shape or form, is forbidden and requires punishment. "

4-The Rights of Standing Mute:

The accused has the right not to answer the legal authorities' questions and choose silence and this will not be interpreted as his/her being guilty. The most important basis for choosing to stand mute is the principle of

being innocent until proven guilty. Basically, the accused is not responsible for presenting reasons to exonerate himself / herself.

It is the legal establish, net that should find good reasons for the suspect's criminal action through legal avenues. According to article 60 of CLPL ratified in 1392, asking the accused questions during interrogations that are misleading or deceiving and not related to the crime in question is forbidden and the accused's statements in response to such questions are not credible. It is also emphasized in the last segment of article 195 that questions asked by the interrogator should be useful, clear and related to the accusation. Suggestive or deceptive questioning and forcing the accused to answer them is forbidden.

Some principles in the Constitution have implicitly referred to this right of the accused ideological questions and not torturing justifies the right of the accused defending himself/herself. Article 129, 194 and 197 of the CLPL ratified in 1378 and paragraph 11 of the single article of the law respecting the legitimate liberties and protecting citizen's rights have pointed out this important issue. This matter in our country was not recognized under the title of "explanation of the allegation" until its ratification in CLPL in 1392 and it became executable within 6 months. The right to remain silent also became part of issues related to "explanation of the allegation".

5-Explanation of Allegation:

Anybody arrested or apprehended should be, right away, aware of the reason for deprivation of freedom. The main objective is to give the individual in custody a chance to object his arrest. The accused's lack of knowledge about the reason for the arrest will lead into the violation of individual's right of defense and freedom.

6-Explanation of the rights include in the Law for the individual in Question:

One of the important duties of legal authorities for the accused is the explanation of the rights of the accused included in this law. This matter that was unprecedented in Iran's penal laws is one of the innovations of CLPL (article 52) ratified in 1392 and in today's standard of the law is known as the accused basic rights.

B) The accused right during the preliminary investigations:

This is the most important phase of legal procedures and it provides the foundation of a criminal case.

1-Rules for the Collection of Evidence against the Accused:

The slightest negligence in collecting the evidence and discovery of the crime diminishes the basic rights and liberties of the accused. The necessity of respecting the legal defense of the accused during the discovery of the crime requires using no scientific and technological advancements that are in humane and principally wrong. The following is some of the examples: prevention of torture a suspect in custody cannot be forced into confession and or incriminating himself. (article 14 of civil and political treaty and article 55 of international penal court charter) of human rights committee has indicated that the wordings in article 14 that indicate no one can be forced to incriminate and confess against himself means that inflicting physical and mental pressure either directly or indirectly against the accused for the purpose of gathering confession is forbidden.

European court made it clear that this right does not include issues such as breathalyzing. Blood, urine and body tissues tests in order to test the accused DNA and through imposing such tests, no harm will be inflicted upon the determination and will power the suspect. Therefore these tests will not be stopped. The principle 38 of the IR of I'S law, torture is pointed out, but not explicitly defined. However, the law maker based on article one declared the law forbidding torture which was ratified by the Islamic Assembly on May 8th, 2002, needless to say that, definitely, committing torture (whether physically or mentally) is not exclusively in this article 1 of the law forbidding torture and the said instances in this article are exemplary and not real. Also in paragraph 9 of single article of citizenship right's law, taking into account the legal and jurisprudence sources, torture is forbidden and confessions taken by inflicting torture are illegal and religious proof. Article 197 of CLPL ratified in 1378 and also article 4 of the law preventing torture considers confessions taken under torture to be without merit and discounts them as proofs of the case.

Second, prevention of arbitrary intervention in housing, private life, correspondence: Respecting the privacy of citizens is respected in Iran's laws and we can refer to article 582 of Iran's civil law ratified in 1975 in which searching, blocking letters from reaching their destinations and exposing phone conversations to the public, exposing any telecommunication contents to the public including censoring and not sending them and also eavesdropping and finally any searching (without warrant) is forbidden.

Thirdly, making comments about a committed crime disguised as a case prevented from prosecution, forbidden from prosecution or writ of conviction.

2- Lawyer's Intervention:

One of the developments in the new penal legal procedure is reinforcing the accused's right of defense by making the conditions of defense lawyer's intervention in the preliminary investigations. Article 190 of this law points out the right of having a lawyer and making the accused understand it. Additionally, article 48 (and its amendment), 86 and 302 of the same law has explained this right and its exceptions.

3-the right of the accused (defendant) or his/her lawyer at the time investigating effective documents and evidence while discovering the crime: article 154 of CLPL ratified in 1392: "whenever an accused deposits written documents, or any other things related to the crime at the time of discovery to his /he attorney or anybody else, the investigator can examine them at the presence of the attorney or the defendant..."

4-the right to utilize facilities and having enough time to prepare defense: this principle which is about defendants accused of a criminal case, has been expressed in paragraph 1 of article 11 of international Human Rights Declaration and B clause in paragraph 3 of article 14 of political and civil rights treaty and respecting it in civil claims with the above mentioned argument is considered to be one of the international standard in legal procedure. Having enough time to get ready for defense seems to be different in different cases and it is related to special circumstances of each case. All defendants in criminal cases in order to have the guarantee for their defense to be objective, have the right to enjoy enough time and appropriate facilities to defend themselves; the right is the important ASPECT OF THE BASIC PRINCIPLE OF "Equal Tools and Facilities." Defense and prosecution must be done as such that the rights of both parties in the dispute for getting ready and presenting the case during the course of the investigation will be equal. The right of the defendant's attendance in local inspection and investigation (article 125 of CLPL ratified in 1392) or the right of asking for the case to be sent to the expertise (article 155), the right of the defendant being allowed to be present in the court sessions (article 356) and or article 351 for even more consideration for the defendant's right to use any facilities necessary to redeem himself / herself.

5- The Right to Having a Physician:

The law maker has, for the first time, officially recognized this right by providing article 51 of CLPL ratified in 1392 so that if the defendant is ill, he or she will be examined by a doctor.

Patients suffering from heart, lung, and other diseases are those who will end up having worse conditions or even facing death if they are not paid attention to while in custody.

6) The right of the defendant's family to be informed of the arrest:

One of the innovations in CLPL ratified in 1392 is informing the relatives of the defendant of the arrest (article 50). This point is also mentioned on the last line of single article 5 of citizenship rights.

Is clear; when an accused is under arrest, he/she is under so much emotional stress that perhaps he will not be able to properly defend himself/herself. However, informing the relatives gives them the opportunities to provide the proper care. It is to be mentioned that establishment of connection in article 50 is not restricted and it is possible by any means necessary.

B) The Defendant's Rights during The Prosecution of the Crime preparation of the case against the defendant accused of committing the crime is the responsibility of the prosecutor. The following points guarantee a fair trial at this stage:

C) 1- Separation of the investigator from the prosecutor:

It is one of the accepted principles in many legal systems. There should be a separation between the judge and the prosecutor; otherwise there will never be a fair trial.

2- Revealing the details of the investigation to the defendant:

Details of the defendant's criminal case should be revealed to the defendant before the beginning of the trial at the court. At least, during the phase of receiving the last defense from the defendant in the court of law, the contents of the case and the prosecutor's documents should be at attorney's and the defendant's disposal for inspection and preparation of the defense. No items that can be effective for the entrapment of the defendant should be kept away from the defendant.

D) Defendant's Rights during the Trial:

The fourth stage is the process for dealing with the crime in the court. The court as the public grievance reference should take charge in dealing with claims and issuance of verdicts; it should do its best to materialize the achievement of justice. The conditions for achieving a fair trial are as follows:

1- Prompt trial and without excusable delay:

One of the problems whose importance is not hidden to anybody is speed in the process of investigation for the purpose of not leaving the defendant in the air so that if he is innocent, his rights will not be violated as

much. Besides, the longer the process, the more the possibilities of hints and evidence to be lost. Also, in some cases the long process results in the escape or hiding of the real criminal and his/her accomplices.

Based on principle 32 of Islamic Republic of Iran's laws, "No later than 24 hours, the preliminary file of the case should be sent to the proper authorities and the preparations should start as soon as possible." Also, articles 395 and 189 of country's Legal Procedure ratified in 1392 require investigation of the case and collection of documents and evidence by legal authorities and the investigator as soon as possible.

2- Reading the indictment (to the defendant) in a language familiar to the defendant:

In the court of law, once the identity of the accused is verified, the indictment against him should be read to him so that he can understand it.

3- Making the defendant understand the subject of the indictment:

In this stage, charges brought up during preliminary investigation will be dealt with. Even the (accurate) terminology of the charge(s) should be explained to the defendant. It is for the same reason that the law maker has required in article 280 of CLPL ratified in 1392, "the title of the charge(s) indicated in the indictment does not stop the court from selecting the correct terminology for the case. If the total number of violations committed by the defendant, as a result of investigations by the courthouse, is clear and the court identifies the title of the charge(s) to be incorrect, it is required to make the defendant understand the new title of the charge(s) so that the court can defend the charge(s) attributed to the defendant and then issue its verdict.

4- Respecting the conditions for hearing:

Conditions for having a court hearing include having an independent, legal, and impartial court. It should be open to the public. The jury should, at least, be present in violations related to politics and the press. Defendant should have an attorney. He/she should have an interpreter if needed.

4-1- the trial should be held at a court that has been selected according to the rules and regulations of the constitution or other laws of the country and it should be open to the public. In Iran's legal system because of principle 156 of IRI'S laws, "Judicial power is independent and it protects the social and individual rights and it is responsible for materialization of justice." Therefore, judges should not be under pressure and subdued by other governing branches of the country in order to be able to provide justice for the citizens. The principle of the separation of powers stated in principle 57 of IRI'S laws fulfills this purpose.

4-2-The Legality of the verdicts:

Based on principle 166 of IRI's laws, "Courts' verdicts should be issued based on legal premises."

4-3-Holding Public Hearings:

Article 10 of Human rights Declaration and paragraph 1 of article 14 of political and civil Treaty emphasizes the necessity for hearings to be open to the public. It means that in addition to the parties involved in the dispute, the public also has the right to attend the hearings to see how justice is done. This will make it possible for the public to search for justice. It also proves the court authorities to be self-confident and this article has been known as a common rule of the justice system.

Public hearing is a guarantee for those being judged and it shows that the judicial system has self-confidence. Principle 165 of IRI's laws has also emphasized on the principle of the hearings to be public and there are also three exceptions for this principle and they are: Public order, Public morality and the requests by both parties of the dispute for the hearing to be held closed to the public.

4-4- The right to have an interpreter:

Every defendant has the right to have an interpreter. His/her documents of the case also need to be translated; otherwise he/she may not be able to know completely what is going on. Having the right to an interpreter during the criminal hearing regardless of the result of the trial, should be free. However, if the defendant understands the court's language well enough, but prefers to speak in another language, the authorities do not have to hire an interpreter for the defendant.

4-5- The Presence of an attorney:

In Principle 35 of IRI's laws emphasizes on the right of the parties in the dispute to select their own attorney. This principle is attributive, necessary and mandatory. The defendant can request at the end of the first fact-finding session for an attorney selected for him. (Article 347 of CLPL ratified in 1392). In violations related to A, B, C and D paragraphs of article 302 of this law, the fact-finding session will not be held without the participation of an attorney.

5- The right of summon witnesses:

Clause 1 of paragraph 3 of article 14 in political and civil laws treaty, defendants of criminal violations are given the right to have witnesses with information regarding their innocence in the case in the court. Defendants can also ask the plaintiff or the prosecutor's with questions. According to some legal experts, this right has been given to the defendants in criminal cases because the prosecutor has the same right too.

6- The Right of having the opportunity for the last defense:

The necessity of getting the defendant's last defense has not been foreseen in international documents, but the end of preliminary researches and hearing are done in phases. The same trend is executable based on paragraph K of article 3 of in the preliminary investigation and based on the last part of article 193 of CLPL ratified in 1378 during the investigation phase if there are enough reasons for the conviction of the defendant and the judicial procedure is the same. The new criminal legal procedure law has made a reference to this in article 262.

E) The Right of the Defendant after the Hearing or the execution of Punishment

The defendant at this phase if convicted, does not have the right to appeal and object to the verdict and if the punishment is carried out, he will enjoy the benefit of not being sued again. If the defendant is acquitted of the crime he has been accused of, in addition to enjoying the benefit of not being prosecuted again except for the issuance of the order of not being prosecuted again because of the lack of cause that only one more time by attaining new evidence, he/she will be prosecutable, the defendant has the right to also ask for compensation and restoration of reputation of the defendants who were at rest after a while with the issuance of the order not to be prosecuted. Some of the legal systems have considered the issuance of the mentioned order as restitution and some have considered it to be contingent upon the defendant to become acquitted of the crime.

Conclusion:

Based on what was said and analyzed, we can reach the conclusion that basically although in Iran's legal system, these principles have been accepted in both the Constitution and also the ordinary laws, unfortunately, not much attention has been given to the rights of the parties specially the defendant's involved in the by the courts. It is obvious that the judicial organization should make different aspects related to this law quite clear. The issues mentioned in this article should be respected in a fair court. However, it is reminded that judicial system while getting rid of the current ambiguities should also provide bills that the negligent principles of fair justice will be clearly clarified.

Finally, first of all, we would like to remind you that the right of having a fair hearing respecting all the criminal legal procedure is necessary. Secondly, without respecting all the above mentioned rules and regulations by the judicial authorities, the possibility of reading the whole legal procedures is practically and it is no more than a slogan which might have long-term damages inflicted on the civil law. We must remember that in order to glorify the human and moral values in the society, we have no choice except reviving the judicial system and conducting impartial hearings that are fair so that we can be persistent in getting the rights of all citizens.

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