

STUDYING THE LEGAL AND JURISPRUDENCE PRINCIPLES OF JUDGE'S VIOLATIONS AND MISTAKES

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ABSTRACT

Judgment is one of the very important tasks assigned to a judge. In a criminal case, thus, judge should prove criminal intent, ill will and/or disobedience of accused beside material and external acts referring to legal articles defined by the law. Judge's mistake means that he actually causes loss of another without intent and malice. In this regard, it is important to consider tasks of a judge since violation and mistake of judges is influential mental and material profit and loss of people. Thus, the current research investigates legal and jurisprudence principles of judge's violations and mistakes with descriptive-analytical method. As a result, in case of judge's mistake he is absolutely irresponsible considering that he had not intended to harm another. However, someone else had loss through judge's mistake (either mentally or materially) and must be compensated.

Keywords: mistake, fault, judge, judge's violation and mistake.

INTRODUCTION

The world around us is full of cruelty, offending the regulations, violating rights of others and even manipulating the global peace and phenomena. Thus, implementation of justice and law enforcement is an inevitable thing and the most proper and competent people must bear this piece de resistance. From Islamic viewpoint, justice executives must be selected from the most competent people due to specific place of order and justice in the society.

In a criminal court, therefore, the judge should prove criminal intent, ill will and/or disobedience of accused beside material and external acts referring to legal articles defined by the law. The judge or general attorney is responsible for proof of each of these 3 cases; of course, in some violations the existence of material element is symmetry for existence of mental element while in other cases, existence of material element is considered as an absolute presumption for mental one so that the opposite is not accepted from the material subject of criminal acts.

There are many studies conducted by researchers and scholars about judge's mistake and violations as below:

In his MA thesis of law faculty of Tehran University, Ghorbani (2010) studied legal measures of judge's mistake. The nature of judicial work, and complexity and improvement of socioeconomic relations between people are among factors that make fault on the part of the judge inevitable and thus Shia jurists consider the responsibility of judge's mistakes on treasury.

In her MA thesis, Sarhadi considered legal and jurisprudence study about judge's mistakes and how to compensate them; she tried to study judge's mistake from legal and jurisprudence viewpoint. With purpose of explaining alternatives and juridical principles and its legal

status, this thesis considers judge's mistake in terms of constitution, common laws, jurisprudence and analysis of the ways to compensate material and mental loss. She concluded that though no one can claim removal of judicial fault, but there is a hope for more investigation about types of judicial faults due to article 171 of constitution and common criminal and civil laws.

Jabar Ibrahim (2013) performed a comparative study about the liability arising from judge's fault in law of Iran and Iraq. According to the principle of immunity of judges, their responsibility was not so attended and rate of their responsibility was ambiguous. This research aimed at studying Islam viewpoint about this issue and also considering laws of these two countries based on Islamic thoughts.

Since judge's violation and mistake is influential on material and mental loss and profit of people, thus it is important to consider this aspect of judge's responsibility. Using a descriptive-analytical method, the current research considers the goals below:

OBJECTIVES OF THE STUDY

Studying the legal and jurisprudence principles of judge's violations and mistakes is the main goal of the study while secondary objectives are:

1. Explaining the concept and meaning of judge's mistakes, and its difference with ignorance;
2. Studying the ways to prevent judge's mistakes in law of Iran.

Definition of Fault

Lexically, fault means 'mantling' and 'stay behind'; it means 'false impression of a thing (materially or mentally). Authors of civil law define fault as 'false image of a human about reality'. In other words, it is false display of reality in the mind that stands among psychological phenomenon. In the law, fault has no specific meaning.

The wrong interpretation of the term 'fault' in legal literature is close to its lexical meaning; it means the imagination of a matter against the law in legal relations of people; however, it must be said that judge's mistake means that he actually causes loss of another without intent and malice.

Concept of Judge

As said before, judgment is one of the very important tasks assigned to a judge. The level and importance of this position is investigated in holy Quran, traditions, and Islamic law.

Judge means a man who rules, i.e. someone who moves among people to resolve disputes. The term 'judgment' is used in different meanings and in jurisprudence terms, judge is someone who rules over the people; thus, the idiomatic and lexical meaning of the term 'judge' is the same.

One of the judge-related concepts is his knowledge; it means understanding and consciousness of humans toward surrounding events and phenomenon. From the logic viewpoint, science is the quality created due to integration of the current feeling with previous feelings of human mind. The type of quality state is called 'perception, consciousness or result of external object in mind' that is also interpreted as cognition and science.

Judge's Fault

Judge's fault is the violation and breach of a duty that is assigned by laws and regulations to reliable person. Article 953 of the civil law defines fault as violation and wastage; also, article 951 of the same law defines 'violation' as exceeding the allowed permits or standards against other's property or rights. Alike other professions, judges are also follower of different laws and regulations when playing their role and in case of violating those regulations –when handling the claim and issuance of verdict- they are recognized as guilty and consequently they have legal liability. Fault is a concept implemented in several fields such as ethics and law. The existence of common laws and regulations, particularly practice of businessmen and the disagreement between lawyers and experts had made cognition of different aspects of the concept 'fault' complicated. Distinguishing the fault from right, and also identification standard of these two concepts is one of the most difficult discussions philosophically and morally. Full dominance on all aspects of fault is not possible, since it poses in different fields of human activities. The losses caused by fault and social activities are important to the extent that jurists have no doubt to assume agents of such losses as reliable.

Compensation of the loss caused by judge's violation

According to what was said before, in case of imposing loss on someone by judge he (the judge) has civil liability against the victim and should compensate the loss caused by his fault or harmful act as appropriate. basically, civil liability is attentive for a person who commits a fault and he is responsible for this reason; therefore, he should bear the effects and heaviness of the committed fault due to the rule of law and also wisdom, common law, and sharia.

Generally, for civil responsibility, attention to loss and outer manifestation of act or omission of damages that is imposed to another party is fulfillment condition of civil responsibility of the harmful subject or omission and civil responsibility of the judge also follows the same thing, while civil responsibility has social and typical aspect and its criteria is conventional and standard behavior of the society. It is impossible to evaluate civil responsibility of judge by this criteria but it is valuable according to significance and unique characteristic as well as necessity where civil responsibility of transgressed judge is compared with conduct or inactivity of "standard judge", because proportional criteria is merely judicial custom and manner of standard judge.

Judge misconception in laws

In connection with misconception, an order that may occur when interpreting vague law or silence on law, the rule "ignorance to law does not hinder responsibility" has partially flexible and as ignorance or negligence are not caused by misconception, it should be accepted. Objective misconception is "misconception in objectives against legal order" like mistake imposed to victim and constituents of crime or mistake caused by criminal act. There may be three conditions that lead to issuing wrong order:

1. Mistake occurrence to attain reality: sometimes, judge attains results through documents and claim documents that are against the reality; for example, criminal court realizes criminality of the accused by adducting witnesses and votes his condemnation, while testimonies contradicts in some directions that logically could not be the basis of achieving criminality.
2. Occurrence of mistake in order document and its issue in a way that no erasure is posed to the basis of order; regarding accusation of car accident that terminates to injury, it

seems as if expert knows guilty 50 percent the driver and passenger (injured) and the judge mistakenly condemns defendant to pay the whole blood money. Or about leg bone fracture that is completely connected by virtue of relevant article (article 442 of Islamic punishment law) mistakenly estimates the rate of blood money based on bone that are imperfectly connected or mistakenly mentions the name of complaint and defendant in the verdict.

3. Occurrence of mistake in order documents and its issue in a way that erasure is posed to the basis of order; as if criminal act is committed by defendant which is called disloyalty in honesty, the judge consider it robbery and defendant is condemned to theft or he order to calculates the nose bone fracture from the viewpoint of forensic medicine.

Detection authority judge mistake

Article 18 of forming courts of general and revolution enacted 1994 on determining verification authority stipulates: " notes 1 and 2 (verification judge realizes the mistake) review authority verify and violates vote and note 3 (verifying judge has no competency to prepare and verify the votes) review authority at first verify non-competency claim and again perform the review in case of ascertainment". Therefore above-mentioned law has been mentioned as " review authority". Article 235 of court of general and revolution procedure code has also mistakenly determined review court as authority to address the issue. Note 3 of above article included that: " in the event that vote issuing judge realizes his mistake, inevitably the vote is sent to review court..." furthermore, note 4 of the same article has mistakenly stipulated in determining verification authority: "In the event that any of authorities in note (1) realizes the mistake of issued vote, at first issuing judge of vote will be notified, as he accepted the vote, take action against note 3, otherwise the file will be sent to the review court.

Silence of article 235 and disagreements will be answered by uniform judicial precedent, No 629 dated 1998/10/29 and has mistakenly introduced nation supreme court as verification authority about issued vote of review court. The content of above-mentioned uniform judicial precedent is: " what is legislature means by " review authority will address and violates the vote". There is authority in the underlying note of article 18 of revolution and general courts enacted 1994 that he should be in higher position and dignity to vote issuing court where wrong claim has occurred. According to principle 161 of Islamic law on supervising nation supreme court to correctly perform laws in courts, as legitimate review authority, authority who has the right to violate issued vote of court, he will be appointed as nation supreme court. Particularly, issuing court has no right to violate his vote because Supreme Court is considered an authority to violate or confirm vote 10.

Mistake cases of judge

Kinds of stipulated mistake in Islamic punishment law that provide security and responsibility of the judge are:

a. Judge mistake in claims

According to article 58 of Islamic punishment law, mistake Judge is:

Visualization of illegal affair, from judge, to claimed issue in the court or to discern perpetrator or apprehend the order, there are law and regulation that are obligatory to be observed by court that someone is subject to loss and detriment. According to the definition and to understand mistake from judge, article 190 of civil code, to acknowledge the contract which is the issue of contract or certain transaction, and following the order of civil code, to attain contractor's agreement to composite contract or transaction that is one of contract

correctness terms, article 194 of aforesaid law states that: utterance and indication that contractor compose the contract. In a manner that party accepts the same contract that another party decides to compose it, otherwise the contract is null. Therefore, to acknowledge the contract, the type and issue of the contract should be agreeable for contractors, otherwise if one of contract party do not accept the same contract that opposite party intend to compose it and proofs are available, that contract will be null.

b. Mistake of judge to adapt the order on special case

Scholars and lawyers have expressed various ideas on the basis of mistake morally, socially and philosophically. Regarding judge's mistake to adapt order, by virtue of defining "wrong order" namely imagination of opposing affair of binding rule and regulations from judge that is considered ignorance to law and according to general rule, "ignorance to law is not acceptable and will not arise from responsibility" because legislator has assumed wise all people, particularly judge to perform law, and proving opposing subject is not accepted in exceptional cases. Thus, judge and legal procedure should guarantee if they make mistake to adapt special order.

Investigating the causes of judge's mistake

Article 235 of criminal procedure code and article 326 of civil procedure code have stated three ways to address reversible votes because of judge's mistake:

1. When judge himself realizes mistake in issued vote.
2. When another judge who has legally received the file realizes his mistake.
3. When it is revealed that the judge is not entitled to inquire and issue the verdict.

Considering principle 171 of The Constitution and Article 58 of Islamic Criminal Code, the misjudgment by a judge occurs due to two reasons:

1) Mistake caused by judge's fault

If the mistake occurs because of judge's fault or intention, he/she will be liable for it. A judge's professional fault is defined as committing an action from which the he/she is banned, or failing to perform a deed to which he/she was liable, but corporeal or non-corporeal damage is incurred to someone by his/her fault. According to article 953 of civil law, fault consists of "excessive use or failure" and article 951 defines the excess as transgression of the conventional limits. Judges, like every other guild, are bound to conform to various laws while performing their tasks and in case of violating those laws, they will be found guilty and be legally liable at the time of issuing verdict and determining the damage (Mohajeri, 2004).

2) The mistake caused by judge's inadvertence

In case a judge does not meet the conditions for being faulty and makes a mistake without malice and by inadvertence, he/she will not be liable and the government should compensate the damages induced by the mistake. Since the judge does not intend to incur the damage and he was under duty, his lack of liability seems rational. However, the victim of the mistake should not be forsaken due to the prestige of legal system and justice, because Judicial System of Iran as a governing system has the final responsibility of judgment and the civil liability is on him/her. Therefore, the victim's loss should be compensated by the government.

Judge's doubt in his verdict

a) Detecting judge's apparent mistake

Article 31 of The Constitution states: "if a public prosecutor recognizes the verdict against the canon or law, he/she has the right to ask Supreme Court of Iran for violating the verdict." Furthermore, article 19 of The Constitution of this law states: "if authority of revision realizes the judge's obvious mistake after inquiry, he/she has the right to violate the verdict and inquire again." In clause 1 of article, it is written as: "...realizes his/her wrong verdict", and in clause 2 of the same article we read: "... realizes the wrongness of issued verdict." In line with the aforementioned laws, article 31 states that in case of apparent disagreement between judge's verdict and the canon, the legislator has the right to bind the public prosecutor to request for the violation of the verdict from Supreme Court. Therefore, the association between verdict and canon is on the public prosecutor, indirectly obligating Supreme Court on the issue. That is, Supreme Court of Iran as well as public prosecutor should act upon the apparent religious principles at the time of inquiry, because if the public prosecutor is bound to observe the canon, it automatically will bind the Supreme Court to do so. Otherwise, an irrational separation will occur. So, the concept of judge's apparent mistake in article 19 includes both apparent religious and legal mistakes, not only the legal mistake. Moreover, "mistake" in clauses 1 and 2 of article 18 includes religious and legal mistake, because although articles 18 and 19 do not have notes or conditions, but the note on article 31 that has mentioned canon next to the law interprets this article, and it is said that "absolute is considered as bound" (Naghibi, 2004).

b) Violation of judge's verdict

Violation of judge's verdict, and in legal terms, "revision in court verdict" is an important issue and requires more investigation from various aspects (Sabri, 2014).

Violation of judge's verdict from the view of Imamieh jurisprudence:

Most jurisprudents believe that this process will lead to violating the judge's verdict.

1. Imam Khomeini: considering that the views and jurisprudential principles of Imam Khomeini has been the legislators' benchmark during the legislation process after the Islamic Revolution, so reviewing his view is of utmost importance, since they can be the best interpretation of law:

"Violation is permitted if the issued verdict does not conform to the mandatory verdict of jurisprudence (Fiqh) so that if the judge becomes aware of it, he/she will violate his/her verdict immediately after his/her awareness of his/her negligence."

But if the case is theoretical and jurisprudential, the violation is not permitted, because:

- a) Imam's point of "permitting the violation" is in fact "the necessity of violation. In the previous phrase, he states the invalidity of violation in normal condition, so in case of inconformity of verdict with jurisprudential necessity, this "sanction" means "necessity"
- b) The meaning of "inconformity with the mandatory verdict" is that the verdict does not conform to the certain jurisprudential verdict in which disagreement or personal views are not considered valid.

2. Sheikh Tousi: he has expressed his opinions on violation of judicial verdict in an absolute way, that is, he has not clarified whether the verdict is liable to be violated due to the inconformity with presumptive religious reason or not.

Saheb Javaher quotes from Sheikh Tousi, "If a judge's verdict is against the definite reason in cases about the rights of people, it should not be violated without claiming the rightful person's right. However, the rightful person may relinquish his/her right, but the verdict will be violated if it is against the right of God" (Mir Abbasi, 2009).

The conditions for judge's acquittal

The jurists have different views on the conditions of acquittal for judges.

1. The judge will be acquitted by introducing the witnesses to the court.
2. The judge will be acquitted by taking an oath.
3. Judge without presenting clear proof and taking an oath, his speech based upon rectitude and equity of the verdict is accepted and exonerated.

Some of the jurists believe that compulsory for the judge to raise evidence that he has voted based on testimony of two fair witnesses. This speech is stronger in my point of view, because the judge has admitted to judgment issuance and transferring losing party property to another and in next stage he claims that he has no guaranty to the property. So his assertion is not accepted without clear proof (Naghbi, 2004). You see that Sheikh Tuosi has propounded issue assumption for a case that, lawsuit is the problem but, they have replied sheik inference in this manner: if transmission of others property is not extravagated, it does not bring liability. In addition, when the losing party has complained, obliging the judges to adduce clear proof is desecration to them. Therefore merited ones will not have tendency to take this position but sheik despite them has not necessitated exhibiting clear proof and saw it sufficient for judges to pledge.

Overseeing behavior and judges' malfeasances

Judicial behavior controlling and punishment exertion alongside of judge violation is one of the issues that was basked over time. In ancient Rome, the castigation for judge negligence was death sentence. Iranian also in ancient era did not approve judge violation of the law and showed exactness in inspection. Generally, equity in ancient Iran had a high position. Since Achaemenid, there is sufficient evidence that the kings tried hard to control judiciary and frankness of the judges (Ravandi, 1990). Throughout this era, besides that meritorious, trustworthy and savant judges were appointed in courts, the judges who passed a wrong verdict by taking bribery, were condemned to execution.

Islamic governments also engaged in this work with a particular sensitiveness. Imam Ali considers the person who takes the judgment position but is not merited, blamed by people and likens the person who takes the judgment seat unfairly to a fly who is captured in spider frail web.

In addition to the strictness that is mooted in judges' selection, after incumbency also they are under surveillance. Imam Ali in his command to Malik Al-Ashtar does not see judge selection condition, preserving self-reliance, and impartiality enough, on the contrary order that the judges performance always need to be controlled and inspected.

CONCLUSION

Jurisdictions are basically centers of adjudication. The petitioners -of each type - refer to these neutral centers for oppression and right restoration. With criteria in his hand and legal investigations, the judge verdicts any type legal or criminal claim; otherwise, he must verdict

on the issue according to Islamic reliable sources and sentences. The judge cannot refuse handling of claims and verdict under the pretext of silence, breach, conflict or brevity of codified laws. Thus, judge's verdict and judicial review is highly important having enough executive assurance. However, judge is a fallible human being always at risk of mistake and fault. In case of judge's mistake, he is absolutely irresponsible if he intends not to harm others; anyway, another individual has suffered damage (either materially or mentally) that must be compensated. Therefore, the judicial part - as final authority in the field of judgment - will be the guarantee.

SUGGESTIONS

1. Since legal contexts do not accurately consider judge's liability after commitment of violation or mistake, thus, it is necessary to revise related legal contexts.
2. The violation and mistake of judge might cause loss for all classes of society, thus, it is necessary to investigate factors of judge's fault and mistake to reduce these violations.
3. According to what was said, if judge commit a mistake the judiciary would be responsible for compensation; however, it is also necessary to blame the judge himself due to the importance of this subject in different arenas and rights of society.

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