

Review of Councils Dispute in Islamic Republic of Iran

Alireza Shakarbigi

Department of law, Payam noor University, Kermanshah, Ira

Email: Ali.shakarbaigi@gmail.com

Amir Ahmadi

Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University,
Karaj, Iran

Email: Amir.ahmadiy91@gmail.com

Ghobad Naderi

Department of law, Payam noor University, Kermanshah, Iran

Yahya Pyrie

Department of law, Payam noor University, Kermanshah, Iran

Abstract

One of the new legal departments in the recent years sway councils dispute its very valuable the principles of peace and agreements and attempts for removing disorders in society for religious culture but the councils dispute rules and their executive regulations be arranged that don't match with the legal and religious measures in this research it is indicated to the background of councils dispute for legal system in our country, after reviewing of 189 article , the third e economical cultural/ social development program of Islamic republic of Iran .It is paid attention to reviving of executive regulation for this particle.

In this passage it has been tried to investigate the position of criticism and the option of this department in order to act for removing of its defects.

Keywords: Councils dispute, Strengthening judge, People co-operation removal of difference, Peace and agreement.

Introduction

Without doubt it isn't pleasant the position of judiciary branch for people lawyers especially competent authorities gaining the best position and the suitable place for judge in Islamic systems with regarding the religious backgrounds it needs the more attempts and benefiting of knowledge and legal techniques and using of all legal and religious capacities.

The judiciary branch with telling the more intact in legal systems express that developing of legal systems is the goal and step indifferent fields' such as reconstruction of public

prosecutor's office but its hastily reconstruction without providing necessary backgrounds such as editing suitable providing physical equipments /enough forces, and domination of two ways in legal systems way the weak point in reconstruction of public prosecutor's office that be reviewed.

In other action establishing of council's dispute and using of public co-operation and solving differences by people that doing it correctly can affect on removing legislative branch's problems in order to remove the roots of fighting fighter and causes more folders by people's mediation leads to peace and agreements and then the mass of justice folders decrease.

For this purpose, councils dispute must be established in all over our country it was said the councils dispute cause the decreasing of 50%of folders in more states of Iran (Islamic republic newspaper, 2006/1/2)But it sounds these statistics are not real.

How many folders are there in the council's dispute that it reduced to 50%?

Without regarding of accuracy of these statistics it is important that these councils get away from the main duty and vote against the religious measures and constitutional law our attempts in this articles is hat review councils in order to prevent from repenting the error in the bills and reform the position, the valve and perfection of dispute among people from the aspect of Quran and traditions, the more verses exist for the attempts for solving the differences among people .in Koran; sure hoarest (49) indicate that; if two groups of Muslims combat with each .there, provide peace and agreement among them and also Indi cede to(sure Anfal 8).

The prophet Mohammad said: "Solving differences among people than one year for prayer and font"(Horr Ameli, 1994).

In other narration prophet Mohammad said: "everyone who step for angels salute him/her and give guards blessing to him/her"(Horr Ameli, 1994).

There is no discussion for dispute principles so it is laved able the judiciary branch actions for using of Islamic culture for peace and reduction of folders and solving the problems ensiling. But we must be careful the executive constrictions of using this cutlery must be accordance with the holy and religious law frame in order to not create and increase the problems of solving.

The first part: council's dispute back grounds

The departments such as councils dispute have long agedness in legal system in Iran.

1-legal actions in state of lorestan

The first experiences of cooperative justice formally came to Iran in 1934, in this year, our country provides the sample of cooperative justice system for single article for legal matters and administrative matters of Lorestan and the system related to it entered into the legal system in our country.

In this law was predicated for checking and settlement the differences among people, he established the court consist of three persons the validity of this system was for three years to be passed (Abbasi, 2004).

2-Local committees for dispute

After conclusion of experimental periods of legal system related to legal directorial matters in Lorestan our country provides a period in accomplishment of cooperative justice and local justice for them, in 1954 with this topic ((legal bill for local disputing)) to be passed in 30 articles.

In this bill was determined in each city or village without court or the part which its population be more than 3000 that committees consist of three persons of neighbors the conditions for begin 30 years old. without any crime actually the mentioned bill not be done because of the bad political condition and bad social conditions and lost its validity (Gailani, 2003).

3- Tribal cooperative justice

After failing the first experiences in the formal cooperative thoughts in the frame of mentioned rules. the next step of lawyers before the revolution of posing the rules with this topic (the rules related tribal matters) which be settled. the committee consist of three persons (two skill full judge one person selected by local peoples and end the fights and differences by mediation and correcting differences (Abbasi, 2004).

4-Equity houses

The plan for trades house for the first time in the year of 1963 was provided by justice department and in the year of 1964 to be passed as a decrees by cabinet the legal authority in trades house for personal matters in the case of mediation and peace and reemit doesn't leave any limitation (Eneqami, 1968); (Abbasi, 2004).

5-Arbitration councils

After the preparation of trades house in the village for creating the same departments with large authority in the city must be act because of density of folders in the court. it was sensible that people's cooperating in the frame of (referee's councils) can solve many problems in these

cases .so in the 1967there frees councils bypassed and establish related referees in cities in 1969this law way reviewed according some statistics in 1970in different cities there frees councils be active(Abbasi, 2004).

Part II: reviewing of 189article

The new approach for council's dispute according to 189articles, the third economical, cultural ,social development program be provide in Islamic republic of farm. This article de terminus: "For reduction of referring to the judge and for peoples cooperation, removing of local differences and solving the problems which don`t have any legal entity or have less complexity, these matters be yielded to the councils dispute. Limitation –duty and options of these councils, combination and the way of choosing the member according to the regulations that minister of justice offer it and cabinet pass it and judicature manager emphasize".

There are many important points in this article: The goal of council dispute is the duties of councils co determining the duties and options of councils dispute for providing regulations by governments and emphasizing the judicature manger.

A. the goal of council's dispute

In the 189article determines two goals for counsels:

1-decreasing of people`s references to the courts

For clearing the first goal be said one of the problems for Judi capture is the high level of legal folders that cause waste pressure of work / peoples displeasure its clear the furious statistics of folders eaves decreasing of quality of action with having priority to in crossing ended folders the quality be destroyed. In recent societies, the mass of legal folders is one of the problems in law deportment (Abbasi, 2004), because of new facilities, situations, expanding for social – economical directorial relationship, the statistics of crimes and lawful disputing in creased more and more. So the mass of these folders has minor significance and low entity .but it provides occupations for lawful system. This situation which decrease the quality, leads to peoples displeasure fear of problems for flowing their rights in the courts and give up their following. It is legal that one of goals for establishing the councils dispute of folders mass. We must try to decrease criminal statistics and folder with new techniques.

2. Expanding of people's cooperation's

In relation to this goal, people's cooperation's, we say: the government tries to decrease their activities in order to yield their actions to private parts .not only for economical educational matters but also appear for legal parts. In legal matters, expanding of people cooperation especially becomes impressive in criminal matters.

The most clear of them, establishing the criminal mediation department. development of people`s cooperation in legal makes is not for decreasing publish activities, it has the goals.

B-The duties for council`s dispute

In 189articles for economical, cultural, social third development program in Islamic republic of Iran in clouded in:

1- Solving local differences.**2-** solviy the problems that has no legal entity.**3-** solving the problems that their legal entity has simplicity.

The mention duties weren`t clear .the appearance dispute can vote for mentioned mutters and the appearance of this article that council dispute can vote for mentioned matters. It is against with religious and constitutional law it isn`t clear why councils of sentry not declare this article contrary to religious and constitutional law .or don`t return the same article to department. And don`t use the comments for removing the ambiguity.

For example the councils of sentry about the comments for political of lance actin 2001/3/8saidi: In 4 article, determined that court consist of one manger /two judges by selecting of master of justice in state. the purpose of choosing is vague ,it isn`t clear it the judicature manager notify and prose cut or`s general refer it or prosecutor`s general notify directly .(Pivandi,2004).

It sounds that the mentioned article is clear and has enough appearance but 189article has ambiguities and has local conciliation and disposition for votives that it`s contrary with religious and constitutional law is clear .in 189article of executive regulations give the rights to vote for this councils this article considers 3duties for the council`s dispute.

1-removal of local disputing

Removal of local disputing is not clear. This word consist of criminal and legal combat it is clear that differences especially local contrast aren`t without exec use and result from murderer, pillage, collaborative combat, aggression, occupation, destruction of properties, and agricultural products, family problems, robbery. Chasteness, There is no legal and religious justification for yielding these combats to the persons that aren`t familiar with religious rules and law.

In the regulations, the duties of council`s dispute be limited. But the errors of article remained. The word (removal) is vague removal of local his agreement means the peace and agreement in religions. There are no errors in l. cal disagreement. But it doesn`t have any legal justification in some crimes which can`t be overlooked and endanger the security of society, if it means the referee and ruling. It comes into the councils dispute regulation certainly it is against the religious measures such as criminal combats beside of disagreement with religious .It is ageist with the 36 principles of constitutional law.

2. Disputing the matters without legal entity

This matter is vague. These matters are related to the positions there isn't any combat and difference that its reference to the councils dispute and solving the problems has no popularity or these matters are related to differences that find legal entity naturally the goal of legal expert isn't clear. The mentioned article isn't clear.

The other ambiguities of part is the word (disposition) if the purpose is mediation and invitation to peace and agreement or the purpose is ruling? If the purpose is ruling, it is against the religious rules.

3. Solving the legal matters which are simple

This topic is critical and vague. What is the purpose of simplicity and complexity? If the simplicity and complexity are understood from intensity and reduction of punishment or amount of combat? Can we say this action has three months for prison is not complex But that action has four months for punishment is complex or not? Or that combat which its amount is 500 Tomans isn't complex, but that combat which its amount is 1/500/000/000 Tomans is complex? so, the crime happens that has less punishment meant but the identification of its entity is complex that wise lawyers can solve to in legal matters, There are many combats, that its identification of legal entity for topic and its correspondence with rules are complex.

In contrast, there are many combats that their demands are high but their identification and solving the matters is very easy this point was neglected in the revolutions and criminal matters the decreasing in punishment and in legal matters decreasing in demands are criteria for simplicity (Rahgoshay, 2005).

Secondly the simplicity of matters gives the person's the legality for judge and ruling? Is it possible to yield the punishment to the unsuitable court against the 36 principle of constitutional final law? So the 189 article of economical, cultural, social third development program of IRI has many ambiguities and errors.

Yielding the limitation and duties and options to councils is part of regulation of this role to government with emphasizing of judicature manager, is the source of errors of this article yielding the preparation of regulation to referees except parliament, causes the accuracy and supervision decrease with regarding the preparation of regulation, there is vague.

If complaints of mentioned regulation are checking in Supreme Court's not? It is not clear this regulation is the bill from cabinet members in order to be reachable in supreme court or be considered as a part of letters and bills of judicature that are not reachable in supreme court, If it is related to part # what duty of people and which authority undertake the investigation for complaints of the part of judicature's bills or letters.

Part tertiary: Review of executive regulations of 189 article of development program

This regulation of 189 article in the summer of 2002 be adjusted in 23 months after the eats of cabinet member the judicature's manger emphasize it.

We can design many points for reviewing of this regulations and determine them:

The apposing with religion Because of giving the judge to the persons that don't have the conditions for judgment apposing with constitutional law, apposing with legal principles and measures, woman's judge. Parliament judge, different vagueness not providing the duty of council dispute in the 189 article.

A. Apposing with religion because of giving the judgment to unsuitable people

The criticism of this regulation, the judgment given to the people that don't have necessary conditions for judgment with this explanation: the council dispute according with 4 article consist of three members, one of them council's manager selected by judicature. The other with the choice of councils of city or related village and the third person as a local trustee be selected by the committees consist of governor. Martial I law commander and religious leader or famous clergy.

The conditions for membership in this council be declared that the most important condition is fame, justice having know ledge being familiar with legal rules, religious measures , one of the conditions not be regarded being muslins for the members .

Omitting the Islam from the condition for exporter of ruling has apposing with religious rules. Being said that the word necessary justices can support this condition; because of ambiguity in this word (justices). It is essential (being Muslim) be mentioned as one of the conditions for member's of councils dispute in 7 article of regulation be mentioned 5 at first the council try to end to the topic adaptively(14 article) but these actions don't result in agreement then the council come in to investigation and order the essential vote (16 articles).

The first question about the limit of authority of council dispute If the member of the council dispute understand this comprehension How many of these persons are familiar with the term (legal and physical properties) loss resulted from crime.

Giving these matters to the un know led gable persons for legal and religious discussion what mean?

The second question with regarding to accuracy for investigation and ruling from the council's members if the council's members have the rights to vote legally?

It sounds that ruling from members of council is against the religious rules. Because the from the Imamyeh canonists opinion the judgment is the Good's post and is the branch of prophecy, Imamat and related to the prophets and religions(Najafi, 1984). In the absence tine the

comprehensive clergyman are allowed to rule and has become common accords for this topic so some of the clergy men for the order and the others for the second order except the un clergymen But they are aware of religious, legal rules are allowed to rule (Najafi, 1984). So in absence line of Imam, clergymen according to the option of canonists, judges are allowed to rule.

It's clear that the members of councils aren't clergymen and not judge. So the judgment and ruling from them don't have any legality. Moby It way said that the members of councils are strengthening judge and their judgments are allowable.

This talking is not correct because at first the two sides of combat don't select them for re free. They are pre-determined persons that the people are obliged for refereeing to them and accept their ruling.

Then they don't tales in to account as strengthening judge. Secondly, it was supposed that the people select them for judgments and they are named string thing judge. From the opinion of Imameyh canonists the strengthening judges are related to the time of Imam's presence and in the time of absence the topic of strengthening judge become removed(Sabzwari, 1975);(Amoli, 1991).

One the canonists in answering to this question if the woman can become strengthening judge in related to their matters said: The origin of strengthening judge are not acceptable to declare it is details (Fazl-Inkrany, 1997).

Thirdly ,It was supposed to accept the legality of strengthening judge in the time of absence, Be caves of Imamyeh canonists common accords, this judge most have all the conditions for judgments , they can't select everyone as strengthening judge (Maki, 1991).

Having the competence fatwa's according to Imamyeh common accords is Essen tail and puberty. Wisdom innocence. strong memory and justice are the conditions for judgment the first martyr in the lessons knew the conditions not only for strengthening judge but also for appointed judge.

So moltagheghe helli in shraye Islam, Alamehhelli in his books, the boy of fakhr-e-Almohagheghi in Ayzah Al-favaeel about the necessity of this condition for strengthening judge become sure (Amoli, 1991);(Ardabil,1996);(Najafi, 1984);(Golpayegani, 1993).

Mr. golpayegani said: It wasn't imagined the products for discussion about strengthening judge If the judge doesn't have the condition for judge ment, his ruling hasn't any effect. If the judge has the conditions are allowed by Emam for ruling and judgment (Golpayegani, 1993).

It may be said the adviser beside the members of council's dispute are predicted in 13 article, re move the Indicated problem. But the answer is that the adviser isn't judge and the ruling for adviser has not been issued. In other wards according to 13 article, the adviser are selected

among employed judge, re tired judge lawyers, scientific members of universities or educational in statue, in the fields of (awor among the graduated person) with conditions for employment in judgment. It's clear that the adviser cannot be judge. If the adviser knows the councils opinions correctly they don't investigate and send the folders for authorized re free in coved.

B. apposing with constructional law

The regulation of council dispute is against with constructional law this regulation is against the principle of 4. That indicates:

All the rule and civil, criminal, economical, cultural, military political laws must be according with Islamic measures according with 36 principle: ruling for punishment must be only by means of suitable court, with regarding to the word (must only) any references except court can't investigate criminal folders so from the principles of constitutional law used this point pleading and investigation four complaints and ruling is only for Judi capture. The 34 pimple declared that pleading is there right for everyone and every one can refer to the court for pleading. The entire people haw this right and we can't prevent people from referring to the courts according to 61 principles: Judiciary branch action are provided by the courts according to religious rules. The most important duty of judiciary in 156 principles is expressed lnes ligation and ruling in the cases of oppressions, aggression complaints, solving differences / talking actions and decision are determined by law. Finally in the 156 principle legal reference for oppressions and complaints are courts the establishment and deter mining of them are related to the rule. Exclusive, legal reference for investigation to aggression is the courts as the council dispute are not considered as the court investigates some differences /problems. These councils act under the supervision of legislative branch apposing with legal principles and measures apposing with legal rules and constitutional law ,the regulation of this council is against the legal measures the to article of this regulation , investigation in this council is not related to ceremony.

Other items that can be noted are:

C. Inconsistent with the principles and legal criteria

In addition to opposing the Sharia and the constitution, bylaws of the council has been inconsistent of some criteria legal certainty. Article 10 of the Regulations provides: "The council's investigation was not subject to due process procedures, And ...". So except production irregularities judicial proceedings would not be "(Department of Education and Research of the Judiciary, 2005).

D. Judging women

The regulations in question, there is no prohibition regarding women as members of the council. Contemporary jurisprudents say:" There is consensus about the man's

judgments"(Golpayegani, 1993);(Maki, 1991);(Amoli, 1999);(Ansari,1994);(Khoi, 1976). Thus, women Membership in the councils have the problem.

E) Judgments Consultative

The Islamic judicial system, issue multiplicity of judges has not been foreseen, and proceedings in civil matters and criminal justice approach can be done unity (Akhundi, 1995). Imam Khomeini "s" this type judgments said legal consultative (Karimi, 1987). However, of some jurisprudents do not consider it legitimate (Golpayegani, 1993); (Fazl-Inkrany, 1997). Just as in an appeals court judge multiplicity of, multiplicity of in Council can also be the judge(Zeraat, 2005).

G. Failure to Supply Council duties set forth in Article 189

By studying the regulation, there are tasks that in Article 189 of Plan Law, in regulations have not been well defined these duties and there are numerous ambiguities in the regulations from which we pass.

Discussion

1 - Council dispute resolution has been shaped with two objectives: a) to reduce referrals to the people courts b) development of public participation in conflict resolution. But there is ambiguity in Article 189 in practice this council has made the challenge.

2- Such is the current state of that legislative as an excuse to achieve the goal of high legal and religious tenets are neglected.

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