

## The Pathology of “Judicial Justice” in Islamic Republic of Iran and its correction Mechanism

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### A b s t r a c t

Social justice has been described in various areas; one of the most important of these areas is the realization of judicial justice. Democratic and democratic governments, based on the will and opinion of the people, are formed and run in pursuit of the implementation of judicial justice as one of the essential means for the realization of social justice in society. The Islamic Republic of Iran, as a democratic and religious system, has been pursuing justice since its inception. Now and after four decades of the Islamic Revolution, the pathology of the realization of social justice in the judicial field is essential. Therefore, this paper seeks to achieve judicial justice in the field of judging and dealing with opponents and criminals, and addresses the problems and solutions to these problems. Based on the findings of this study, the status of the performance of the system in the field of the realization of judicial justice reveals that the most important problems and injuries are in the way of judging, the process of prosecution, the type of dealing with people and financial corruption, and the basic solution of its exit, transparency, supervision and Changes in the judicial system. This research is a descriptive-analytical method that describes the damages of the realization of judicial justice and its correction mechanism.

**Keywords:** justice, social justice, Judicial Justice, Constitution of Islamic Republic of Iran, Judgment.

### Introduction

Justice and impartiality are regarded as the main components of the mankind's character and his life, as a result, throughout the human history, it has been given the most significant place in human beliefs; and its actualization culminates in incredible changes in the individual and social lives of human beings. Justice is a pillar of society, and human society has been founded upon justice. Justice and fairness not only contributes to the growth and development, progress, welfare and security of the society, but it also is the leading cause of unity and, consequently, the continuity and survival of society.<sup>1</sup>

One of the fundamental objectives behind creating democratic governments, which are formed based on people's will and opinion, is the manifestation of social justice in the society. The holy religion of Islam also stresses on the realization of justice in the community. The Islamic Republic of Iran, as a democratic and religion-based system, has set the realization of social justice as one of its main objectives and this has had an impact on all aspects, components and structures of the country's political system.

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<sup>1</sup> Jamshidi, Mohammad Hussein, *Theory of Justice from the Viewpoint of Farabi-Imam Khomeini-Shahid Sadr*, Tehran, Imam Khomeini and Islamic Revolution Research Center, 2001, p. 38.

On the other hand, according to the preface to the Constitution, the judicial system's responsibility to protect the rights of the people in the line with the Islamic movement is imperative in order to prevent local deviations within the Islamic nation, therefore, the creation of a judicial system based on Islamic justice, composed of fair judges who are familiar with legal procedures has been predicted. Due to its fundamental significance and its religious nature, this system is expected not to be based on improper relationships or partiality. Hence, social justice has been taken into account in a variety of areas, such as political justice, cultural justice, economic justice and judicial justice which is one of the most important areas which is discussed in the current study.

The judicial system is considered as one of the most important pillars of the Islamic system, and the implementation of justice in society largely relies upon its proper functioning. Furthermore, the judiciary system is responsible for the task of resolving the conflicts in the community, regulating the relationships between individuals and it is the main obstacle to social rebelliousness in in case of conflicts. Beyond the legal mechanisms, the most important factor driving people to the judiciary system is the trust people have in this power. For this reason, one of the objectives of the soft warfare is to spread rumor, blacken the image of the judiciary system and to undermine public confidence in this key body. When people lose faith in the judiciary system, social tensions and mayhem arise, and the only thing that can resolve the problem is the national unity.

The question of the current study entitled "the pathology of judicial justice" in Islamic Republic of Iran is as follows: "what are the obstacles and challenges in the way of the implementation of judicial justice in the Islamic Republic of Iran and what are the solutions to overcome these problems?"

### A. Theoretical Framework

In social activities, various theories have divided the relationship of agency and structure into three categories: the primacy of agency, the primacy of the structure, and structure and agency interactions. The first group considers social agents and their behavior as a central element in social issues. Based on this viewpoint, opinions, beliefs, awareness and recognition of individual or collective identities and the behavior of the agent are the foundation for the formation of events and happenings and social changes. The second group, known as structuralists, considers the social conditions, the context, and the structure of the community, the classes and the government, and similar factors as determining forces of the behavior of agents and activists and their social relations. The third category gives primacy to the relationship and phenomena that bring individuals together to create society. In this view, there is a relationship between structure and agency, and their impact on each other, as well as the effect of this relationship on social changes and modifications. In general, there are three theories and viewpoints to explain social phenomena in terms of putting the emphasis on agency or structure: agency theories, structure- theories, and theories that are agency-structure oriented. The advocates of volunteerism put the stress on agency, and structuralists and post-structuralists emphasize the concept of structuration and theories, such as construction and critical realism theory, and some are looking for a third definition encompassing the other two concepts.<sup>2</sup>

As for judicial justice, which is the subject of this research, neither structure nor agency can be merely considered as the only factor the actualization of judicial justice. Therefore, this article, with emphasis on the primacy of the structure and the agency, tries to look at the obstacles, problems, and the solutions and explain how judicial justice could be manifested in the society.

This theory, which emphasizes the interaction and dynamic relationship between structure and agency, seeks to prevent the interpretation based on causation and the dependence of a variable on other variables, since the emphasis on the interaction of the structure and agency is reciprocal, we try to avoid a one-way emphasis. The concept of structuration is based on the notion that agencies and structures are not two separate sets of existing phenomena, and present the existence of a dual unit. Structural layers of social systems are both intermediators and the consequences of performances that are organized in a recursive manner.

<sup>2</sup> Haghghat, Seyyed Sadegh, "Problem of Structure / Agency in the Social Sciences", *Methodology of Humanities*, 2010, No. 64 and 65.

## B. Judicial Justice in Islamic Thought

Justice is regarded as one of the most significant concepts in the history of political thought and especially among the topics of political philosophy. This concept is so important that the foundation of thought and philosophy of politics has been shaped and perpetuated along with the concept of justice.

One of the difficulties with the concept of justice is the ambiguity in its definitions and meanings. Obviously, the synonyms, antonyms and definitions of justice cannot be explained here for precise conceptualization. However, in his book called "*Marif va Ma'rif*", Dashti writes: "justice can be defined as perseverance"<sup>3</sup> or in another book called *Mofradat*, Ragheb Esfahani writes: "justice is a term that could be both defined as impartiality and equality"<sup>4</sup> Also *Sheikh Tusi*, writes about justice in his book called *Mabsoot*: "justice could be defined as being fair-minded and even-tempered"<sup>5</sup>

Of all dictionaries, only *Qamus* has defined the concept of judicial justice from the viewpoint of a judge and justice has been defined as equality; "to weigh something fairly or to pass a fair judgment"<sup>6</sup>

### I. The place of justice in Islam

Justice is a concept which is rooted in the rational attitude of man and his nature, and God has also created him as a justice-seeking creature and considered it as the foundation upon which creation is based, and setting the world order, the sending of the messengers, and the revelation of divine verses and laws have been actualized through justice. The Qur'an states: "The word of thy Lord doth find its fulfillment in truth and in justice: None can change His words: for He is the one who heareth and knoweth all".<sup>7</sup> Here God states He has perfected all the imperfections in the world through revealing divine religions an example of which is Islam. The verse also states that truth and justice are two divine traditions that cannot be denied based on which the whole universe has been created.<sup>8</sup> Also according to the holy Quran "The highest goal of the world and of human beings is to establish justice by sending messengers and divine religions to mankind."

### II. Judicial justice in the Viewpoints of Imam Khomeini

The great Leader of Islamic Revolution has defined justice from individual, social and divine aspects. The individual justice is manifested in the form of one's relationship with his soul and with others in the form of ethics. One should try to be fair to himself and do himself no wrong and while interacting with others, he should not violate their rights and treat them justly. Social justice is considered as one of the most important characteristics of Islamic government based on which all institutions and organizations are formed, aiming at implementing operational and intellectual programs to manifest justice. One of the most important institutions is the judiciary system which is obliged to actualize judiciary justice. The eradication of poverty, oppression, fighting against capitalism encouraging people to have a simple life should all be largely manifested in Islamic society. Imam Khomeini defines divine justice as the most outstanding characteristic of creatures and the absolute justice of God includes all the virtues and divine perfections.

### III. Judicial justice in the Viewpoints of Ayatollah Khamenei

Most thinkers in the field of justice research are more focused on the theoretical aspect of the discussion while discussing social justice. Even in this theoretical aspect, few have paid attention to all dimensions of the social justice, and some have only given a limited definition of justice and its divisions, while others have partially depicted the principles of justice, and some others have looked at ethical issues related to the concept of justice in a philosophical way. However, the statements of

<sup>3</sup> Dashti, Hossein, *Ma'aref and Maarif*, 4<sup>th</sup> ed., Tehran: Cultural Institute of Arayeh, first edition, (2006), p. 218.

<sup>4</sup> Esfahani, Ragheb, *Al-Fardat Fi Gharib al-Quran*, First edition, 1412 AH, p. 551.

<sup>5</sup> Sheikh Tusi, *Al-Mabsout fi Fiqh al-Emamiyah*, 2009, p. 218.

<sup>6</sup> Ghorashi Bonabi, Ali Akbar, *Qamus Quran*, Vol. 4, Tehran: Dar al-Kabul al-Islam, 1992, p. 301.

<sup>7</sup> The Holy Quran, An'am 6:11.

<sup>8</sup> Tabatabai, Mohammad Hussein, *Al-Mizan Commentary*, 2008, Vol. 7, p. 454.

the Supreme Leader in the area of justice are different in that he has not paid attention to just the theoretical debates and has taken into account the delicate points on practical implementation of justice in the Islamic society. one of the most important of these areas is justice.

He believes that admiring justice, advocating it and discussing it philosophically is not enough, and the main goal should be to establish social relations in different areas based on justice. He argues: "In the Islamic system, justice is the basis of all executive decisions, and all the authorities of the system, from the respectable representatives of the Islamic Consultative Assembly to the officials in various executive departments, especially the policy-makers and expert groups, and the judges and other staff of the judiciary system should do their best with sincerity to enforce justice in society. Today, in our society, the best step towards the establishment of justice is to eradicate poverty among the poor and low-income classes."<sup>9</sup>

### C. Judicial Justice in the Constitution

As a system that has emerged from revelation and attributes its power and sovereignty to God, the Islamic Republic of Iran places a lot of importance on justice. Even if justice is not fully actualized at the stage of implementation and practice, the system's foundation is based on justice and at least it has been stressed on in the most basic theories and laws. By taking a glance at the fundamental documents of the Islamic Republic of Iran, we can clearly grasp the importance of this concept. As a national covenant, the Constitution, which must be the basis for the operation of all elements of the system, is very important for the value it gives to the concept of justice. Constitution directly and indirectly addresses the issue of "justice" in a way that it can be claimed that "justice" is one of the fundamental principles governing the Constitution. As a result, one can observe the traces and the effect of justice on different areas of the Constitution.

The Constitution of the Islamic Republic of Iran, as the most important law of the country and the National Covenant based on which the system of the Islamic Republic of Iran has been formed, has addressed justice in various articles, and states that the realization of social justice in various political, cultural, economic and judicial areas is one of the most fundamental duties of the government and authorities of the country. In chapter 11 of the Constitution, while explaining the duties of the judiciary power in article 156, it is pointed out that this power is responsible for the actualization of justice in society, and in order to achieve this goal, it must spread justice in the society. Also, in Article 158, the recruitment of fair judges is pointed out as one of the duties of the head of the judiciary power. Here, by examining the various principles of the Constitution, we present an overview of judicial justice in the Constitution of the Islamic Republic of Iran in the form of the basic principles of implementing judicial justice.

- a. The principle of judicial security
- b. The principle of equality before the law

The distinction between justice in an Islamic and a non-Islamic government is that everyone, from the leader of the society to the ordinary people who live in this society, is equal in the eye of law. Imam Khomeini stated: "We want Islamic justice in this country. When Imam Ali (AS) heard that a Jewish woman was attacked he was extremely saddened by the situation and said that Muslims had to die of sorrow upon hearing such terrible news. We are looking for this type of justice where there is no oppression and all the high and low classes of the society are equal before the law".<sup>10</sup>

Article 14 of the third principle of the Constitution states that creating "judicial security and equality of all before the law" is one of the main responsibilities of the government: "the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights.

- c. The principle of the prohibition of arrest

One of the most important principles in the realization of judicial justice is the prohibition of arrest without legitimate and justifiable reasons. According to Article 32 of the Constitution, people are born free, and individuals can be arrested because of complaints made by individuals or legal entities and,

<sup>9</sup> Statements of Ayatollah Khamenei, 2011 June 27.

<sup>10</sup> Statements of Imam Khomeini, *Sahifeh Imam*, date unknown, pp. 424 and 425.

according to the verdicts of the qualified courts, otherwise they cannot be arrested, since arresting people without judicial authorization is a crime and the law breaking officer is also punished.

d. The principle of litigation

One of the basic rights of the people is the "right to a lawsuit"; that is, anyone who is oppressed and his rights are violated can refer to a qualified court without fear and concern and prevent his rights or the rights of those who are under guardianship from being violated through the law enforcement agencies. Establishing a center where people can easily go there to demand the rights and prevent the violation of their rights through this institution has always been one of the fundamental desires of all the revolutions and liberal movements. From the point of view of the *Shari'ah*, the amendment of the laws and the settlement of disputes and conflicts between people are the inherent duties of the government. Article 34 of the Constitution also refers to this issue.

e. Principle of Choice of Attorney

The right to defense counsel for the parties to the lawsuit is an undeniable right at all stages of the trial because the society has natural and inherent rights before the emergence of the state and the constitutional laws. Article 35 of the Constitution speaks about this principle.

f. Principle of the legitimacy of the court and the legality of the penalty

The legitimacy of judicial authorities in legal hearings, proving the offense and issuing verdicts is a principle, and the first issue which is taken into account while referring to competent authorities is determining and identifying a judge who is competent to resolve legal issues and he must prove having such as jurisdiction before starting any trial. Therefore, the lawsuit, the issuance of a verdict, and in the next stage, the enforcement of the sentence, should be conducted by an authority that the law considers qualified, an issue which has been pointed out in article 36 of the Constitution. Also in article 61 it has been stated that individuals should refer to legal bodies or Justice Department courts which are to attend to the evaluation and settlement of complaints, the preservation of public rights, and the expansion and administration of justice, and the upholding of the divine laws. Article 159 states the courts of justice are the official bodies to which all grievances and complaints are to be referred. The formation of courts and their jurisdiction is to be determined by law. The formation of courts and the determination of their jurisdiction are subject to the rule of law. Also in article 166, it is been pointed out that Court verdicts must be substantiated, and based on the articles of the law, and the principles that have determined the verdict.

g. The principle of innocence

Innocence principle has been around for such a long time both in Shiite jurisprudence and legal references of the country. Of course, more attention has been given to this progress of principle in the jurisprudence of *Imamah*. Obviously, all the jurists know about the emphasis put on the principle of innocence by Shiite jurists. This issue has been stated in the article 37 of the Constitution.

h. The principle of torture prohibition

One of the main principles of judicial system is the prohibition of torture which has been explicitly stated in the article 38. Also, in common law of torture prohibition by the Islamic Consultative Assembly, eighteen cases of torture have been elaborated. As a result, according to the current laws of the country, whether constitutionally or lawfully, and also based on the Islamic Penal Code, confession or any other evidence obtained through torture will be without legal effect.

i. Principle of aspersion of the dignity

The defamation of the accused, although charged with committing a crime, is not correct, and the prohibition of defaming individuals is one of the most important principles for the realization of judicial justice. Article 39 of the Constitution also prohibits it and any offensive of this kind is punishable by law.

j. Public trials

Since the purpose of the judiciary power in the Islamic system is the administration of justice, the recognition of the right of the oppressed and punishing the wrongdoer, the proceedings of the accused must be completely transparent and held openly for the public. Article 165 of the Constitution speaks about public trials, and also Article 168 of the Constitution states that political and press offenses must be held openly; therefore, the belief in the principle that justice must be conducted is a fundamental principle for legal systems. People have the right to appear before the courts. This right has been given to individuals so that a kind of public perception of the court will be created as a place of fairness and justice, and also the belief in accepting what is being passed as a judgment and ruling

from the court will be strengthened. Of course, we should not forget that the even in the case of public trials there are some exceptions especially when the court determines that an open trial would be detrimental to public morality or discipline, or if in case of private disputes, both the parties request the court not to hold open hearing.

k. Principle of claiming compensation and damages caused by improper judicial judgments

The Islamic system has set another right for the defendant to object to the proceedings if he believes he is being charged wrongly; and this is one of the fundamental principles for the implementation of judicial justice. For this purpose, the article 90 of the Constitution and the Administrative Justice Tribunal (stated in the Arctic and 173) are written to protect this right. Also, according to Article 171 whenever an individual suffers moral or material loss as the result of a fault or error of the judge with respect to the subject matter of a case or the verdict delivered, or the application of a rule in a particular case, the offending judge must be held responsible for the reparation of that loss.

## D. Areas for the Actualization of Judicial Justice

In the Islamic system, judicial justice is of high importance. The actualization of judicial justice was one of the most important goals of the Islamic Revolution in its fight against the Shah's regime, and neglecting it will bring about dire consequences for the Islamic system. After explaining the Islamic view of justice and its content in the Constitution, in this section we discuss the practical aspect of the establishment of judicial justice at various levels and areas; that is, the discussion of how and in what areas judicial justice can be implemented. While discussing the practical aspects of judicial justice, we have to point out the necessity of formulating the applicable stages for the implementation of judicial justice. In the following, some important areas of judicial justice are discussed:

### I. Justice in Judgment and Arbitration

The most central area for the realization of judicial justice is the issue of judgment and arbitration. In other words, what represents justice in the judiciary system is judgment and arbitration itself. Solomon ibn Khaled quoted *Imam Sadiq* (AS) as saying: "the position of a judge belongs to the Prophet and the Imams (AS), and they have the right to the government and religious leadership."<sup>11</sup> Obviously, this position is assigned to those who are eligible to judge and have the authority to judge. Infallible Imams (AS) allow people to judge who are qualified (knowledgeable and fair etc.). The issues that matter for being a judge and improve his performance during the trial and lead to the realization of judicial justice in the area of judgment and arbitration are many. Some of the most important examples of which are pointed out here:

a. The judge must be a grand jurist

One of the important prerequisites to be a judge, in addition to being fair, is being a *mujahidin*-i.e. being a qualified religious expert.<sup>12</sup> According to narrations, if anyone, without knowledge of the religious laws issues a verdict solely on the basis of his own judgment, he destroys the community.<sup>13</sup> *Imam Sadiq* (AS) stated: "The judges can be divided into four groups, three of whom belong to hell. They are judges who know the facts but give the wrong verdict or those who lack enough knowledge and do poorly in judging and people who do not have the knowledge but judge correctly. Only those judges will have enough knowledge based on which they can enter paradise".<sup>14</sup>

b. Place of judgment

The judge is required to hold the trial in a place where people can access it equally. Therefore, it is advisable to have a hearing in the middle of the city so that the parties to the dispute can get there

<sup>11</sup> Heli, Ibn Idris, Tabsara Al-Mota'almini fi Ahkam Din, *Morvarid Selsela Al-Yanabi al-Fiqahi*, Aliasghar Morvarid, Beirut: The Islamic jurisprudence institute, first edition, 1413 AD.

<sup>12</sup> Shahid Sani, Zainaldin Al-Jabali al-Amoli, *Sharhe Lom'a (al-Ruza al-Behayee Fei al-Lom'a Al-Dameshqiya)*, 3<sup>rd</sup>, Beirut: Dar al-'Al-al-Islami, date unknown, p. 62.

<sup>13</sup> Hurr Amoli, Shikh Muhammad ibn Hassan, *Wasael al-Shi'a ila Tahsil Masael al-Sharia*, Beirut, Dar al-'Ahya al-Torat Al-Arabi, 1403 AD, pp. 10, 18.

<sup>14</sup> *Ibid*, p. 11.

under similar conditions.<sup>15</sup> The judge should also be stationed in a wide area so that people have no difficulty approaching him.<sup>16</sup> According to narrations, Imam Ali (AS) asked the judges not to hold hearings in their houses.<sup>17</sup>

c. Consulting with experts

Undoubtedly, counseling in any way can create huge progress in the best possible way. Judgment, as one of the most important things that plays a fundamental role in the social and economic well-being of the community, is no exception. In a legal hearing, whenever a judge doubts the validity of a religious law, he must ask the jurists or search the references and texts of the jurisprudence, but if he wishes to issue a ruling on a new subject and he is in doubt, he should consult with the experts in that field. Explaining the manners of a judge, *Shahid Awal* states: "It is advisable for the judge to carry out legal hearings in the presence of the scholars so that they can assist him in recalling the sources and origins of the ruling, as well as resolving the mistakes, of course the judge doesn't need to imitate them."<sup>18</sup> Imam Ali (PBUH) said: I asked the Prophet (PBUH): "what should I do when I encounter a problem in judgment, whose ruling was not in the book of God, nor in your traditions? The Prophet (PBUH) said: hold a meeting with jurists and true believers, and solve the problem with their help."<sup>19</sup>

d. Decisiveness in judgment

One of the most important pitfalls in judging is the lack of determination in the issuance and enforcement of a sentence because of nepotism, connections, family ties or friendship, and so on. Imam Ali (PBUH) advised *Malek Ashtar* to choose a person to judge from among people who, after truth is revealed, is more decisive in enforcing the law; one who is not easily deceived and is not influenced by flattery.<sup>20</sup>

Imam Ali was extremely against bending the rules in judgment and even when he was informed that his daughter, had borrowed a necklace with the permission of the public treasurer for the day of *Eid al-Fitr*, he shouted at the public treasurer and returned the necklace to the public treasury. Then he said to his daughter: "If you have done it without permission, your hand would be the first hand to be cut off in *Bani Hashem*."<sup>21</sup>

## II. Justice in dealing with Opponents, Criminals and Sinners

One of the areas in which judicial justice is actualized is the way we deal with offenders, criminals and sinners. A judge and the judiciary must treat the plaintiff and the accused equally. "Impartiality" means equal treatment of the parties to the dispute and giving them no privileges. Some jurists argue that the judge is obliged to observe four things: to speak, say hello, or give a reply, look and listen to the words of the two sides to the dispute equally.<sup>22</sup> Imam Khomeini quotes *Kafi* as saying: "It is obligatory for the judge to observe equality and justice for both sides of the dispute, even if they differ in terms of the social status; he should greet them, answer their questions, look at them and talk to them equally."<sup>23</sup>

<sup>15</sup> Sheikh Tusi, *op. cit.*, date unknown, 8, p. 87.

<sup>16</sup> Heli, Allameh Yusuf ibn Mutahar, *The Rules of Allah*, Pearl of the Elinbib Al-Fiqhayyah dynasty, Aliasghar Pearl, Beirut: The Islamic jurisprudence institute, first edition, 1413: 11, p. 397.

<sup>17</sup> Mohaddes Nouri, Mirza Mohammad Hossein, *Mustardak Al-Wussaiel and Mostanbat Al-Masel*, (3 volumes), Vol. 3, Tehran: Lithography, Rahli, date unknown, 3, 197.

<sup>18</sup> Shahid Awal, Mohammad bin Jamal al-Din Maki-Ameli, *Al-Duras al-Sharaei fi Fiqh al-Amamiyah*, No. 33, date unknown, 33, p. 384.

<sup>19</sup> Hindi, Aladdin al-Al-Muttaqi, *Kenz al-Amal fi Sonan al-Aqghval bar al-Af'al*, Beirut: al-Risalah Institution, 1409, 5, p. 812.

<sup>20</sup> Mohaddes Nouri, Mirza Mohammad Hossein, *op. cit.*, 3, p. 195.

<sup>21</sup> Hurr Amoli, Shikh Muhammad ibn Hassan, *op. cit.*, 18, 521.

<sup>22</sup> Heli, Mohaghegh Abolqasem Najm al-Din Ja'far, *Sharia al-Islam fi Masel al-Hilal and al-Haram*, 3<sup>rd</sup> edition, Najaf Ashraf: Al-Adab, 1969, 3, pp. 874-870.

<sup>23</sup> Koleini Razi, Abu Ja'far Mohammad, *al-Forogh min al-Kafi*, Vol.2, Tehran: Dar al-Ketab al-Islam, 1983. 2, p. 540.

Although the jurists do not think that a judge should be impartial to both sides of the party in heart, they believe that it is even desirable that the judge also adhere to the principle of equality in heart<sup>24</sup> and should not be partial to one specific party, he must do his best to be impartial to the parties of the dispute and avoid doing any action which could be to the benefit of one side.

Observance of justice in relation to the parties to the dispute is not limited to "impartiality", but also includes other cases; for example, when one of the parties in the lawsuit starts talking first, the judge should listen to his words, and if both begin speaking, it is necessary for the judge to pay attention to the words of the person who is standing to the right side of his companion.<sup>25</sup> If the two sides of the dispute come to the judge and remain silent, the judge should not prefer one to another, but it is recommended that the judge give both of them no preference and asks them state their claim, and it is not advisable that he address one of them specifically and ask him to speak.<sup>26</sup>

In the Hadith of *Salmah bin Koheil*, we read that we must treat Muslims equally in the way we look at them and talk to them and even the place you offer them to seat, so that the ones close to you do not expect you any favors and your enemies lose hope in your justice.<sup>27</sup>

*Sekuni quotes Abiabdullah (AS)* as saying: whoever acts as a judge, should treat people equally in pointing and looking at them and their sitting.<sup>28</sup>

*Marsaleh Saduq* also said: "treat them equally".<sup>29</sup>

For a judge, there is no difference between high and low classes of the society, the wealthy and poor, and according to Imam Ali (AS) between different races of people. When the judge's friends expect him to lean to their side and those who do not belong to his circle of friends lose hope in his justice, even though it has nothing to do with the judge, it brings about some dire consequences for the reliability of the judge; therefore, it should be avoided.

## E. Harms and Hindrances to the Realization of Judicial Justice

Protecting the rights of citizens and the implementation of judicial justice is one of the fundamental responsibilities of the country's judicial system. If this goal cannot be achieved, we will face the crisis, which can be defined as creating problems and a fundamental break in a system in a way that the progress of that system stops or becomes destabilized and does not run normally; in this section we try to deal with the problems facing judicial justice. Although the harms and the obstacles are different, the result is a general discontent with the functioning of the judiciary and, consequently, the Islamic system.

### I. Judge's *Ijtihad* (mastery over judicial laws)

The judges' *Ijtihad* is one of the most important components of the realization of judicial justice, but on the other hand, Iran's law allows non-*Mojtahid* judges to judge. On the other hand, although according to Article 167 of the Constitution, if a judge is not able to issue a verdict for the case, he is allowed to issue a verdict based on credible Islamic sources, on the other hand, the legislators, even if the judge does not find a ruling in common laws, the judge has not been given the right to act based on his fatwa even if it is a *Mujtahid*. Therefore, the law itself sometimes impedes the actualization of judicial justice. To elaborate, we can say that, although exercising the law itself can provide a platform for judicial justice, sometimes the limitations of a judge caused by the law not to act on the basis of his judicial knowledge which could be the source of judgment during the time of the infallible Imam's absence, would be an obstacle on the way of achieving judicial justice.

<sup>24</sup> Hosseini Amoli, Seyyed Mohammad Jawad, *Meftah al-Karama*, Beirut, Dar al-Teras, 1418, 20, p. 54.

<sup>25</sup> Shahid Sani, *op.cit.*, date unknown, 3, pp. 73 and 74.

<sup>26</sup> Shahid Sani, *op.cit.*, p. 89.

<sup>27</sup> Koleini Razi, *op. cit.*, 2, p. 540.

<sup>28</sup> Ibn Abi al-Hadid, *A description of Nahj al-Balaghah*, Dar al-Ahya'at al-Arabiya, 1963, 17, p. 65.

<sup>29</sup> Hosseini Amoli, *op. cit.*, 20, p. 54.

## II. Trial duration

One of the most important obstacles to the realization of judicial justice is the lengthy process of judicial proceedings. Prolonging hearings or delaying legal proceedings is an inevitable part of the judiciary, but to what extent is this delay justifiable? Some judicial cases have been prolonged for more than 10 years or 12 years. When victims of a judicial case are coming and going to the courts for years, and the defendants of the case are free by bail, the situation will certainly change their attitude towards justice in the judiciary power. The reason why people are dissatisfied with the outcome of the proceedings is that judicial issues usually originate from a difference, that is, when they experience a conflict and feel that they have been wronged and want the judicial system to tackle the wrongdoing, they are psychologically hasty and expect the judicial system to resolve the case immediately. Therefore, the lengthy processing of cases can cause people to be disappointed with the judiciary system to get their rights, and this disappointment with the judiciary power causes serious damage to the judiciary system and the community and the criminals might take advantage of these lengthy trials. In the long run, the lengthy process of prosecution will also destroy public trust, and the result will be that, unlike in the past, individuals will switch to cash transactions instead of credit purchases.

Unfortunately, the problem of lengthy hearings does exist, and this prolongation of judicial proceedings has several reasons which must be investigated all together. One of the most important cases is the large number of plaintiffs and defendants in a case, some of these cases are not related, but they are brought together in a case, as a result, it is possible to separate non-relevant cases from these cases in order to increase the speed of the proceedings. It should also not be forgotten that the lack of proper management has led to these prolonged trials

## III. Number of Cases

One of the most significant obstacles to the actualization of judicial justice, which also affects justice, is the high number of judicial cases. According to the latest figures from the judiciary power, in 1996, 16 million 212 thousand and 80 cases were handled. Generally, a large number of cases can seriously damage the legal procedures; one of the major difficulties with too many cases is that when people want their trials to be over soon, it reduces the accuracy of the investigation and, as a result, a wrong verdict may be issued. In other words, when there are a large number of judicial cases, judges and the judiciary power have to speed up the trial, which reduces their accuracy.

In addition, the huge number of cases makes it impossible for the parties to receive a timely verdict and with a large number of cases, people, including plaintiffs and defendants, experience prolonged prosecution and, naturally, cannot resolve the problems in due time which will be a major obstacle to judicial justice because one of the important foundation of justice is time management. For example, in the case of economic justice, if distribution of wealth is carried out, but this distribution is not at the proper time, in practice, economic justice has not occurred. In judicial justice, if the right verdict is issued, and people's rights are given to them, but this does not happen at the proper time, justice in practice has not been fully realized.

## IV. Financial Corruption

Financial corruption is regarded one of the most significant hindrances to the realization of judicial justice, which can take place in many areas; one of the most important factors is the bribery in the judiciary system, which in some way prevents people from exercising their rights. Therefore, one of the obstacles to the implementation of justice in the Islamic society is the corruption and bribery of some judges, agents, government officials and authorities, and has long been one of the corruptions that have inflicted human society, given the sensitivity and position of individuals; they might experience different forms of bribery.

In different cultures, the word bribe has been used in various meanings. The general concept of bribery, seen in *Majma-al-Bahrien*, is used to give something in order to violate the right or to cause injustice.<sup>30</sup> Strictly speaking, a bribe is something given to a ruler or individuals, in order to obtain a ruling in somebody's favor or to issue a sentence according to the desire of the briber. To put it more precisely, "a bribe is something that is given to the judge in order to violate the law to the benefit of

<sup>30</sup>

Al-Tarihi, 1988: 1, p. 182

the briber, or is the money paid to the judge in order to receive a sentence in one's favor, or is some money given to the judge so that he can teach one of the parties how to beat his enemy in a trial."<sup>31</sup>

Bribery and justice are two old enemies of each other; this phenomenon is regarded as the biggest obstacle to the implementation of social justice and law. In many cases, offenders and lawbreakers do not fear the enforcement of law and justice. The oppressed and deprived of the community get disappointed in its implementation, because they know that nobody will assist him due to their poverty; therefore, this improper practice of law will result in the law being implemented for the benefit of the rich and the poor, and the rights of the weak will be violated because the poor and the middle class, can't afford to pay bribes, and as a result, the laws become a new toy in the hands of the mighty and rich to continue with their oppression and abuse the rights of the poor and the weak.

Imam Ali (AS) states: it is not advisable for Muslims to let a miserly ruler take control of the spoils, lives and laws of the Muslims and become their religious leader and it is not advisable for Muslims to let a briber who violates other people's rights and prevents them from getting what they deserve become their leader.

Therefore, if this trend continues and bribery becomes prevalent among judges and authorities of a society, the Islamic system is seriously damaged and all social virtues and values will be overshadowed, which will inevitably culminate in the fall and destruction of the system.

Generally speaking, bribery is a sinister social phenomenon and is a clear indication of fraud and corruption. Along with individual misconduct, it is regarded as the greatest impediment to the implementation of social justice and the law becomes a tool to protect the benefits of the powerful classes of the society instead of protecting the interests of working and middle-class families; bribery is and has always been one of the biggest obstacles to the implementation of social justice, and takes advantage of the laws to the benefit of powerful social classes instead of protecting pool classes of the society .

Naturally, bribery and embezzlement will spread under glamorous titles such as "gift", "donation" and "share", and it will also spread among low level working force and they just offer service to the wealthy because of their own cultural and financial poverty. Undoubtedly, this kind of corruption, such as infectious diseases, will not be stopped at a certain level, but will also include high ranking officials and individuals from government agencies, because some high-ranking officials would do anything including sending gifts to the authorities to ignore the complaints made against them, especially if the gift is in line with the group's political line, complaints and petitions written against the official are referred to themselves to identify their opponents and attack them at the right time and send more gifts to the officials .

## **F. Solutions to Remove the Obstacles to Realization of Judicial Justice**

The position of a judge is regarded as one of the most important positions because of the special attention given to it by Islam and the sacred law to protect the rights and dignity of human beings. In the current era, with the advent of human societies and the vast legal relationships between individuals and the need for a fair judicial approach, judging has naturally become a major challenge. In this section, by taking into consideration the obstacles and impediments to judicial justice, some of the basic approaches to the realization of judicial justice are discussed.

### *I. Transparency*

Transparency in the proceedings is one of the most important ways of realizing justice and eliminating obstacles in this regard. Public trust is strengthened through public awareness and building public confidence, which requires transparency in the judiciary system. In recent years, the judiciary system has been the subject of media attacks, which can undermine the public's trust in fundamental state system, due to the lack of transparency in the judiciary body. Public trust is one of the most important elements of governance that is reinforced through transparency in the different departments of the government. Therefore, increasing public confidence through the development of judicial transparency is the only strategy to make the attacks against the judiciary system ineffective.

<sup>31</sup>

Shambiyati, Hooshang, *Specialized Criminal Law*, J 3, Tehran: Jubin Publications, 1998, 3, p. 433.

In the judicial system, transparency has two main aspects of “transparency of processes” and the “transparency of processes outcome”. Accordingly, judicial transparency includes the openness of the courts (process of proceedings) and access to the courts' verdicts for investigation and review (the outcome of the proceedings). Judicial transparency, in addition to strengthening public confidence-, also improves the quality of court proceedings. Adherence to the principle of justice requires that the trial process have the necessary transparency, that is, justice is not actualized until it is seen.

One of the shining examples of transparency is the public holding of court hearings, which is explicitly pointed out in Article 165 of the Constitution.

Judicial justice will take place in its real form when the trials are held publicly; and not behind closed doors and away from the eyes of observers and critics, as this would allow further violations of manners of judiciary system and the rules of prosecution and arbitration. The openness of the trial, in addition to the supervision of the judiciary system and the government, brings about public monitoring of the judging process, which in turn provides the basis for the health of the judiciary system and the security of the society.

*Imam Ali's* (AS) tradition was to hold trials publicly and to do so, he commanded that the hearings be openly held in the mosque, when he heard that Judge *Shurayh*, carried out the hearings in his home, he commanded him to hold the trials in the mosque because it would be more fair and it would also be belittling for a judge to carry out his obligations at home behind closed doors.<sup>32</sup> Acting as a judge at home is similar to the judging in a hidden place, which paves the way for any kind of judgment and the violation of the rights of the accused and the plaintiff, and it is necessary to avoid it seriously and the rules and procedures of the proceedings should be carried out in a way that makes it impossible for such conditions to emerge.<sup>33</sup>

*Imam Ali* (AS) had chosen to judge a high position in the *Kufa* mosque, in order for the people to see the trial and the conduct of the judge towards the accused and the plaintiff clearly, and he did not hide anything from people; this position was known as the "Place of Judgment".<sup>34</sup>

Obviously, under the name of expediency, many lawsuits, in particular, cases of well-known people in the country are held in secret. This can seriously damage the public's perception of judicial justice. Understanding justice is sometimes more important than justice itself. If people in a community experience legal injustice, naturally they cannot trust the justice system. Therefore, fostering a sense of injustice as a judge will be part of injustice or judicial injustice. As Article 165 states, we must move towards creating public hearings to have judicial transparency. Especially when the accused is one of the economic corrupted individuals affiliated with powerful departments. The most important positive effect of this principle of the constitution is that the judiciary system, through enforcing this legal requirement, acquits itself from daily charges of the enemies, and some of these corrupted influential figures cannot go around pretending to be innocent.

## II. Supervision

In Islamic history, the concept of supervision has always been one of the policies used to address the barriers to judicial justice and the prevention of misconduct and corruption. Supervision is precisely the opposite of corruption. There should be supervision not only in the judicial system, but also in any system, institution, or organization, since human beings, as the main components of a system and government, make mistakes deliberately or inadvertently. The objective behind supervision is to minimize the errors not to just find faults. Therefore, one of the most important aspects of modern management in all systems is the issue of supervision. This concept is of overriding importance by which we can make sure that all the elements are moving in the right direction to achieve the set objectives.

In management terminology, "supervision" is defined as "the measurement of performance to ensure that the goals of the organization and its implementation plans are accomplished with success."

The monitoring and control process has four main stages:

- Determining standards and metrics for measurement

<sup>32</sup> Hurr Amoli, Shikh Muhammad ibn Hassan, *op. cit.*, 10, p. 18.

<sup>33</sup> Hurr Amoli, *op. cit.*, p. 11.

<sup>34</sup> Feyz, Alireza, *Fundamentals of Law and Principles*, Tehran: Tehran University Press, 1990, p. 172.

- Measuring operation and performance
- Comparing performance with standards
- Corrective actions

In Islamic viewpoint, many issues have been put forward in the Holy Qur'an, under the name of "enjoining good and forbidding evil" for public control and supervision. In addition, there are verses in which God sets forth his own supervision, such as verse 18 of *Surah al-gh*: "no words are spoken unless the *Raghib* and the *Atid* (the name of the two angels who record good and bad deeds) record them "Or verses 7 and 8 of *Az-Zalzalasura*: Then shall anyone who has done an atom's weight of good, see it! And anyone who has done an atom's weight of evil, shall see it.

In the country's judicial system, the laws and important documents, attention has been paid to the concept of supervision and its tools. The supervision bodies of the judiciary system are as follows:

- referring to judiciary system and the court as the official centers for claims and complaints (Article 159)

- Supervision through the article 170
- The General Inspection Organization (article 174)
- The Administrative Court of Justice (article 173)

Public supervision has always been viewed by the revolutionary leaders as a kind of monitoring in the form of enjoining good and forbidding evil. *Shahid Beheshti*, as the first official of the Judiciary system pointed out the Quranic verse of " We sent aforesaid our messengers with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice;<sup>35</sup> emphasizing the central role of the active participation of people in the establishment of justice, and argues that the Quran's emphasis is on the establishment of justice by people themselves which can be achieved through the training and teachings of the messengers of God.<sup>36</sup> He stresses on this participation, and argues that the realization of social justice in society is a public responsibility, and believes that the realization of social justice is not only the duty of the authorities or a specific group of people, but this is a public duty and requires efforts made by all the members of the society.

*Shahid Beheshti* says, "We have to reach a point where the weak of the society are not under severe pressure by the mighty and if, God forbid, it happens, we have to act quickly to free them from that pressure. We are all obliged to create justice, social justice, and economic justice, and it is very difficult to realize it; but it is achievable; it will be realized."<sup>37</sup> (*Shahid Beheshti*, 8/4/1980)

### III. Fundamental Changes in the Judicial System

With further expansion of societies, the evolution of legal relations, the development of the Internet and e-commerce in the field of private law, as well as the growth of organized and individual crimes and strong relationship with the community in the field of criminal law requires a deeper look at the judicial system. Since some shortcomings to the implementation of judicial justice are rude to in the inefficiency of the judicial structure and system of the country, one of the important solutions for the realization of judicial justice is to create systematic changes in the judiciary system, which, if implemented accurately, can be effective in achieving judicial justice and gaining public confidence. Elaborating on the significance of enforcing justice and the fight against oppression, the Supreme Leader states: "Every court at any place where people refer to for their legal complaints, even though small, should act in a way that it can gain people's trust so that they are convinced of the justice enforced by this legal body."<sup>38</sup>

The first move in revolutionizing the judiciary is to change the fundamental approach to recruit specialized experts to handle cases, because as long as the judiciary is faced with a shortage of staff to handle cases, there can be no quick and accurate handling of cases in order to pave the way for the realization of judicial justice.

Another change that should take place is increasing the public awareness. People's information about the law and abiding the law, giving them the information how to use a lawyer in various cases

<sup>35</sup> Ibn Abi al-Hadid, *op. cit.*, p. 57.

<sup>36</sup> Shahid Beheshti, statements at various meetings, sate unknown

<sup>37</sup> Shahid Beheshti, statements on 8/4/1980

<sup>38</sup> Statements of Ayatollah Khamenei, 07/04/2003

and preparing the ground, the professionalizing the a judges' job and the strengthening and reforming of the functions of the Dispute Resolution Councils and the appointment of knowledgeable experts can help us greatly to create justice in the judiciary system .one of the most important solutions to the removal of barriers to judicial justice is to lessen the burdens of judiciary system which can happen through relinquishing many cases to some institutions and related organizations because some of the minor crimes and offenses do not need a trial and the relevant organizations and institutions can decide on such matters; and the legal department of the organization and institutions or the arbitration systems can solve the cases before any complaints are made to the judiciary system. As a result, a large amount of judicial system cases are solved the proceedings of other cases can speed up.

Another way of system change is creating a Judgment Council, or some other way of creating a "panel of judges" where some of the judges review a "single case" and, after consulting each other, all or most of them will create a "single ruling". The jurists who agree with the concept of Judgment Council believe that this kind of judgment can create an almost accurate verdict based on the consensus of the judges. Also, the principles of jurisprudence inferred from logics can be a good reason the necessity and validity of Judgment Council and, given the developments in human relations, it is necessary that the council's judgment become an inevitable way of judging in today's society.

## Conclusion

Establishing security for their own nations is one of the functions of governments, in the absence of which there will be many problems, such as financial corruption, people's disappointment in the security forces and eventually the destruction of the society. If the judiciary system, as one of the main bodies of the political system of Islam, along with the state, puts justice first, it can help the political system in the security sector.

Obviously, the judicial system of the Islamic Republic should follow the implementation of judicial justice in all directions, rules and procedures, but why is the situation different? And why does not the public believe that the judiciary system is not moving towards justice? The answer is very simple and short. It has not defined and organized its legal functions on the basis of social justice. In addition, crime prevention has been neglected as the most important task of this department. Therefore, where the current legal and judicial system does not have the power to move towards the realization of justice, one cannot expect the community to move towards the realization of social justice either. The reconstruction of the country's judicial system with a new approach to social justice is regarded as the most important prerequisites for the realization of social justice and without it we cannot talk about social justice. Also, bribery in the judicial system, ignoring great crimes, favoritism and lack of preventive policies for crime are considered as the most important issues, causing justice to fade away in the judicial system.

Regarding the judicial system, the Constitution has predicted the establishment of a justice system based on Islamic justice and composed of fair judges familiar with precise religious standards; therefore, the judicial system should be based on justice which is a type of Islamic justice and in the selection of judges, the element of justice should be taken into account.

Judicial justice must be taken into consideration both for the judge and his judgment, so that the judges would not do any favors and the power to fight against the oppressors. If justice is destroyed in the process judgment, corruption and oppression also spread faster, as a result, the most important component of judging is the concept of enforcing justice and helping people to obtain their rights.

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