



Principles Governing a Fair Trial under Islamic Jurisprudence and International Law

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Abstract

A fair trial along with the preservation of human dignity is one of the most important features of Islamic judicial measurement and is a guarantee for individuals to enjoy the fundamental principles of human rights such as freedom and equality. The administration of judicial justice is not only possible due to the existence of substantive laws, but also its executive and formal methods have a prominent and important role in this field, which is also understood by the international judicial system today. However, the weakness of human thought in formulating comprehensive and efficient laws prevents the realization of justice and the achievement of a fair trial. The present article - with a descriptive-analytical method - deals with the formal and principled laws in a fair trial from the perspective of the Islamic judicial system and concludes that the Islamic judicial system includes principles that guarantee the rights of the accused to the highest degree and observe and include this Formal principles and rules in law are a step towards establishing justice in judicial proceedings; However, these laws have been approved and emphasized much earlier than other systems along with the preservation of human dignity in the Islamic judiciary.

Keywords: *Islamic Jurisprudence; Human Rights; Human Dignity; Fair Trial; Islamic Law*

1-Introduction

A fair trial, which extends to the scope of all criminal and civil proceedings, in a general sense, from the stage of discovery and investigation to the execution of punishment in a specific sense, from the beginning of the trial to the end of the trial and the finality of the sentence. Therefore, it can definitely be considered a necessity for the whole set of human rights. In today's world, a fair trial has become an integral part of judicial justice. The administration of judicial justice is not only due to the existence of substantive laws, although fair and progressive, but also the methods of exercising and enforcing substantive rights play an important role in this. Therefore, due process in any legal system plays a significant role in ensuring the administration of justice. These guarantees, if realized, limit the government's authority over individuals and, as a result, provide better protection for individuals' rights.

The most sublime and emphatic interpretations in this field can be found in the teachings of the religion of Islam.

Islam has given the most obvious value and importance to the issue of judgment and trial in order to ensure the rights of the people and the establishment of social justice. In Islamic sources, these principles and rules have been explained by relying on the Holy Quran and the authentic narrations of the Imams (AS) and the judicial life of the Prophet (PBUH). However, the term fair trial as a human right has been introduced into the subject systems for two centuries Universal and regional human rights instruments, such as the 1948 Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (Article 14), recognize the right to a fair trial and oblige governments to exercise and guarantee this right for all.

The Islamic judicial system, which is based on the principle of human dignity, as an independent system, along with other judicial systems, includes principles that guarantee the rights of the accused to the highest degree; Referring to the verses of the Qur'an, we see that God Almighty introduces the purpose of sending the messenger as installments and justice, while the establishment of justice for the accused will not be possible except through the use of justice and justice, something in the judicial life of the infallible Imams is also evident. The present study has been written with the aim of studying and extracting fair principles in Islamic sources and strategies of the Islamic legal system in order to achieve justice in criminal proceedings based on the judicial life of the Infallible Imams (AS) and the words of jurists and its application to international law.

2-Trial on the Standard of Justice

In Islamic law, justice is a principle. The principle by which judgments should be weighed, not the other way around; That is, justice should not be measured by the scale of rules and sub-rules, but justice itself is a measure for the correct understanding and evaluation of the rules (Fazaeli, 1393: 162). As we know, justice and fairness in the school of thought of Islam is one of the principles of religious belief and with this description, it includes dignity and status beyond the realm of human life, so that it can be said that the foundation of existence is laid on it and it is obvious. On which all aspects of human life are based. Accordingly, the principle of justice in various areas of human collective life requires rights and duties that are sometimes expressed in the form of religious texts and sometimes man is guided by this wisdom, this inner prophet, and in any case the compatibility and adaptation of this Rulings with the principle of justice, with the innate understanding of human conscience (Fazaeli, 1387, 104).

For this reason, Islam emphasizes the justice of the judge and considers justice as one of the basic conditions of judgment, and this is the difference between Islam and other schools of law in the position of judge; Because from a legal point of view, as long as the applicant has a good record and no bad record, it is enough to take over the judiciary. But in Islam, the attribute of justice in the judge is very much emphasized, so that by removing it, the judge is not allowed to issue a sentence and execute punishment on the offender (Tavakoli, Rahbarpour, 1396: 91).

The history of human civilization has always been associated with the dialogue of justice. But justice is still one of the most important difficulties in the collective life of human beings. Since justice is a concept that human beings have known since the beginning of their civilization and have tried to establish it, it can be said that this value concept is rooted in the reality of existence and is not merely credible and made by the human mind (Katozian, 1379: 222). From a legal point of view, justice is sought in the observance of the law. That is, it is a just act that is in accordance with the law. Justice, then, refers to the strict and rigorous implementation of rules and standards. One of the important manifestations of the general right to equality of rights and legal equality is equality in the courts. This equality goes beyond equality in the specific application of the law by the judiciary, and this right means that all

persons should be entitled to equal access to a court without distinction based on race, religion, language, sex, wealth or otherwise.

Therefore, it can be said that the establishment of separate courts for different racial, religious, political, social, national and other groups is contrary to paragraph (1) of Article (14) of the Covenant on Civil and Political Rights, which states the right to equality before the courts. However, we are witnessing the formation of some special criminal courts at the international or mixed level, as well as the International Criminal Court to try certain types of defendants. The existence of special or military tribunals that try civilians creates problems with the equitable, impartial and independent administration of justice.

Often the reason for establishing such courts is not in accordance with the usual standards of justice (Fazaeli, 1387: 8-67). In fact, justice is a desirable perfection that social man can never find to achieve. The judiciary, which from ancient times to the present has always been adorned with slogans such as the scales of justice and the angel of justice, is a purposeful institution whose foremost is justice and fairness. Therefore, the legitimacy of judicial affairs from trial to sentencing should be based on the principles of fairness and justice so that the public conscience can be calmed (Fazaeli, 1389: 45).

According to what has been said, it can be said that justice in criminal matters is in two forms: justice in the execution of punishment and realization of justice in punishment and granting every right to its owner and there is a general feeling of success and justice.

3- Fair Trial from the Perspective of Jurisprudence and Law

The goals of jurisprudence from the Islamic point of view are to establish justice and the realization of truth. Therefore, in revelatory and religious teachings, in comparison with other systems, the most complete method and principles of trial are presented. The Qur'an places special emphasis on the administration of justice, which is the basis of justice. In verse 58 of Surah An-Nisa', God introduces the basis of the judicial system as the principle of justice and says: "Whenever you rule among the people, judge with justice." So everything in the affairs of government must be in accordance with the standards of justice. In verse 45 of Surah Ma'idah So judge with justice among them »which in this verse states the standard and basis of trial and justice and does not differentiate between the parties to the dispute in terms of infidelity, Islam, wealth and poverty. Even if the infidels turn to the Islamic ruler for judgment, it is necessary for him to rule with justice (Javadi Amoli, 1389: vol. 22, 488). Verse 58 of Surah An-Nisa' also emphasizes on a just trial based on divine commands, and in the tradition of the Prophet (PBUH), a trial is based on justice.

4- The Concept of Fair Trial

Fair trial is defined as the trial and judicial decision between the litigants in a competent, independent, impartial court with the guarantee and observance of the legal rights of the litigants during the various stages of the proceedings (Fazaeli, 1387: 60). In general, a fair trial includes a set of criteria and these are guarantees that have been provided for the observance of the rights of the parties in the process of hearing all types of lawsuits before a competent, independent, impartial and predictable court in the judicial mechanism (Rostami, 2010: 89).

The right to a fair trial is enshrined in all important human rights declarations, from the Great Charter of England (1215) to the French Declaration of Human Rights and Citizenship (1789) and the Declaration of Human Rights. Among the documents that examine this right in more detail are the International Covenant on Civil and Political Rights, the United Nations Basic Principles on the

Independence of the Judiciary, and regional documents such as the European Convention on Human Rights (1952). The American Convention on Human Rights (1969) and so on.

5- Principles Governing the Fair Trial Process from the Perspective of Jurisprudence and Law

A fair trial requires the observance of a set of principles that must be observed in all hearings. The principles of fair trial in jurisprudence means what the judge needs to observe in relation to the litigants so that the trial is fair according to what society expects from justice (Mohsen al-Baqir al-Musa, 1999: 1, 34).

A fair trial must always follow a series of ethical and legal principles and standards, and the compliance of the rituals and mechanisms used in all stages of the judicial process must be constantly measured so that it does not deviate from the path of justice. These principles and rules are usually accepted by various legal and judicial systems, they can be referred to as general principles of law that can play a decisive role in leading the trial to a fair trial, require certain rituals and methods, and provide fundamental rights for the parties. Litigation and relevant persons, especially the accused, demand that its beneficiaries can refer to it in court and, if necessary, protest and investigate for its violation (Fazaeli, 2008: 267).

The principles of a fair trial lead to the establishment of the trial process in its correct and true direction, and the main elements in this process, namely the judge on the one hand and the litigants on the other, as living and dynamic factors in the process, can lead to a fair trial.

5-1-Essential Principles

5-1-1- The principle of legality of crimes and punishments

One of the basic principles of criminal law, which is specified by Islam and is considered a Muslim rule by the jurists, is the principle of legality of crimes and punishments. This means that any right or obligation must have a legal origin.

However, in the case of duties whose violation guarantees criminal execution, this principle is interpreted as the principle of legality of the crime and punishments (Sajadi Nejad, 2006: 19). According to some Islamic law scholars, the principle of legality of crimes and punishments is widely recognized in Islamic law. Because in the presumption of ignorance of the law, if not guilty, the perpetrator is considered exempt from punishment.

The principle of judicial punishment is so valid that it is usually specified in the constitutions of countries. In our country, Article 36 of the Constitution of the Islamic Republic of Iran states: "The sentence of punishment and its execution should be only through a competent court and in accordance with the law." And Article 37 states: "The principle is innocence and no one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed."

The results of identifying the principle of legality of crimes and punishments are as follows:

If individuals do not commit criminal acts knowing their legal boundaries, they will be sure that they will not be punished and their security will not be compromised. Assuming that the crime was committed and deserved punishment, the perpetrators will be assured that they will not be punished more than the prescribed legal punishment. Individuals will have the assurance that if they are attacked by other people, society will restore their lost security by invoking the law and prosecuting and punishing the aggressor (Hashemi, 2005: 11).

5-1-2- The principle of innocence

Innocence is one of the most important and indisputable principles in various jurisprudential religions, and one of the four practical principles in the later principles of the Imams, which is the negation of the obligation of the obligor in cases of doubt in the obligation and the result of this principle is the need for evidence by the plaintiff. Because in legal matters, he puts the burden on the plaintiff and proves the burden, and as long as there is no evidence or confession, the accused is acquitted (Hashemi Bajajgani, 1378: 225). Islam has recognized this right for human beings for centuries and has advised law enforcers that no one will be punished until proven guilty in court. The acquittal of the accused before proving his conviction is one of the characteristics of Islamic trials. This principle is quite evident in the trials and judgments of our Imams, especially in the cases of the rights of God. In such cases, the Hadd is removed with suspicion and the Hadd is not enforced except with evidence, and the accused is not required to take an oath. (Sheikh Tusi, 1407: J 10, 51).

The principle of innocence is so important that it is specified in the constitutions of most countries of the world. The principle of criminal innocence with the presumption of innocence was first explicitly mentioned in Article 9 of the French Declaration of Human Rights in 1789: "All innocent persons are presumed innocent until proven guilty", but the first international document to establish the principle of innocence Article 11 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on December 10, 1946, states: "Anyone charged with a crime shall be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. Provided for his defense; "His crime must be legally proven."

The 1950 European Convention on Human Rights also addresses the principle of innocence in paragraph 2 of Article 6: "Whoever is accused of having committed a crime shall be presumed innocent until proved guilty according to law."

The result of the principle of innocence in criminal matters is that, firstly: the accused is not obliged to provide evidence of his innocence. Second: Doubt must be interpreted in favor of the accused. Third: The accused of committing a crime, whether he is an accidental or repeat offender, is considered innocent of that charge until his guilt is proven (Khazaei, 1373: 132). The basis of this principle is without a doubt justice and whenever this principle is ignored, the rights of the accused will be seriously violated, resulting in distorted justice. Failure to observe this principle in many cases leads to oppression of citizens (Ghorbannia, 1381: 245).

5-1-3- The principle of judicial justice

The administration of justice is the ultimate goal of the trial. Many verses and hadiths emphasize this principle; Verse 25 of Surah Al-Hadid says about this principle: "Indeed, We sent our messengers with clear proofs and signs, and we sent down with them the Book(Quran) to guide mankind, so that the people may rise up to establish justice." Verse 58 of Surah An-Nisa 'states: "When you judge among the people, you should rule with justice ..." The judicial justice of Islam includes not only Muslims but all human beings. Part of Article 14 of the Constitution of the Islamic Republic of Iran states: "... The Government of the Islamic Republic of Iran and Muslims are obliged to treat non-Muslims with good morals and Islamic justice and to respect their rights. The judicial system of Imam Ali (as) is composed of the general principles of judging, which together provide judicial justice in the Islamic government.

Judicial justice is one of the pivotal foundations of social justice in Islam. The survival of the Islamic government depends on it, and the efficiency of the system depends to it with a large extent.

5-2- Formal Principles

Formal principles refer to the principles that are necessary due to the course of the trial and are more related to the way the trial is conducted and administered.

5-2-1- The principle of the need to observe equality between litigants

The principle of impartiality of the judge is one of the necessary conditions for a fair trial. This principle, which is known in jurisprudence as "the obligation of reconciliation between the enemies", is taken from many verses and hadiths. Verse 58 of Surah An-Nisa 'regarding the observance of justice and judgment rightly commands, that "God commands you When you judge between people, judge with justice."

Well-known Imami jurists believe in the necessity of this issue in this regard (Mohaghegh Naraghi, 1419: J 17, 111; Ansari, 1415: 112) and have said that "observing equality between the parties to a dispute is obligatory on the judge and he should speak, greet and reject it." "Look at and hear the statements of the parties and others behave equally and do not prefer one over the other." (Sheikh Tusi, *Bitā*: 338, Shahid Thani, 1413: vol. 13, 428, Tabatabai, 1419: vol. 2, 394) and consider the behavior of judges based on equality and equality between the parties (Ibn Babavieh, 1415: vol. 1, 14).

In judicial laws, the observance of the principles of equality in the treatment of the parties is one of the pillars of the realization of a fair trial as one of the fundamental human rights. Equality means the equal treatment of the litigants and the prohibition of any unjust discrimination against them. Therefore, in the trial, the judge, as the reviewing authority, should treat the parties equally and equally, and refrain from any undue discrimination against one of them (Khedri, 1394: 537). According to this principle, as enshrined in Articles 7 and 10 of the Universal Declaration of Human Rights and Articles 3 and 26 of the Covenant on Civil and Political Rights, the parties to disputes should not be chosen in such a way that there is a suspicion that they may be sided by one of the parties. Can be designed. It is based on this principle that the necessity of rejecting the judge is raised and the possibility of rejecting the judge in resolving disputes is one of the standards of litigation that arises from the principle of equality of persons before the law and the court (Alizadeh, 1387: 19).

5-2-2- Independence and impartiality of courts and judges

The principle of independence and impartiality of the judge and the court is an integral part of a fair trial. In the Holy Qur'an, God commands His Prophet: "Say, 'My Lord has commanded justice ...'" (A'raf / 29). He also tells the believers: They should observe justice even if it is to the detriment of themselves or their parents (Maeda / 8 and Nisa / 135). In the Islamic judicial system, because it is based on *ijtihad*, it has the broadest meaning of independence and freedom. From the point of view of jurists, the judge has complete independence, which means that in considering and issuing verdicts, he should only think of achieving justice through the implementation of the law and divine rules, and should not consider other considerations and expediencies (Ghasemi, 141:189)

In order to achieve justice in the judicial system, the independence and non-dependence of the judge on the institution or organization seems necessary because the independence of judges, on the one hand, increases the ability of judges to recognize the right, and as a result, they will make a fair judgment if there are no violations and no mistakes. On the other hand, it reduces the chaos in the society and increases the society's trust in the judiciary. Otherwise, other people will not trust the judiciary and will have doubts about it (Mohajeri, 2012: 69)

In line with this principle, the Seventh United Nations Congress on the Prevention of Crime and Punishment of Criminals, by drafting the document "Political Principles on the Independence of the

Judiciary", has clearly defined the components and examples of judicial independence and their components to governments. Recommends (Malekli, 1991: 59) According to Article 156 of the Iranian Constitution, the judiciary is a force that supports individual and social rights and is responsible for achieving justice. According to this principle, the basis of judicial independence in Iran has been legally accepted (Ashouri, 2004: 184).

5-2-3-The principle of openness of the trial

The openness of the trial means that members of the public can freely attend court hearings and see how it unfolds, and ensure the accurate execution, impartiality of judges and the existence of real judicial justice (Akhundi, 2005:226). The open nature of litigation helps ensure a fair trial by supporting litigants against arbitrary decisions, and enables society to control the administration of justice. The public nature of the proceedings, together with the public announcement of the verdict, will help ensure that the people are informed and thus ensure that justice is done. In fact, the openness of the proceedings is in the interest of both parties and in the public interest. The condition of openness does not apply to all stages of the judicial process, but only to the stage of hearing the parties, i.e., oral examination of their evidence and bills (Filsafi, 1375: 288). In Islamic jurisprudence, the openness of the courts as a duty in Islamic proceedings.

The openness of the trial is necessary in both criminal and civil trials, but it is obviously far more important and necessary in criminal trials. Therefore, this principle has a special place in both national laws and international human rights regulations (Fazaeli, 1393: 168). Publicity, in addition to enabling public opinion to monitor the proceedings, is also a sign of the confidence of the investigating body (Shams, 2004: 154).

Islamic jurists do not have a fatwa stating that this principle must be observed during the trial but their opinion on the certainty of this principle in Islam can be obtained with certainty, especially since this method is a good thing for the intellect.

5-2-4-The principle of accepting representation in lawsuits

One of the guarantees necessary to protect the defendant's defense rights is the participation of a lawyer to defend him. When a person is accused of committing a criminal act, he or she may lose his or her individual rights as a defendant due to lack of familiarity with his or her rights and how to enjoy them. Having the right to a lawyer in court is acceptable in Islam. In Islamic law, advocacy in lawsuits is a legal institution that was founded by the wise in the first human societies.

From the point of view of the jurists, it can be concluded that since according to the view of the jurists, representation in matters that can be represented, representation is also correct in this matter and the right to have a lawyer in court proceedings is acceptable in Islam. According to the application of verses and hadiths, it can be stated that in Islamic trials, a lawyer has the right to be present in all stages of the trial.

5-2-5- Principle of prohibition of procrastination

One of the requirements of a fair trial is that the defendant be charged within a reasonable time and without delay. This is important because the prolongation of the trial and the unreasonable delay in the trial of the accused divert fair and equitable trial from its main purpose, which is to guarantee the rights of the litigants on the one hand and the rights of the society on the other (Ashouri et al., 339). Failure to adjourn the trial means the immediate administration of justice, and the immediate administration of justice means that the reviewing authority has a duty to resolve the dispute quickly.

Because as it is known, the delay of justice is the denial of justice (Qanavati, Mandani, 1397: 174). And terminate the investigation in the shortest possible time (Farahzadi, 1379: 56).

In most international regulations, the speed and fairness of the proceedings are used together. The most important provision in this regard is stated in paragraph (3) of Article (66) of the Statute of the International Criminal Court that the reviewing branch is required to submit and adopt the necessary procedures to facilitate the fair and expeditious conduct of the proceedings. This shows the importance of speed of trial without which the fairness of the trial will not be guaranteed (Fazaeli, 1389: 336).

5-2-6-Principle of Equilibrium

In the Qur'an, God says to His Prophet (PBUH): Whenever you want to judge among non-Muslims, you must observe moderation and equality between them (Maeda, 42). The procedure of the Prophet (PBUH) has also been based on the similarity between the litigant in hearing the statements and arguments of the both parties (Qolipour et al., 2014: 120). Except in special cases, the judge cannot issue a verdict simply by trusting the statements of one of the plaintiffs, but must listen to the words of both parties and, if possible, provide the ground for face-to-face dialogue and protest of the adversaries (Farahzadi, 2000: 63). One of the Prophet's (PBUH) instructions to Imam Ali (as) when he was sent to Yemen to judge was as follows: Whenever the plaintiffs appeared before you for trial, in favor of one of them, before the statements do not judge the other side (Sheikh Tusi, 1407: 228; Sheikh Saduq, 1981: 7). Accordingly, the jurists have obligated the judge to look at the adversary equally, in questioning and listening to its contents. Further, to observe equality in determining the place where the two sit in court. It is necessary to observe non-indoctrination to one of the two parties to the dispute and should not teach them the reason (Shahid Thani, 1403: 81).

5-2-7-The right to silence

The right to silence, which is based on the principle of freedom of expression and the principle of innocence, directly governs the right of the accused to deal with the judge's questions. Most criminal justice systems accept that the accused has the right to use his power freely to respond or to refuse. In other words, the laws of the countries have either provided explicit provisions in this regard or the judicial procedure has gradually registered such a right for the accused (Ardabili, 2004: 214).

The right to remain silent requires that the accused not be compelled to testify or plead guilty because the accused has no duty to disclose the facts to the judicial authorities, but the prosecutor himself is required to gather sufficient evidence to substantiate the charge. To know. This right is related to the principle of prohibition of torture to obtain a confession (Saber, 1388: 155).

The right of the accused to remain silent has also been emphasized in many legal systems, although human rights treaties have not explicitly stated it. The European Court of Human Rights has ruled as follows; "Although this right is not specifically mentioned in Article 6 of the European Convention on Human Rights, there is no doubt that the right to remain silent in the face of police inquiries is one of the standards at the heart of the concept of fair trial in Article 6 of the Convention."

From what has been said, it can be said that the silence of the accused cannot necessarily be considered as a reason for his being accused, but it can only be considered as a reason for convincing the judge's conscience, among other reasons.

5-2-8-The principle of the prohibition of torture

Torture of the accused during interrogation and criminal investigation to obtain a confession or information is an inhumane act (Moazenzadegan, 1379: 432). Regarding the prohibition of torture,

Allameh Tabatabaei writes: "Torture is a clear example of oppression, violation and violation of dignity and justice, and anything that violates dignity and the principle of justice is forbidden in Islam. For this reason, torture and ill-treatment, and any act that is considered oppression, is forbidden and condemned by Islam. In other words, any kind of torture and ill-treatment is a clear example of oppression, and many cases of oppression are considered torture, among which there are so-called logicians, both public and private. "Islamic sources such as the book, tradition, reason and consensus clearly indicate sanctions, torture and desecration of human beings." (Najafi, 1389, vol. 22, 74).

According to the principles of jurisprudence, it can be said that according to human dignity and honor, Islamic law strictly prohibits torture and torture of human beings, which destroys their dignity, and prohibits any behavior that is contrary to human dignity.

Conclusion

The most complete method of adjudication can be achieved by examining Islamic sources and in particular the four arguments and in order to discover the basis of a just trial, one must refer to the same revelatory and religious teachings. God in the Holy Qur'an has introduced the basis of the judicial system as the principle of justice where saying that whenever you rule among the people, judge with justice. (Nisa, 58). This verse expresses a general rule and includes any kind of judgment and government; And what is mentioned about the trial in jurisprudential sources as the etiquette of the judiciary can be considered as a guarantee of the rights of the accused and the principles of a fair trial.

In the Islamic legislative system, the rights of the accused are based on the principle of human dignity, the principle of justice and judicial security.

Since a fair trial is recognized as one of the general principles in the doctrine of Islamic law, respect for the rights of the accused should be one of the manifestations of justice. Accordingly, it is necessary for the judiciary to adhere to the rights and guarantees recognized in the proceedings for a fair trial, and to make every effort to improve its quantitative and qualitative level within the judicial justice system.

In litigation, one of the ways to ensure a fair and just outcome is to follow the rules of the trial, so the rules and regulations that are considered for the trial must be effective and efficient.

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