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The Study of Judge Mistake in the Process of Criminal Procedure and Religious Jurisprudence Law (feqh) Procedure in Iran

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ABSTRACT

This research investigates the judge's mistake in terms of religious jurisprudence law (feqh) and legal sources in 2 units, containing 3 discourses. How is the compensation for losses due to judge's mistake in terms of feqh and civil sources? Feqh laws and ordinal laws have been studied considering the analysis of the ways of compensating material and moral damages indicating the aim of schism and kinds of judge's mistake and feqhbasis and its civil place, the judge's mistake with a view to constitution. It is supposed that the judge's mistake in judgment, which causes damage to injured person, can be compensated according to feqh and civil law. In other supposition, the ways of compensating the losses due to the judge's material and moral mistakes are different and ambiguous and have divergence of opinions. By paying attention to the sensitive and dangerous responsibility of judgment task and the ways of compensation for losses in Feqh and civil sources, different factors such as revolutionary situation, hastening in render a first grade trial judgment with accepting the judge's unity on important crimes, and sometimes depriving defendant to have lawyer and right of self-defense in civil files, non-considering and non-care invalidating and analyzing the reasons and documents of parties, may lead the most sympathetic and the most careful judges into an error in obtaining its reasons, because of the wrong information, forged and faked documents, false evidence and untruthful confession, expert's theory with misleading results can lead to rendering an innocent judgment. Although nobody can deny the judge's mistakes, it is hoped that the principle 171 of constitution and article 255 criminal procedure and ordinary rules in criminal and civil matter and government play a significant role in considerable compensation for losses and what it given of Feqh and legal competence. The mentioned mistakes are determined in order to easier and more efficient avoid it and compensate it, if possible.

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INTRODUCTION

According to Islamic law adopted by legal and judicial commission of parliament in May 1st, 2013 that has been approved by the Guardian Council, the legislature accepted that in order to follow legal standards and legislation to implement the provisions of Article 171 of the Constitution of the Islamic Republic of Iran, in the fourth chapter, entitled "About judicial responsibilities," explained the criminal provisions, for the first time in the former Article 58 of the Islamic Penal Code, the judge's responsibility or fault caused by a mistake in identifying the subject of the sentence or the implementation of specific prediction. As can be seen, the judge fault or mistake on diagnosis about the subject or verdict has gained special attention by the legislature and prediction of the verdict in criminal law is an innovation by the authors of the Islamic Penal Code, But the judge's liability for compensation for moral harm; the judge mistake is used synonymous to his fault and it is the responsibility of the government following the rights of the Imami constitution provided in Article 171 in constitutional law; in cases where a judge has committed a fault, he is responsible for compensation for material and moral damage. If the general rules of civil liability are exercised for the decisions of the judges with regard to the serious nature of this job, the judge will be sued numerously, and instead of judging, he always will stand in the defense position. Because of the importance of this position in both Islamic law and the Iranian constitution attempts made to distinguish between judge fault and mistake and in case of judge mistake, the judge has no civil liability and compensation for damage caused by the judge's decision is on the state. However, in case of fault, the judge is personally responsible.

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Problem Statement:

The research is conducted in the judge mistake in criminal law and religious jurisprudence law (feqh) procedure.

It is necessary to explain the choice in accordance with religious jurisprudence rules "La zarara" and "Tasbib "everyone is liable to compensate for damages caused by their action. These religious jurisprudence rules are universally accepted in the legal systems . On the other hand, judges are not immune of mistakes and according to the above rules are required to compensate damages resulting from the issuance of wrong verdicts. Accordingly, obviously the judge mistakes notion frees him from the criminal intent but he is responsible according to the theory of mistake and risk. According to the theory of risk whoever commits an act which further inflicts harm on the other is to compensation and according to the theory of fault or mistake someone who is doing something is morally reprehensible for his act.

The importance and necessity of the research:

Since the judicial practice and procedure in criminal courts are not immune from judicial errors, and as the Code of Criminal Procedure mentions the judge's erroneous opinion is considered as one of violating the appeal necessary to be reconsidered in court, therefore it is essential to study dimensions and magnitude of this institution in civil sources and religious jurisprudence law (feqh) to investigate the causes and preventive measures.

Research Objectives:

1. To identify the mistake of the judge in the criminal justice process
2. To express and recognize all mistakes and wrong directions of the judge's verdict

*Research questions and hypotheses:**Research questions:*

- 1- What rights guaranteed legal and criminal law practices in the case of judge mistake in Iran criminal law ?
- 2- Are legal and criminal law practices guarantees for judge mistake predicted in Iran criminal law?
- 3- Is compensation for losses due to judge mistake predicted in Iran criminal law and Feqh?

Hypotheses:

- 1- Law in Article 327, in the case arguably the judge realized his mistake the file is sent the Court of Appeals and in Criminal Justice 255, if the judge commits a mistake, the compensation is done by government .
- 2- The need for compensation for material and moral mistake by the judge is stressed in the legal and feqh sources.

Research Structure:

This paper investigates the principles and concepts of judge mistake, definitions of judge mistake, and theoretical foundations of judge mistake.

The study of judges' mistake legal principles:

Rules and regulations regarding the judges' mistake can be placed in three categories.

First: the rules regarding the pen mistakes that do not require reinvestigating.
Second and third: rules stating mistakes that may quash the sentence.

Mistaken notion:

Mistake means "false impression of something" that shall relatively eliminate criminal liability and in criminal law is not considered as minor, and lunacy that eliminate criminal liability. Mistake is generally divided into two types of mistake of judgment and mistake of subject. The mistake of judgment may occurs when law is ambiguous or silent in interpreting a case, the rule of ignorance of the law shall not eliminate the responsibility, but is flexible to some extent, and if the mistake is not due to negligence should be adopted.

Mistake of topic is "the error of subject in legal issues", such as the mistakes occurred on the victim identity, crime components and mistaken results from the acts committed....

The legal concept of mistake in criminal justice:

Term mistake in its legal sense, is consistent with the lexical meanings in legal publications to the effect that some of the mistakes are defined: the wrong impression contrary to truth and reality. In order to remove any doubt some legal scholars have noted that: these points should be borne in mind that we do not consider the term mistake to the meaning of the word, but mistake is synonymous to ignorance and lack of knowledge, however mistake may differ in terms of sentence or subject. In another legal system, the mistake is considered different from its customary meaning and sometimes is defined in its regulations; therefore customary plurality of judge

mistake is considered diagnostic criteria of his fault. Other criteria for professional fault detection of judges their conventional behaviors, that the judge gains independence and authority by the means of law, so should avoid erroneous behavior....

Definition of mistake in feqh:

In the book " Almosoe Al feqh Al Eslami" mistake definition reads: when great jurists use the term mistake, they do not go beyond its literally meaning of covered and mixed. The book states: If a judge is a priest, and is in doubt for sentence, he acts according to his opinion and in this case it is better to consult jurists.

Definition of mistake in civil laws:

Mistake is to believe in something that is not in accordance with reality, i.e. counterfactual image of something.

When civil law talks of "the impression of mistake on will" the purpose is the same meaning, like when you say a mistake by parties in the transaction will invalidate the contract, means that they is a counterfactual image in trade type and their belief have not been true, as it is intended to borrow money, and another with the intent to donate it. In this instance, the parties to the transaction were wrong, that they belief are not consistent with reality .

The above mistake is in accordance with civil law 199,200,201.

Mistake in law:

Mistake in law is the false impression of criminal of sentence or law subject or the nature or elements of the crime.

In criminal law the concept that is referred to as "misunderstood" is defined as mistake.

In the criminal law of most countries with belief that ignorance has no impact on the verdict of criminal responsibility, the rule of ignorance of the law shall not eliminate criminal liability is accepted for various reasons. This means that after approval and publication of Law, it is assumed that all people are informed and those ignorant of law certainly are negligent.

Mistake definition in criminal law:

Mistake in legal term is the ignorance of criminal of the criminality of the committed. In a more complete sense ,Mistake is counterfactual thinking of criminal at the discretion of a penalty or the law or the nature or the elements of the offense that eliminates the ability of liability as segment to criminal. Mistake is divided into two kinds of the sentence and the subject. If the mistake is caused by a lack of knowledge of the law and or whether someone misinterpreted the law concept and purpose of a text mistakenly, it will be a legal mistake. If the error is due to counterfactual thinking of criminal at the discretion of the law or the nature or the elements of the offense or the results from it, it will subject mistake. It should be noted that the mistake is of the relative resolver of criminal liability. However, because the judge may perform mistake in doing his duties, the Judge Liability issue arises.

Judge Liability types:

Criminal Justice of Judge Liability:

In this kind of liability we cannot consider any undesirable and harmful act as a criminal act, but according to the principle of legality of crimes and punishments ;the person is responsible for quality of the committed act that is explicitly mentioned in the constitution, and purpose of delinquent act is effective in punishment .Also, criminal liability guarantees the sanction of public law and its intensity depends on the degree of disruption to public order . Liability means accountability in the presence of the conscience, God, society, and the Court .

Legal liability is divided into three branches of civil liability, criminal liability and disciplinary liability, such as bribing a judge; he will be liability of all three aspects.

Disciplinary liability of judge:

There are two types of monitoring in the judicial system: Judicial supervision and security surveillance . Judicial supervision at the Research and appeals procedures is done by the provincial courts of the state Supreme Court with the purpose to provide competent judgment through correcting judicial mistakes .The aim of security surveillance is to keep judicial environment intact by measures required by the prosecution and the trial of guilty judge. Judicial supervision consider only references and judicial decisions and are not involved with the judge and security surveillance only deals with the disciplinary fault of the judge and does not comment on judicial decisions of the trial to indicate the rightness or wrongness of them.

Civil liability of judge:

Civil liability of judge is obligations of a person to compensate losses and damages caused by the person responsible and or action of persons and property related to the person or resulting from facilities owned or occupied by him.

*Theoretical foundations of losses compensation due to the mistake of the judge and its liability:**Types of Loss:*

Usually the loss is divided into two kinds of material and moral losses and some losses meet both the physical and spiritual aspects. According to Article 58 of the former Islamic Penal Code, the losses due to the Judge mistake are of two types:

Material Loss:

Material loss is not defined in the civil law and criminal law. It seems that this legal gap could be due to the clarity of the concept and simply detected customary financial loss to everyone and compensated for financial losses caused by the offense. But in Jafari Langroodi terminology material loss according to civil law is defined as: financial and physical loss in contrast to moral loss. Material losses are existing loss, future loss and imminent loss, as well.

Compensable material loss are compensations for damages related to the loss of material possessions or deduction in legitimate wealth or benefit as a result of judge mistake in determining the issue of the particular case or issuing a verdict. In such losses, the judge or the state will have to pay compensations.

Moral loss:

"Moral loss " in legal terms is the damage that is not material in any fashion; like insult and disrespect to officers and employees of international organizations and foreign states. According to Article 14 of the Code of Criminal Procedure, "Moral loss " is defined as the reduction of prestige or reputation of persons or trauma.

Moral loss caused by the crime is the damage to the non-financial entities such as loss of reputation, or trauma that is non-financial. Such losses due to the non-material nature cannot be evaluated and could not be compensated in money, so some consider it irreversible. Although some also insist on payment to the injured party as it pleased him and that reduces the sufferings. In general, as mentioned in Article 58 it is to rehabilitate the injured. Rehabilitation takes place in pursuant to Article 10 of the Civil Liability Act. This Article says "Wherever the importance of loss and the sort of fault may require; the court may, if proven guilty, in addition to compensation sentencing, to eliminate losses through other media, such as the obligation to apologize and the introduce sentence in the press and so like. "

Types of liability:

Liability from a loss is twofold from one perspective:

1. Civil liability
2. Criminal liability

Condition of civil liability and criminal liability is that in both cases an individual's engagement in and or leaving an activity cause harm to another. But, there are differences that a few of them include:

A) Committing a crime is followed by the criminal responsibility of the perpetrator leads to the disruption of order and the loss to the community, whether someone is hurt or not. But in civil liability, the subject to damage is a person. B) Criminal responsibility which involves a great risk to individual liberty is obtained when someone who commits any of the crimes mentioned in the constitution precisely accept civil liability, it is not too difficult to bear, and realized of behaviors that the law has defined them with more flexibility. C) The purpose of criminal liability is criminal penalties. So, the punishment should be commensurate with the importance of committing a fault, while the purpose of civil liability is to compensate the damage. Thus, the damaged subject shall be deemed responsible for losses relative to the importance losses.

The loss compensation foundation due to the judge mistake in Jurisprudence (fegh) and Law

*Jurisprudence (fegh):**Tradition:*

Some jurists when discussing the rules for moral damage refer to rules such as "La zarara va lazarar", "Laharaj" and "Tasbib", and the principle of "Almaghror Yarjao ela man ghora" point out that these rules are permission to claim moral damage .

Legal Foundations:

Claim losses resulting from the crime are possible, according to some legal rules and procedures.

Constitution:

Article 171 of Iran's constitution explicitly predicted judge civil liability. This legislature rule for the first time expresses for those judges who committed the fault the civil liability to persons injured and this principle also appears to be rooted in the rule of jurists as "La zarara va lazerar". According to the twentieth article of the constitution "All citizens, both men and women located in the protection of the law and enjoy all human, political, economic, social and cultural rights, in conformity with Islamic criteria." Article 34 of the constitution also provides litigation as the inalienable right of every person "... anyone can go to petition the competent courts. All citizens have the right to access to these courts and no one may be barred to recourse to the court that it is by entitled by law. "Thus, with regard to Article 171 of the constitution and the constitution Article 34 anyone who feels damaged due to judge fault may be filed in court against the judge and as described in detail in the next chapter, and if the judge found guilty, he will be liable and will be sentenced to compensate for losses.

Islamic Penal Code:

Some of the Penal Code stated clearly the responsibility of the judge, It should also limit jurisdictional immunity of the judges with more civil liability to prevent abuse and lawlessness and deliberate faults or intentional judgment by those in positions of importance and very serious situation. Former Islamic Penal Code, Article 58 that can be considered constitution's Article 171 with a slight change provides: "Whenever, moral or material damages incurred to someone due to fault or mistake of the judge on the verdict on the case or subject, in the case of material damage the culprit is to blame according to Islamic rules, and otherwise damage to be compensated by the government and If a moral damage is incurred by fault or mistake of the judge the spiritual harm caused should be rehabilitated by him.

- 1- Perpetrator is of government authority
- 2- complaint and petition is taken to him in accordance with the regulations
- 3- complaint and petition is duty of judge in accordance with the regulations
- 4- The judge may refuse to accept a complaint or proceedings or delay verdict against the law or acts contrary to the law.

In other cases the IPC also refers to the liability of the judge or the judge's staff that some of these Articles include the Article 604, the Article 681, the Article 605, the Article 570 and the Article 587.

Civil liability law:

Civil Liability Act was passed in 1960 in 15 Articles. Articles 1 that in fact is Article 328 of the Civil Code States: Article 2 emphasizes on the liability of taking the blame and indicates that in cases where the act of loss importer incurs moral or material damage, as soon as the evidence proves, is liable for compensation by a court order. The proof necessary for principle 3 is the existence of causality relation between the defendant act, damage and fault. Fault is either intentional or the result of carelessness. After taking these 3 main principles, defendant is sentenced to compensate damages and the damage here is the moral one.

Articles 3 and 4 of the Civil Liability Act dealt with compensation according to the quality of the claim and the amount of damage. Accordingly, Article 5 of this Act is the criteria for determining the amount of damage. Article 6 shows the damage incurred to a third party. Article 14 of the Code of Criminal Procedure of Public and Revolutionary Courts.

Judicial procedure:

Legislative and judicial procedure recognized compensation due to the crime, as in petition No. 251-252 dated April 30, 1984; Criminal Court Branch 181 of Tehran sentenced two alleged losses.

Judiciary legal department in 5947/7 dated January 19, 1977; has legalized claiming losses from the guilt. Panel of Supreme Court judgment number 6 dated June 25, 1996 issued a decree on compensation losses in excess of Diye in obtain of a formal expert opinion and accepted the standard adopted and says in the verdict text:

*Backgrounds and Factors that caused the Judge Mistake and fault:**Individual Factors:**Judges and spiritual factors in their verdicts:*

Examples of objectives and evidences of judicial mistake are various that providing a comprehensive list of them is impossible. Sentences issued in criminal matters are in opposition with property and honor and dignity of the individual and sometimes completely destroy the sentenced person. The judges should be specialized in the subject matter. Judge information should be according to the time and place of the procedure to be able to settle disputes in accordance with the principles and rules of the time, and the limited information and knowledge of the principles of the former affairs and propositions cannot new civilization precedes settle disputes. The judge mental states and maturity are of important causes of judge mistakes. Everything that lead

to judge's confusion and anxiety or their mistake is unable to distinguish truth from falsehood by the judge in the cases.

Illicit and illegal reasoning:

If the court or prosecution authorities try to use unreasonable and unlawful evidences in addition to all the features and legal authority and gather evidence against the defendant at any cost, If indeed this is the basis of criminal convictions, not only is the best examples of the judge mistake and clearly violation of the law and the life and survival of the society does depend on.

False evidence and untruthful confession:

Witness's confession has generally been regarded as one of the strongest arguments in the trial and in many cases is considered as one of the documents in the sentences.

Witnesses are regarded as the eyes and ears of justice and their statements can help judge in his judgment of conviction. However, it should be noted that the testimony of two witnesses, although trusted by the authority cannot be the origin of certainly. Sometimes the wrong witnesses that a certain person committed the act in a certain location has been incomplete, but however certain circumstances, as has been the case thrown into confusion and wrong based on the testimony of a judicial mistake occurred. Psychologically there is not such a true testament of the sincerity and unbiased uttered and at least one is false.

The loss compensation due to the judge mistake:

Fixing mistakes of certain provisions of the Courts:

There are plenty of mistakes in criminal or civil matters, for example scope for legal mistakes can be considered as far as the judge in criminal matters, sentences the punishment disproportional to the crime. Criminal judge has lots of facilities to detect the truth and to avoid legal mistakes should stay away from all the weaknesses and failings to introduce its most glamorous reasons that are not so good records. Also, the defendant can also contest reasons and claim evidences.

Re-Trial:

Re-trial: according to Article 474 of Public and Revolutionary Courts under of the Procedures Certain provisions in the Criminal Courts Act of 2013 or the first sentence is final and without appeal or after a final decision has been appealed and will be addressed in the revision or due to the expiration of the deadline for objection and no objection is obvious, in some cases this is verifiable. These enclosed in seven of Article 474, however, are limited and rare, but realization of each gives to the Attorney General and the Chairman of Jurisdiction to request a retrial before the Supreme Court's jurisdiction.

Final verdicts of courts are appealable in three states :

First: When the Judge himself finds out the mistake in the sentence .

Second: When another judge that he had been legally obtained file finds out the mistake .

Third: When specified, the judge did not have the competence in jurisdiction and issue judgments .

There are three cases possible that may lead to wrong verdict:

1) Mistake in verification of the facts: Sometimes, the judge concludes opposite to the truth from the outcome of litigation documents; for example, the judge in criminal proceedings seeking witnesses alleges criminality, and finds him guilty; while the testimony was inconsistent in some respects could not be rationally and logically the basis of criminality proof.

2) Mistake in sentence documentation and subject in a respect that could not damage the sentence basis, for example, in an accident resulting in injury charges , the driver and the pedestrians are found of fifty-fifty percent guilty and the judge accepted expert opinion and cited it as evidence of the judgment ,Inadvertently condemned the driver to pay compensation to them .Or in the case of a leg bone fracture that is safe now, According to the article "Former Article 442 of the Islamic Penal Code" inadvertently calculates the amount of Diye based on bone that is damaged, or inadvertently cites complainant and accused names in petition for each others.

3) Mistake in sentence documentation and subject in a respect that could damage the sentence basis, for example, the committed crime by criminal as the barratry is considered by the judge as the stealing and condemn him; or in the calculation of nasal bone fracture compensation sentences the "orsh" payment.

Judge mistake diagnosis reference:

Judge mistake diagnosis reference: Disciplinary Supreme Court of Judges is the reference to the investigation of violations of the judges, the reference to authentication of judge mistake is the same court, so the damaged should first complain to prove the mistake. And the provision of Article 18 of the Public and Revolutionary Courts Act of 1994, with respect to determining the reference that addresses mistake cites The Court of Appeals that: "The provisions of paragraphs 1 and 2," the judge issuing the verdict or another judge

finds out a mistake ", the Court of Appeals violates the verdict and investigates. In paragraphs 3, "the judge issuing the verdict is not competent». The Court of Appeals first investigates the claim of lack of competence of judge and, if proven, will do further investigation ". This law simply mentioned "The Court of Appeals ". As noted in Article 18 is silent in the case of the competent authority to deal with mistakes issued by the Court of Appeal, also the silence has led to multiple ideas and opinions, including the opinion No 7.8378 dated at February 28, 1995 finds the court branches at the same position at the Judiciary Law Office as the authority to investigate the Appeals Court's mistakes.

Compensation for damages caused by the judge mistake:

Islamic legal system has paid close attention to compensation for damages that became possible through feqh rules of "La zarara" and "Tasbib" , although the person incurred the damage is not the culprit. For this reason, even in crime against the physical integrity of the type of absolute mistake with no fault can be defined for the person incurred the damage, compensation for losses shall be considered as "Diye".

Article 171 of the Constitution and Article 58 of the former Islamic Penal Code are considered two assumptions on liability.

- 1- The judge is found guilty in verdict issuing and damage, in which he is personally responsible for the compensation .
- 2- The judge is not found guilty for a verdict due to mistake; such as mistake due to the wrong perception of the law. The compensation will be paid from public funds.

Ways to compensate losses:

Methods of compensation due to wrong verdict are as follows :

- 1- Concrete repair or restore the situation to its original state: when there is the possibility of concrete repair or restore the situation to its original state, compensation through other ways are not justified, for objective compensation is the best one.
- 2- Financial compensation: in cases where objective compensation is not possible, financial compensation may be responsive to the damaged; For example, if in the judgment of the demonization and destruction of property it was destroyed by mistake, the expert can assess the damage and to pay and thus compensate for the loss.
- 3- Rehabilitation: the material and moral compensation for all losses arising from disrespected people who have been victims of judicial mistakes and their behavior over time is so that justice demands are met and so the conviction disappears. "Eadeh" literally means to grant restitution, restoration, return, repair and restore. Dignity also means prestige, credibility and personality rights.

Conclusions:

In our current legal system, basically the general rule in the judge duty and their responsibilities is that he is responsible for mistakes leading to material losses arising from professional fault. But to accept this rule or principle does not prevent that the judge mistake in diagnosis or judgment on the verdict in the case of certain crucial issue of moral or material harm to anyone remain irrecoverable .It is sometimes necessary to compensate for losses caused by legal or illegal mistake of judge including the necessary moral and material damage losses by the state as the legislature in this case, as in the Islamic Penal Code expressly admitted.

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