Investigating Human Rights of the Accused Rights in Jurisprudence and Rules of Iran

Hormoz Asadi Koohbad1*, Mohammad Etemadi2
1Islamic Azad University, Ramhormoz Branch, Department of Law, Ramhormoz, Iran
Email:asadi.koohbad@gmail.com
2Ph.D Candidate in Jurisprudence and the Fundaments of the Islamic Law, Department of Jurisprudence and the Fundaments of the Islamic, Islamic Azad University, Ramhormoz Branch, Ramhormoz, Iran
Email:dretemadi88@gmail.com

Abstract

Human rights exists from a long time age as natural rights that all human beings enjoy from it because of their humanity and it exists among all different societies, civilizations and religions and it cannot be limited to a special civilization. Among them, the true Islam Religion as the last divine and most complete religion and as a complete guidance for humanity included certainly the major concepts of human rights in all individual and social dimensions and determined and drawn the most complete rights of humanity. The results show that regarding to the naturalness of human rights' rules; a strong relationship can be established among the most regulations of human rights such as Iran rules and Islam rules. Yet, there are some problems among them due to different view of Islam to human beings and type of their drawn rights. Islamic trial with a different style comparing to modern trials is based on one-step method that some of known rights for the accused in trial steps that is common in current trial system are not imaginable in Islamic Judicial System; like right of arraignment and right to counsel in primary step; but yet its legitimation in Islamic insight can be proved by referring to the resources of inference of religious law.

Keywords: Human Rights; the Accused Rights; Iran Law; Islamic Jurisprudence.
Introduction

From the start of history that human beings formed the society and went towards social life, this affair was considered by thoughtful men; they thought about the measures against breach of social rules and the perpetrators who committed them. The history for accessing to the answer of this question has been witness of many examinations, extortions and injustices and the history included this gradual evolution of human thought; upon a time torture of the accused were legal and judges decided based on it and presumption of innocent at the beginning of its way was not more than a petty against conviction. The most important thing was finding the accused who plead guilty and the trial in which the accused was its only witness and the accused was the only one who should proof his/ her innocence. But this man, thoughtful man, has never been silent against his advocacy of justice nature and he has been as a thirsty searcher following justice elixir and the turning point of this discussion was French Revolution; the revolution that forced men didn't justify the instrument for accessing to their purpose (although transcendental) and it was the time that presumption of innocent was exited out from its wrapper and opened a room for itself in human thoughts so that the speeches of revolutionist men and scientists such as Montesquieu, Rousseau, Beccaria and Bentham were showed off in rules; the torture not only was condemned, but also some guarantees were created so that the offender officers be punished if committed it. Justice is based on respecting to individuals' rights. As the Declaration of Human Rights: "recognizing the equal and inalienable inherent and legal characters of all the members of human society is freedom base of justice and peace in the world". When a person presents in a trial based on criminal accusation, he/ she is faced with the entire government system. How to behave with the accused shows the respect of that government to human rights. The importance and necessity of criminal procedure of rights opposition battleground is duties and powers of government and citizens, because the government following disrupting public discipline due to perpetration reacts against social agents of the mentioned event because of their first duty to create social security and welfare according to the rules of criminal procedure but the new concepts and teachings resulted from human rights education and respect of democracy governments warn them from resorting to any instrument, method or reaction containing spoiling and limitation of citizens' constitutional law and consider their measures as a standard for measuring the respect to public freedoms and rights. As Mario Pagano, jurist of 18th century, from Italy mentioned "when you step on an unknown country and will to have some information on its boundaries of civil liberties, you should refer to criminal procedures". Nearly in all documents enacted on human rights by international authorities, there is a unite content, these documents summarily are same in this point that men enjoy from some rights and liberties that should necessarily and in an effective way be supported and the governments, if infringement on these rights, bound to provide certain measures for realizing individuals' rights. Establishing public discipline in a developed society needs to some rules measured by true standards and be able to guard from society discipline. Observing citizenship rights is essential from judges, disciplinary authorities and other dependents with juridical cases so that we be hopeful to discover the reality, investigations and justly and
neutral trial and close the way for arbitrary and illegal investigations and help to avoidance from prorogation during the trial. In all juridical systems in the world, the accused has some rights as complainant because the aim of legislator is searing the root of crime to avoid from such occurrences. When a person committed to guilt that this guilt is a crime in the law of that country; so, that person committed to a crime. The accused rights is the set of points and facilities which is necessary in a justly trial from the start of accusation till issuing the writ in which he can defend himself/ herself against the claim that considered in contrast of presumption of innocence so that "defending from society's interests should not cause to ignore the accused' rights and regarding to this reason the regulations of criminal procedure should be regulated in a way that help innocents in proving their innocence beside observing society's rights" (Hashemi, 2014: 48).

Human Rights

Human rights is the most basic and primary rights that any person enjoys from it naturally and because of humanity. This simple definition causes to major social and political reflection for people and governments. According to the universal declaration of human rights and other international documents, these rights are holder of universality, inalienable, non-transferable, inseparability, nondiscrimination, equality, integration and interweaving. So they are belong to all individuals in the entire world and nobody is excluded from human rights because of his/ her geographical region that lives there. Whilst all people regardless of factors such as race, nationality, gender and etc. are equal in enjoying from these rights and in this respect nobody is premier than others. These rights included natural rights or legal rights that exist in international and national rules. Doctrines and activists of human rights has established universal and regional institutions and governmental policies in international activities in the field of international law and also established the foundation of public and private policies in this field in activities of nongovernmental organizations. In fact, it can be said that if an universal society in peace room discuss and speak with a common ethical language; this common ethical language is called Human Rights. However, the doctrines of Human rights expresses their theories with doubts and their discussion is further in the field of content, nature and the quality of justifying human rights. In fact, discussable question is indeed the meaning of right or rights that should be recognized and this discussion is continuing in discourses of philosophers (Aghaei, 1997: 64).

Many basic ideas which are movement driver of Human Rights has expanded and developed after World War II and Holocaust crimes and reached to their climax and been recognized by enacting universal declaration of Human Rights in Paris by United Nations General Assembly in 1948. In ancient world, the concept of human rights was not as today but in ancient societies was as a detailed set of duties, which were holder of the concepts such as justice, political legitimating; human efflorescence resulted from accessing to human dignity or being good. The modern and today meaning of human rights in the beginning of modern era and accompanying with European secularization have been developed and expanded from the concept or meaning of Judeo- Christian ethics. In fact, human rights derived from the concept
of natural rights. "Natural rights" is a theory in which legislator power is limited objectively and rationally. In this school, human logic inspires rule foundations from the nature and reaches to performance bond via the nature rule and in fact is accounted as a part of the natural rights of medieval tradition that finds largely a modern concept in enlightenment era by some philosophers such as John Ballack, Francis Hutchison, Jean Jacques Burlamaki and etc, and in political discourses, American Revolution and French Revolution attracts the attention of universal society to itself; so, accordingly, modern theory of Human Rights has been appeared during 2nd half of 20th century and in this era social activities and political discourses placed at the head of many world nations’ agenda. Based on the introduction of universal declaration of Human Rights: Since recognizing natural dignity and equal and inalienable rights of all the members of human family is the base of liberty, justice and peace in the world…

Introduction of Universal Declaration of Human Rights
In accordance with a universal declaration of human rights:
All human beings born with liberty and they are equal with each other in terms of dignity and rights. They enjoy from intellect and conscience endowment and they should have brotherhood spirithan together (universal declaration of human rights, 2014; 137).

The history of Human Rights Concept
Human Rights charter of the Great Cyrus which called Cyrus Charter is a ceramic cylinder built by command of Cyrus II, king of Achaemenian, 539 BC. Human Rights Charter of the Great Cyrus which is known as the first Human Rights Charter in the world had been imbedded in the bases of Babylon city and now is kept in Britain Museum. Creating United Nations has played a major role in the field of international Human Rights. "United Nations" has developed international philanthropy discourses by developing legal institutes and subsets (Hashemi, 2004; 87).
Universal Declaration of Human Rights enacted by General Assembly of United Nations in1948, partially in response to the crimes of World War II. Although Universal Declaration of Human Rights were non- binding resolutions and without sanctions, but now adhering to and accepting international common law has made it partially binding. Universal Declaration of Human Rights wants insistently from the member countries to try and emphasize for developing and expanding some human, civil, economic and social rights that these rights are a part of liberty, justice and peace foundation in the world. International declarations try to step legally in line with limiting government and establish a new system in which the citizens and government can have right and duty against each other. In accordance with Universal Declaration of Human Rights in 1948: "Recognizing natural dignity and equal and certain rights of all the members of human family is the base of liberty, justice and peace in the world… (Universal Declaration of Human Rights, 2014; 169)
Analyzing the concept of Rights
The meaning of Rights in the current research is total points and certain powers which are fabricated by legislator in order to establish judicial security and justice for warranting rights and liberties of the accused and their implementation, also, has been warranted by regulating provisions and orders.

Analyzing the concept of the Accused
The accused (Motaham- متهم) in Arabic word is in rhythm of Mohtaram (محترم) from the root of "Vahm" (وهيم). Tarihi said in definition of Vahm: "Vahm is oversight and what placed in the mind and imagination" (Majmaolbahrein (مجمع البحرين), 1395 AH: 185). Another definition of Vahm is: "conception and imagination of one thing in the mind; whether it exists in the outside world or not" (Lisân al-'arab, 1405 AH: 643). Literary definition of the accused is: "the accused (Mottaham) derived from Tahmeh (تهمه) word, meaning one who has been accused". The accused in Persian language has been meant as "one who has been known as bad and accused to" (Dehkhoda Dictionary, 1963: 383).

In Islamic procedure system and in common law, jurists interprets the accused as the accused against claimant; of course with a bit difference that in common law, the accused is only included criminal lawsuits and in civil lawsuits, the accused person (Mottaham) is called the accused (defendant); but the name of Modaelaih is common in Islamic law and included both civil and criminal lawsuits.

The Concept of the Accused Rights in Islamic Procedure System
The accused rights in Islamic Legislation System which is found based on human dignity principle, justice principle and judicial security is: total orders and legal principles by a holy legislator who prevent a corruption from whom has been attributed to an unlawful punishable action or left it and or attracts him the attention of an interest. Preventing a corruption is as evidence for free from torture for reaching to confessions and attracting some interests such as defense right or implementing presumption of innocence on the accused right. Before entering to major discussions, it is necessary to say that, regardless of divisions which, in modern rights, considered for exploring accusation, steps of crime detection, primary investigations and trial; the rights related to the accused in Islamic procedure system have been considered regarding to the unity system of judge and single step of investigation.

Arraignment
One of the most important warrantees of the accused rights that are viewer of his/ her defense rights from the beginning of trial is getting notified from the subject and the reasons of accusation. Arraignment means that the accused should be aware of the crime subject and or attributed crimes and all reasons and documentations to be able to defend him/ herself (criminal procedure code, 2015: 120).
The necessity of these rights for the accused is that he/she with arraignment got aware of the accusation against him/herself and this awareness gives an opportunity him/her to provide necessary defensive facilities for rejecting incoming accusations. About this right in Islamic Rights, jurists have not mentioned it explicitly; because what is known in Islamic procedure rule for single step of investigation is that claimant brings an action against the accused near the judge and the subjects and the reasons of accusation are announced and notified in the same investigation session near the accused; but the necessity of this right for the accused near to intellect is a fixed affair; because arraignment is a certain introduction for continuing trial and the accused will be able to defend him/herself only by complete awareness of what that being aware of it is his/her certain right.

**Right of Silence**

Right of Silence which is based on the freedom of speech principle and presumption of innocence is directly viewer of the accused right in face of judge questions. Silence in the word means "not speaking" and "being silence" (Tajolarous, 1414 AH: 69; Persian Dictionary, 1996: 1901). The idiomatic meaning of silence is the same as its word meaning and defined as "avoidance of speaking". Regarding to word and idiomatic meaning of silence, the mentioned term is defined as: no response to the judge's questions by the accused about the attributed accusation. In Islamic Rights, the base of the accused's right of silence can be found by consideration and examination of regulations related to trial; where jurists say following the discussion on the response of the accused as: "when the claimant brings an action against the accused, the accused can respond to considered accusation in frame of confession, or denial or silence" (روضه النهی، 1410 AH: 81). But it should pointed that the mentioned right is only a primary right for the accused and dose not enjoy from the feature of continuity which is ordinary in common law.

Jurists describe the reason of the accused's silence against claimant as following:

1- The silence of the accused is because of being deaf and dumb. In this respect it is mentioned that the judge should reach to answer by any possible way, whether by gesture or by other thing such as get help from two translators (لمعه الذهبي، 1409 AH: 342; النهایة، 1411 AH:81; بدع الثانی، 1409 AH: 225).

2- When the presence of the accused in trial and judge grandeur and lack of supporter and equal power between the accused and judge causes to mental instability and insecurity feeling of the accused and he/she by this imagination that expressing the fact takes him/her at risk, the nature of protection makes him/her silent; in this case the judge should provide the field for the accused's calmness and then want the response (مجمع الفائده والبرهان، 1409 AH: 169)

3- The silence of the accused is optionally and maliciously. There are some promises on how to face with this case from the judge:

1"promise: if the silence of the accused be maliciously, the judge should bound the accused to respond to the questions and if he/she abstains of responding, he/she should be
prisoned till responds to the action (المقنعه، 1410 AH: 212; الوسيلة، 1408 AH: 752; الشيعة، 1413 AH: 365). The tellers of the mentioned promise point to a Hadith by Mohammad Prophet: "an able person who acts carelessly in paying to his/ her religion can be imprisoned and behaved severely" (وسائل الشيعة، 1414 AH: 333) and Imam Ali life than to prison creditor.

2nd promise: Mohaqeq Helli quotes from some jurists in شرایع الإسلام and writes: "as refusal of the accused to respond to the questions, they force them to respond by hitting and like it for enjoining good and forbidding wrong" (شرایع الإسلام، 1409 AH: 875). Saheb Javaher writes following this term of Allameh that: "I have not known the holder of this theory till now" (جوهر الكلام، 1398 AH: 207).

3rd promise: Mokhtar Sheikh Toosi in Mabsoot (مبسوط) and Mohiyyeddin Nowi from Shafei jurists on this subject say that the judge should warn the accused to respond the questions for 3 times and if he/ she refuses to respond, the judge can judge to his/ her refusal and reject his/ her oath right to claimant (المباحث، 1351 AH: 160; المساير، 1411 AH: 163; المقام، 1413 AH: 162). This promise is based on that for the silence of the accused the judge cannot judge to his/ her criminality; but after judging to his/ her refusal the right of oath is given to the other part of action because of his/ her refusing to respond to the judge's questions.

The promise that can be supported is the recent promise. By this description that we cannot consider to the silence of the accused as a reason for his/ her criminality and as soon as silencing judge to prison or hitting in order to respond to the questions. But the silence of the accused can only account as counterparts beside other evidences and reasons for satisfying the judge's conscience; in other words, the final thing that the silence of the accused can express it is that if it be a reason for criminality of the accused and these reasons notified him/ her frankly and the accused refuses from responding and defending him/herself, in this case it can be said that this refusal can be a necessary condition for proving his/ her criminality of course beside other reasons.

Preventing from torture for reaching to confession
Torture as the simplest way for obtaining confession from the accused is a mechanism with severe and incorrect behavior that the sanctity and human dignity which makes the base of judicial security of a just trail unstable. Torture has different meanings in word that some of them is as follows: "punishment, pain, persecution and torment" and to torture is: "suffering and persecuting the accused with the torture instruments to obtain to confession from the accused" (الصحاح، 1407 AH: 178; Dictionary، 1963: 520; Persian Dictionary، 1996: 2066). Torture in viewpoint of Islamic scientists is special any type of pain and punishment. The holder of the book "الفرق الفی اللغه" says in difference between torture and punishment: "the difference between punishment and torture is that the punishment is penalty to someone's act and in fact is a penalty for the action of someone who should be punished; but the torture is not and it has relationship with public and private punishment" and he says
in another place that, the difference aspect among torture and behaviors based on persecution is continuing the pain and says: "ان العذاب هو الم المستمر" (Alfrouq Filloqat, 1412 AH, 364).
Shekh Toosi says also that the torture based on the pain resulted from it should continue for a while (Altebyan (التبیان), 1409 AH: 185); in this case, the general concept of torture is any type of pain and harassment continued with pain. Mose by interpreting the aforesaid and current definitions points that the torture, pain and mental persecution beside physical persecution are the ways torture occurs. (See the Conviction on Elimination of torture enacted in 1984-Mabsoot in law terminology, 1999: 230)

The Reasons for Torture Sanctity of the Accused to Obtain Confession
Beside incumbency preserving human respect of the accused which is representative of prohibition of the accused's torture. (Feqh Halsene (فقهالسنه), 1409 AH: 466); the juridical fixed reasons- verses and narrations-, imply clearly on the respect of torture and persecution of the accused that the ways of these implications have been separately considered on prohibition of torture.
1- Verses:
In Islamic teachings, men is a existence who is created in the best form by God and spirit of God is blown in (page 72) and God after creation have admired himself (Momenoun (المؤمنون): 14); and men because of this excellent and competence place regardless to any types of constraints such as faith, Islam and etc. are given respect and dignity (see Asra (اسراء): 70 and Baqare (بقره): 30) and his respect is even known as the most important divine respects (Alkafi (الکافی), 1988: 568). Regarding to human dignity and gentility, Islam Sharia has clearly banned human torture and persecution caused to abjection and ignominy of his dignity and also considered any behaviors against human dignity as an unlawful act (Feqh alsenah (فقه‏السنه), 1409 AH: 467); accordingly, the torture of the accused as soon as accusation not only is cruelty on the accused right (because his/ her torture is a punishment for the action that its reason has not been proven); but it also will not be accepted by the judge and it considered as an unlawful act because of damaging human dignity.

2- Narrations:
In addition to the mentioned verses, some narrations have been narrated in narrative books of Shia and Sunni books by Imams that blamed persecution and torturing others and introduced it as an unlawful act. Here we mentioned some samples:
A) Imam Sadeq narrates in Sahiheh Halabi from Mohammad Prophet that: "the most rebellious people are whom that kill someone who is not a murderer and hit someone who has not hit him/ her" (Alkafi, 1367 AH: 247; من لايجسره الفقهی, 1375 AH: 362)
B) Sokooni narrates from Imam Sadeq that Mohammad Prophet says: "the most hatred people near to God is whom naked someone unreasonably for hitting" (Tahzib alahkam (تهذیب‏الاحکام), 1365 AH: 148).
All these verses massage that persecution and torture of a person only because of accusation and without any cases for maiming, is a cruel and unlawful act ant the doer
should be punished. In attention to the mentioned narrations on torture prohibition, the eloquent words of Imam Ali in Sermon 167 of Nahjolbalaqe should be pointed, the words that express respecting to Muslims and atonement of persecution as a confirmation for previous narrations. Imam Ali says "و لا يحل أذى المسلم إلا بما يجب".

Regarding to the words of Imam Ali: "until there is not any permission for persecuting Muslims, his/ her persecution has not been allowed and if there is permission for that, its quality and quantity authorized by God (Islamic Constraints) should be considered"

3- Intellect:
Since that torture causes to harm and preventing from causing harm to others is an intellectual order; so, aggression to, hitting and persecuting people as soon as quoting accusation cause to their mental instability and cause to lack of social security, even for innocent an honest people; on this base any healthy intellect orders that any types of action that cause to destroy mental and physical calmness and also cause to distrust from people to judicial system is obscene unless in some cases that there is a permission (for example for punishing) for these types of aggressions.

The mentioned discussions make clear that in Islamic Sharia according to the mentioned reasons, any types of behaviors in frame of persecution and torture which are contrary to human dignity and gentility are forbidden.

Prohibition of the Accused Detention
Temporary detention order as a security order in which the accused kept in a detention center till proving the accusation is among the issues that are discordant with the principles of the accused rights; because in one hand the presumption of innocence offers that any type of restriction against the accused should be acted until detecting final disposition of accusation and in other hand the most major and sever security act in for deprivation of the accused's liberties.

Detention and arrest which have the same meaning in words "prohibition, prevention and interception" (Persian Dictionary, 1996: 454) and in idiomatic meaning is: "the order that based on it a judicial authority devests the accused's liberty by prisoning during all or a part of trial" (Criminal Procedure Code, 2005: 160). In Islamic Criminal Code, the principle of illegality of temporary detention order and preventive detention according to juridical fixed reasons is a clear and obvious affair; because in Islam, the order that causes to deprivation of individuals' liberties unreasonably, is not legislated and this claim is obtained by searching in jurists speech which will come in the following; of course, this principle, only on charge of murder means detention of the accused in the certain term, is excluded that apparently in quote of some narrations, Mohammad Prophet and in quote of some other narrations, Imam Ali, have acted in this way and the way of these grandee is documented by jurists- from Shia to Sunni- and authorized detention permission of the accused only in this case.

In the case of detention of the accused who committed to murder, some of Shia and Sunni jurists order on the permission of the accused's detention and some other group such as Mohaqeq Helli, Shahid Sani and Ibn Hazm don't agree with detention of the accused because
of not proving the reason of that murder. Now we consider to the expression and examination of agreed and disagreed promises on detention of the accused and its reason:

Sheikh Toosi says in Nahaye (نهایه): "one who is the accused of a murder should be detained for 6 days; if in this time the claimant represents a reason for proving the accusation or proves it in other ways, that reason has been considered and the judge acts based on it, otherwise the accused is released" (Nahaye (نهایه), 1345 AH: 744).

The reference of Sheikh in this case is a Hadith from Mohammad Prophet. This Hadith says that: "Mohammad Prophet detained the accused for 6 days in the charge of murder; so if the parents of slain can prove this accusation in the mentioned time the authority should act based on that reason and otherwise the accused one should be released" (Tahzibarahkam (تّهذیب ارکام), 1365 AH: 148). This Hadith has also quoted by Sheikh Koleini from Imam Sadeq (ددعائم الإسلام, 1403 AH: 370). Also, the holder of Doaem Aleslam (دعائم الإسلام, 1383 AH: 539).

The holder of different shi'ite and Mahjib albaraz is in line with Sheikh Toosi; but he says that the permission for detention of the accused to a murder should be ordered when the validity of accusation satisfies the conscience of the judge and in this case the accused's detention is permitted only for 6 days. He writes on the reason of this order: "to act to the narration requirements (Sakooni narration quoted from Imam Sadeq) and also it is necessary for securing and protecting men, in this reason the detention of the accused is legal in this term; but if the validity of this possibility is cleared for other person, detention of the accused by this person is not permitted; because requirements of the presumption of innocence require this order" (مختلف الشیعه، 1413 AH: 306; مهذب البارع، 1411 AH: 209).

Moqadas Ardebili confirms the theory of Allameh Helli on the permission of detention of the accused in charge of murder and write in this respect that: "accepting the theory of Allameh in different shi'ite is not unlikely in case of reaching to a powerful supposition by the judge and furthermore, it is possible to recognize necessary the detention of the accused until presenting the witnesses by the avenger of blood" (مجمع الفائده والبرهان, 1404 AH: 214). Khoei and Imam Khomeini by referring to Sacooni promise, permit to detention of the accused for 6 days (refer to the book: مبانی تکمیل منهاج, 1369 AH, تحریرالوسیله, 1390 AH: 480) that to summary this discussion prevent to express their words.

Beside the aforesaid theory, there are some of jurists who don't permit to detention of the accused even in charge of murder. Ibn Edris believes to no permission to detention of the accused and after quoting the narration that temporary detention tells referred on (the narration is mentioned before) says: "only because of accusation, we cannot detain a person and the reason that supports this narration does not exist; but this narration is contrary to the reasons [the reasons that for implementing punishment need to prove the crime]" (السرائر, 1411 AH: 343). Mohaqeq Helli accepts the same theory, too; they doubt in the validity of the permission of detention and consider weak the reference of tellers who are agree with temporary detention in charge of murder.
Shahid Sani says in this case: "the narration that tellers have referred on is weak and detention of the accused is acceleration in the punishment that its reason has not been proved; so, being agree with no permission of detention of the accused is better" (روضه النبهان, 1410 AH: 76).

In the Hadith books of Sunnis, a narration is quoted from Mohammad Prophet that the permission of detention of the accused in all accusations (charges) is absolutely perceived in it. According to Sunan an-Nasa'i on the case of detention of the accused: "Mohammad Prophet detained some people for accusation and then released them" (Sunan an-Nasa'i, 1348 AH: 67).

The same Hadith in Sunan Abu Dawud Sunan at-Tirmidh referring to Bahr Ibn Hakim quoted from his father and his father quoted from his forefather (Sunan Abu Dawud, 1410 AH: 171; Sunan at-Tirmidh, 1403 AH: 435).

Ibn Hazm from Ziru Jurists writes in following of this Hadith: "detention of the accused is a subject that there is any legal aspect for its permission; but detention of the accused that killing him/ her (because of lack of crime proving) is not permitted, not only is not the act of prophet; but also is a void act that cruel people use it for" (Al-Mahali, 1405 AH: 170).

**Observance of equality among parties to the dispute**

One of essential part and necessary conditions for just trial is principle of impartiality of judges in course of trial. Observance of equality among parties to the dispute means that the judge is obliged to investigate the accusation completely impartially and away from any partiality of parties to a dispute and in the path of crime detecting does not distinguish among reasons and witnesses on interest or loss of parties to the dispute. Observance of this principle can cause in wide level to attract public trust than the performance of the judge and in lower level cause to provide judicial security for recovering rights of dispute parties in course of trial. In Islamic law the jurists consider to this principle as "وجوب التسوية بين الخصومين" in following habituates and formalities which are necessary to judge in course of trial and accordingly bound the judge to observe in his behavior with the parties to the dispute the apparent impartiality during trial and prevent from doubtful behaviors and the act that cased to make better the status of one party or make weak the position of other party. On this base, not only should not distinguish the judge among the parties to the dispute, but also he should observe the equality in all types of respect such as greeting, looking and speaking and any other types of respect.

Jafari Jurists have some difference of opinion in this case that whether observance of equality among parties to the dispute is incumbency to the judge or not; but it is one of prominent habituates during the course of trial.

The prominent Jafari jurists say in this respect (القضاء و الشهادات: 111, مستندات الشيعه: 1415 AH: 112) that: "observance of equality among parties to the dispute is an obligation to the judge and should observe equality in speaking, greeting and its rejecting, looking and hearing the statements of parties and in other behaviors and he should not prefer one to other" (شرائع الإسلام: 870, أمره النمشقيه: 1409 AH: 7; لمعه دمشقية, 1411 AH: 7).
The Public Trial

The public trial means that the public people can freely participate in trial sessions and see close up the quality of that course, and ensure from precise implementing, impartiality of judge and existing real judicial just there (criminal procedure code, 2005: 226). In expressing the necessity of this affair it can be said that a public trial is one of prominent warrantees for preserving judicial security; because the public trial placed the performance and decision of the judge exposed to public thoughts and he finds the public as observer of trial course and this reason causes the judge to try for impartiality and rights of parties and for a just trial. In Islamic Sharia there is not a frankly discussion on the duty for holding the public trial; but by attention to judicial life of Imams we can see that there are many trials hold in presence of people means that Mohammad Prophet and Imam Ali judge in a part of mosque called Dakat Alqaza (دنکه القضا) and exposed to people (Alsaraer, 1411 AH: 157; Javahe Alkalam (جواهرالکلام), 1398: 80).

Right to Counsel

One of the warrants necessary to preserve defense rights of the accused is the presence of a defending attorney to defend him/her. When a person accused to a criminal action, it is possible that he/she as the accused one losses his/her individual rights for lack of familiarity with and sufficient information of his/her rights and how to enjoy them and also it is possible that he/she says some words because of lack of awareness of rules that cause to losses and finally provide him/herself for conviction. Regarding to such conditions for preventing from infringement of the accused's rights and providing judicial security, a just trial, the necessity to Individual Cooperation with legal knowledge can play a constructive role.

In Islamic Sharia attorney in lawsuits as legal institute that founded by wise people in the first human societies has been accepted by holy legislator like other signed contracts; because in Islamic Sharia this method not only has not been prohibited but also has been confirmed because of fundamental texts. Islamic jurists- including Shia or Sunni- permit to attorney in all affairs except in the cases that the aim of legislator has directly belonged them and the fully responsible stewardship is conditional in doing it (such as acquisition of purity) (Almabsoot, 1406 AH: 360; Javaher Alkalam, 1398 AH: 377; Kashaf Alqena (کشاف القناع), 1418 AH: 583). In this base that the use from their speech who consider the attorney correct in delegatable affairs, the legality of attorney can be obtained in discussable subject; because right to counsel in order to defend the accused and representing legal witnesses are among the affairs that representation is correct in it.

Sheikh Toosi in Almabsoot considers the attorney allowable and claims the consensus of Islamic nation on it and proves the abomination of its atonement relying on life and tradition of Imams. He has mentioned the attorney in detail regarding to all juridical aspects and after excluding of some cases like attorney in purity, prayer, fast, i'tekaf (secretion), usurpation and other aspects makes allowable other affairs and writes about the permission of attorney:

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"counseling is correct in dispute and any action that can be done delegatably is delegatable" (Mabsoot, 1406 AH: 380).

Imam Khomeini after accepting the permission of attorney in disputes writes for each of claimant and defendant: "the duty of claimant attorney is that bring a suit against defendant and for proving that lawsuit adjusts introducing just witnesses; wants from the denier to oath and requires order to other party of dispute and does summarily any necessary thing for proving the claim and the duty of defendant's attorney is to reject the claim; reproaches the witnesses; challenges the witnesses and summarily he/ she should try in preventing the lawsuit" (Tahrir Alvsileh (تحرير الوسیله), 1390 AH: 45).

Beside the theory of jurists based on legality of attorney, there are some reasons that show the accused's enjoying from this right stronger, these reasons are as follows:

1- **Intelect**
   
The most important reason may is the 4th source of jurisprudence means intellect; since the introduction of just judging and complete and fault-free defending from the accused be depended on employing a certified attorney who is aware of rules, the aforesaid issues find an intellectual aspect; so, the intellect orders that by complicating legal issues-specially in criminal affairs which are in relation to honor, prestige and individuals life-the accused can enjoy from an attorney in defending him/ herself against rejecting the accusation- which need to awareness of legal rules and issues.

2- **Wises Life**
   
Another reason for this affair is wises life; because the wises in the world pass the affairs, which stewardship on them for some reasons such as lack of sufficient capability and the action that need to necessary awareness and information, to proficient and certified individuals delegatably. This method of wises can be representative of the accused's enjoyment from this right who is not familiar with rules and or is not able to speak and analyze the issue.

3- **The Principle of Judicial Justice**
   
Of course the aforesaid principle cannot considered independently; but by resorting to this principle beside other reasons, legality of this right and necessity of participating an attorney to defend from the accused is appeared specially in the crimes that have public aspect and are without private claimant; because when a person accused to a crime, the governor power on behalf of total society try to find out and prove the crime by judicial facilities and enjoyment from proficient individuals; but in other words, there is someone who is not familiar with judicial issues. Here the principle of judicial justice need to presence of a proficient and certified person, who is familiar with rules, on behalf of the accused to void the accusations to the accused by correct and certain reasons relying on his/ her legal information and knowledge.
Right of Protestation for the Absent Accused

Protestation derived from protest which in words means "protest and bring to account" (Amid Dictionary, 1995: 1085) and the protest has been meant "complain and objection" (Persian Dictionary, 1995: 301).

Protestation is called to a demand that is considered by absent losing party than in absentia order in issuing order trial; or in other words, protestation is a demand special to in absentia orders and the orders issued in presence of the accused and or his/ her attorney are not protestable (derived from article No. 217 and Article 305 of criminal Procedure Code).

Protestation is one of basic mechanisms for warranting defending rights of the accused; because by this right the accused who was absent in the first step of judgment can again demand a trial and it is perhaps possible that in the second trial the accused provides some dependences and presents some witnesses to break in absentia order and cause to acquittal and decrement in the rate of punishment. In Islamic law, in addition to the in absentia order issued by holy legislator than the accused one who is not present in trial session for the reasons such as being in travel, being sick or being prisoner, verses he for observing and preserving defense rights of the accused has canonized the protest to the order after return and awareness from issuing the order to make him/ her able to protest and able to prove his/ her innocence by necessary reasons and documents that the order and its principles (refer to book: Almabsoot, 1406 AH: 163; روضه البهية, 1410 AH: 104). In stating the reason of ascertaining, this right come to absent accused: "لعدم تمامیه بعد حجه باقیه" (تکمله عروه الوثقی, 1378 AH: 47); means that in this respect the right of protest is fixed for absent accused so that in first step of judgment, the certain order is issued without the presence of defendant and without hearing his/ her statements and the judgment against defendant is incomplete for lack of conditions. The reason for this claim beside the aforesaid narration is quotation of Sheikh Toosi from Imam Mohammad Baqer and Imam Jafar Sadeq in book called Tahzibby Jamil Ibn Deraj (Tahzib, 1398 AH: 296).

This Hadith says: "when some just witnesses are introduced against the absent person, the order will be issued against or in favor of him/ her… . But the accused has right to represent reason after presence in trial". This Hadith shows that protestation right for the absent accused after presenting in trial and awareness of order is fixed.

Another reason that can be counted beside the reason for ascertaining of such right is judicial justice. Judicial justice require the presence of the accused or his/ her attorney in trial session to defend against attributed accusations and void them; so it is necessary that the right of protestation to the order be fixed for absent accused to preserve the defense right of the accused which is one of necessities of a justly trial.

The Accused Rights

The accused rights is the set of points and facilities which is necessary in a justly trial from the start of accusation till issuing the writ (order) in which he can defend himself/ herself against the claim that considered in contrast of presumption of innocence so that "defending from society's interests should not cause to ignore the accused's rights and regarding to this
reason the regulations of criminal procedure should be regulated in a way that help innocents in proving their innocence beside observing society's rights.

The Accused's Rights in International and Regional Documents
Universal Declaration of Human Rights has pointed to some cases such as prevention of discrimination (Article 2), equality against the rule (Article 7), prevention of torture and right of enjoying from independent and impartial trial and enjoying from justly and public trial (Article 10) which are the rights of all human beings and also the accused people.
But in Article 14, International Covenant on Civil and Political Rights (1966) that Iran joined it by approval of legislative power on 07/05/1975, the rights of the Accused are discussed specifically, frankly and with further universality.
According to the mentioned article, the accused's rights are as follows:
1- The right of enjoyment from justly and public lawsuit in independent and impartial trial;
2- The right of enjoyment from presumption of innocence;
3- As soon as possible be aware from the type and reasons of the attributed accusations in a language that he/ she understand;
4- Having sufficient time and facility to provide necessary defenses and contacting with his/ her attorney;
5- The judgment is done on it without justified delay
6- Be present in the trial and defend from him/herself, he/ she has the right to counsel and if needed a public defender is given him/ her;
7- Be able to ask some questions from the witness or witnesses who witness against him/ her, and has the right to present his/ her witnesses and are questioned and researched;
8- The right to have a free translator;
9- Be not forced to confess against him/ herself;
10- The individuals who are not mature in terms of rule should enjoy from an appropriate trial (Amir Arjmand, 2007: 69)

The Accused's Rights in Iran Law
Constitutional law of Iran in the principles 32, 35, 37, 38 and 39 points to major cases on the accused's rights which as mentioned principles, respectively, are as follow:
1- Prevention of arbitrary arresting, written arraignment as soon as detention and sending the primary file near to a judicial authority within 24 hours;
2- The right of enjoyment from the attorney's comradeship in trial procedure;
3- Enjoyment from the presumption of innocence;
4- Prevention of torture for obtaining confession and lack of value and validity of such confession;
5- Human behaving and prevention of desecration of the detained or arrested accused.
In addition to the aforesaid cases in constitutional law, the Procedure Law of public and revolutionary courts in criminal cases (1999) recognized the following rights for the accused as follows:
1- Being able to revise the detention order of the accused (Article 33), to protest it and the reinforcement of security by the research authority (paragraph 2, Article 3 of public and revolutionary courts with next reforms);
2- The right of silence and refusal of responding (Article 129 and 197);
3- Prevention of detaining the accused and searching houses and places at night unless in terms of necessity and immediacy (Articles 100 and 121);
4- The right to counsel with an attorney during the searches step (Article 128);
5- The right to challenge the witnesses (Article 168), the right to face with witnesses and the right to ask them some questions during trial course (Article 199 and 196), the duty of trial based on announcing to the accused whether is there any question from witness? (Article 198);
6- Enjoyment from public trial in trial course unless in excluded cases (Article 188);
7- The right of publicizing the accused's innocence in mass media (Article 198);
8- In accordance with paragraph 5 of law, respecting to the legal liberties and protecting the civil rights approved in April 2004, an individual can aware his/ her family from being in detention center as soon as possible (Ashouri, 2004: 125)

Conclusion
According to the conclusion and result of the aforesaid issues, it can be said that:
Regarding to the aforesaid discussions, it is concluded that the most important principles and rules are related to the accused's rights which is a common and standard issue among Islam and common Law. Islam Rights is as an independent criminal system and relies on the resources such as Qoran, Sunnah, consensus and intellect, including orders and commands that warrant the base of the accused's rights strongly and firmly and create the foundation of an efficient judicial system along with warranting the security and judicial justice to protect life and honor of the accused and secure his/ her material and spiritual rights of the accused.
Islamic trial with a different style than modern trials, is based on one- step system so that some of know rights for the accused in trial courses are not imaginable as the common Law in current trial system; such as the right of arraignment and the right to counsel in primary step; but yet their legality can be proved in Islamic insight referring to the sources of orders' deduction. In some proved rights for the accused, the relation of absolute generality and peculiarity is governed between Islam Law and Common Law. For example, in the case of revision, the jurists accept it in special cases because of accuracy and discretion of holy legislator in determining the judge (the most important of conditions are Justice and Ijtihad); because in this case there is no room for doubting in the writ (order) to be revised and this right is placed in Common Law for the accused to make him/ her able to notice of appeal of the order of the judge in an appointed opportunity.
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