The application of the presumption of innocence in the new Islamic Penal Code

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Abstract

One of the legitimate rights and freedoms of human beings in human society is very important that the other parties and the government must be respect for it. Justice and respect for the rights of individuals in different societies is human desire. Social justice, the design and implementation of the legal system in such a way that everyone reaches their rights and the rights, duties or responsibilities and consequences do Abuse admit it. Condition for the success of a society, it is justice. We discuss in this article special attention to the rights of persons and the presumption of innocence in criminal trials Iran and the way they interact with judges and the judiciary executive officers in law enforcement and judicial authorities. In the event that the accused person to be summoned as defendants to the judicial authorities should as criminals because charges are merely accusations and the conviction to prove he should be reason enough in all stages of investigation must respect the rights. One of the basic principles of the presumption of innocence is the rights of individuals in the community who various legal and judicial issues important role in the rights of the individuals. This means that in normal individuals are innocent of any charges, and if the claim proved guilty they should charge.

Keywords: crime, punishment, law, acquitted.
Introduction

The presumption of innocence in fact an important cultural and moral values of human society and even necessary obviously the cultural and moral values ranging from judicial social reality when the scene. Police Office emerges as a real value accepted by society and the intellectual and practical commitment to its people. With the goodwill of other social behavior and avoidance of distrust with the taping of one of the important elements of mental health in society and to ensure the safety and security this is the real. Cultural and subjective dimensions of the presumption of innocence criminal, in fact, guarantee of security and freedom in human societies, because if people constantly "To the charge and put paranoia and psychological safety and security of people deprived and vice versa tribute to the independence and security of the individual and community growth and prosperity of the cultural and intellectual.

Criminal presumption of innocence, in fact, a modern military solutions Law on the prevention of conflict and mental health and justice leads. Bond and adhere to the presumption of innocence claims baseless and unfounded criminal of many projects that wasting time and valuable human capital At the end there will be economic block and of the presumption of innocence that only a sense of security and safety of individuals in the exercise of the rights and duties of behaviors increased, but it's important to further the goals of society makes the realization of justice and the provision of areas for growth and development and crime in the history of human evolution step Brdard.ba there is an obvious need, and therefore governments have sought to maintain Individual and social security and prevent aggression on the Rights of Persons Rules and regulations. For example measures in order to maintain social stability and spiritual psychological security and presumption of innocence of any criminal predict community This represents a major challenge for all countries and preventing the violation of individual liberties and social societies, public opinion and the world. Many of the legal system, given the importance of respect for the presumption of innocence to the rules and general principles and binding rights and put it in their constitutions stipulate specific credit given to it and it is considered part of jus cogens and his inalienable rights of the public in order to achieve social justice and And.by immediately followed in order to achieve the criminal law, fair hearing process. Necessary to ensure the rights of the accused special defenses on the one hand and on the other hand the principles underlying the plaintiff's rights of defense must be provided to. The most important considered fair justice system and that the pillars of the presumption of innocence is in the field of acceptance legislation and the proving stage (judicial) there and anchors law obliged to observe this principle. The circle, including the presumption of innocence and somewhat limited in criminal Matters is facing the threat of and concern about crime new, and unprincipled that the permissible and impermissible behavior and human action on the pretext such as the order defined open society. Entry the new criminal categories to jeopardize the validity of this principle.

Statement of the problem

As I mentioned earlier, the value of the principle of the presumption of innocence to the extent that most countries in the world have constitutions that suggested that the principle of people's basic rights and cannot be simply the rights of ignore it .At the presumption of innocence in criminal law in many laws and regulations, including the constitution (Article 37) discussed the following topics in more detail and more of this principle and its place in the
Iranian legal system discussed. The originality innocence will be discussed in Islamic jurisprudence is different from what is stated in the law that exemptions from the Islamic perspective means that if we doubt the forbidden or permitted, the so called because the founder of leaving caution suspected for example, when we will be permissible to doubt whether the sentence had tobacco use is lawful or unlawful religious terms, we say the presumption of innocence and have not committed the unlawful act of smoking, so it is permissible for us to be no eagle to commit it. Authority's acquittal is a collection of verses of the Qur'an, the Sonnat, the consensus of jurists and the reason is that principles are discussed in more detail in the books. In contrast, discussed the issue of innocence in the law, certainly not on duty but also means that we have accepted the principle of culpability of the defendant's initial encounter with the accused but innocent person know him. And, except for the conclusive argument on the alleged culpability have exonerated him we. It seems that although the concept of the presumption of innocence in jurisprudence and law is different and that each authority should be sought at its source, but can be spread the judgment of acquittal to the legal presumption of innocence, and to both identify conceptually. That is the general concept of presumption of innocence, the legal concept of jurisprudence can be used catcher. According to the presumption of innocence means that we have mentioned above, and the results will be different works. As the legal presumption of innocence is the opposite of the principle of culpability. So in case we doubt that the defendant guilty verdict in favor of the accused will be issued Moreover, the existence of this principle in the law has consequences that will be described in detail: According to the rule of "Albiyeh Ali Almoddae va Alyamin Ali Men Adee Alayhe" against the "burden of proof on the plaintiff and the defendant claims that the evidence of his innocence will not have to prove the opposite principle and if not able to prove his claim, ruling in favor of the defendant will be issued. The result is that the accused is not required to prove his innocence but it is sufficient doubt as to the reasons for the suspicion voiced in the spirit of justice that prevented the delivery to be assured. If the presumption of innocence in favor of the accused could be no doubt claim that the responsibility is accused to prove his innocence in all cases to provide the evidence necessary.

Research purposes

The overall goal:

Reviewing and explaining the effects of the presumption of innocence and the provisions of the penal system and its application in Iran and Jurisprudence

Detailed objectives:
- Definition of Notions of crime and punishment and impunity and the principle of presumption of innocence ... and recognition of the same legal topics.
- Check the conditions and characteristics and application of this principle in the IPC 2013.
- The presentation necessary and appropriate legal strategies and solutions to eliminate or reduce the problems and challenges of legal thought on the subject in order to improve the judicial system of Iran.
Research Methodology

The method used for this research is descriptive-analytic. The tools will be used for this purpose, including use of the resources available in libraries and databases and judicial decisions, so it resources and taking notes, outlines, and content analysis to identify the relevant issues and possible ways meet them, will be discussed. This study basically using the latest Book have papers and legal documents as well as electronic resources will be valid. Data is analyzed using analytical methods.

Problems of research

Poverty libraries in providing new and updated resources
Non-authored books and articles in the field

1. Historical presumption of innocence

Historical studies indicate that the presumption of innocence or presumption of innocence of the accused, except in certain legal systems such as Islam was not accepted at least some of the charges. So that in the event that the plaintiff presented sufficient evidence against the accused, the defendant is required to prove his innocence. In the charter of Hammurabi, in ancient Persia and many other places, rejection or judgment divine principle to appeal to led. In European countries, particularly in the Middle Ages to the French revolution of 1789, the presumption of innocence is not much attention judges; recourse to judicial duel or war, acts of torture to obtain confessions and other evidence of rejection of the presumption of innocence are, in many cases. In modern times, the presumption of innocence United States North America in 1789, first in the Bill of Rights and Declaration of Human Rights in France in 1789 with the words: "Every person is innocent unless he is proven guilty," the emphasis was and from there to European countries and other countries extended and was reflected in the statute.

2. Definition of presumption of innocence

With respect to the presumption of innocence is one of the practical principles and practical principles to be used when doubt exists in reality result in the emergence whenever we doubt whether it really exists or not. To resolve razzle-dazzle to outward acts, i.e. specific topics of the Suspicious, Not applicable in other words: the presumption of innocence "lack of action is disruptive status quo ante" For example, we know that theft is a crime and robbery are located and someone is summoned to court as a defendant, but he is not proving grounds for attributing the crime to accuse the other hand, strongly denied that he issued the case, so the ruling of innocence. (Moein, 366, 2011).

This definition of Article VII of the Constitution of the Islamic Republic of Iran and well understood that if this principle says that "the presumption of innocence, and no one is to be not guilty," unless he is proven guilty by a competent court (1) - the outward act is the fact that regardless of seemingly given judgment in criminal cases, when someone is suspected of committing a crime, and after the prosecution and trial primacy of the rule of presumption of innocence is a patron of he is the judge at the start of the trial of the accused as a criminal,
does not look at him as innocent and believes in criminal matters is the principle of the presumption of innocence. (ibid. 365).

3. Works and results discussed in-law presumption of innocence

As the legal presumption of innocence is the opposite of the principle of culpability. So in case we doubt that the defendant guilty verdict in favor of the accused will be issued. Moreover, the existence of this principle in the law has consequences that will be described in detail. (Worlds, 44, 2014).

According to the rule, "Albyh Ali Almdy and Yamine A. I Ady against the" burden of proof on the plaintiff and the defendant claims that the evidence of his innocence will not have to prove the opposite principle and if not able to prove their claims ruling in favor of the accused will be issued. The result is that the accused is not required to prove his innocence but it is sufficient doubt as to the reasons for the suspicion voiced in the spirit of justice that prevented the delivery to be assured. If the presumption of innocence in favor of the accused could be no doubt claim that the responsibility is accused to prove his innocence in all cases to provide the evidence necessary. Because the burden of proof is on the plaintiff and the defendant must prove it can remain silent forth, however, say silence is consent, but this silence cannot be an argument against the accused, but also evidence of, among other reasons, Emirates is. There's no reason, silence cannot be alone because of the conviction. Iran although the law explicitly refers to the right to silence is not charged thirty-eighth principle of the constitution, which provides that: "Any kind of torture to extort confession or acquiring information are forbidden) Alavi, 32.2013) such investigations concluded that the accused has the right to remain silent and not respond to questions from investigators. It should be noted that the right to silence defendant in national legislation in France is predicted to Article 114 of the French Code of Criminal Procedure says that the investigator is obliged to interrogate the accused to be reminded that silence she can be absolutely. In judicial proceedings if the claimant fails to prove his claims allege sufficient grounds for a charge of suspicion of the judge, if the judge to their doubts and condemn the accused in this case had accepted the principle of culpability on the principle of culpability whereas culpability of the defendant is contrary to the principles of law that the presumption of innocence has accepted the above-mentioned materials. But if the doubt to the accused interpret. In this case, the presumption of innocence have accepted so another interpretation of the results of the presumption of innocence in favor of the accused is suspected. (Ibid. 33).

4. Introduction and objectives of the presumption of innocence

The presumption of innocence as the most important legal sanctions in the provision and deployment of human and financial security and physical and mental important role. If instead of the presumption of innocence, the principle of guilt prevailed and instead claimed the defendant to prove innocence, reason, and consequently they required was, in which case many people (unreasonable) claim lives and property of others and the fabric of human social life were torn apart in the process of criminal prosecution of Myshd.az far as public prosecutor (parties) in against the accused, the special authority and could easily force and other safeguards and use the other side fights (accused) in such a position. Thus, the presumption of innocence criminal as a guarantee to protect the principle of equality of arms and create balance and harmony been established between the parties. This rule is rooted in Islamic law, suggest that the acquittal of a guilty person than to punish an innocent person (in
cases of doubt) because in case of doubt, the presumption of innocence of the accused to a better society and is qualified to justice. (Alavi, 2014, 17).

5. Temporary 5.bazdasht and the presumption of innocence

The preliminary investigation the accused happens sometimes several months and sometimes legal issues are involved for several years. The question that arises is whether the accused should be in prison all this time or not? In a criminal prosecutor and other court come by private plaintiffs, all together and use all means try to prove their alleged culpability. No doubt the detention of the accused not only his freedom but also harms the rights of the defense. On the other hand, while the plaintiffs seek to collect evidence freely by any means holds fast to be charged is not capable of those who can contribute had he not, will appeal. Temporary detention, although in some cases to benefit the community (as was the case with the defendant's stake * of his eyes and sees a way out for him is not possible the commission of similar crimes would not hesitate) and in some cases to win like where the accused is guilty of the offense may be the victim or his family or he is going to commit suicide. The temporary detention he had, he would be in the interest of society but also useful, but is incompatible with the presumption of innocence. In addition, temporary detention in the fate of the trial will be highly effective. Defendants in court are freely chance they were acquitted (one of the advisors of the Supreme Court justices France in Paris in Congress acknowledged that "the Supreme Court when the man, who has not been in preventive detention, trial, sentencing her on the doubt ... "research in this field has been done in the United states proves that the accused are not arrested are certain judges over the commutation of the sentence or to grant a suspension and even the acquittal enjoy. (Publication Faculty of law and political Science, Number 12, 4)) and vice versa temporary detention sentence at least to the time of his arrest he accused often leads to the problem where the accused after spending weeks and months and sometimes years in prison, finally, to a fine or corporal punishment less than they were detained, convicted or acquitted in general is. (Tehran criminal court judges accused of a murder that was eight years in prison innocent and knew the ruling. (Quoted by Keihan newspaper, dated 22/6/1351)

6. Rights of France

Temporary detention of the accused is incompatible with the presumption of innocence and an act of violence against the freedom of individuals is often in the world today is trying to make the temporary detention where possible to reduce individual freedoms is the result of the presumption of innocence should be provided. French legislator in the field of lead generation is kidnapped and has long had a special attention to this issue. Rules adopted by the country confirm our words. For example: the new French law, which was passed on July 17, 1970 From the beginning, the magistrate shall issue a temporary detention waves and in this place, the lack of other appointments succession arguably should be expressed in rest of the world is the there is no such compulsion. On the other hand accused the French law for that freedom be respected in an appropriate manner of succession arrangements (arrangements that alternative arrangements are used to replace the temporary detention of the accused and the accused pursuant to prisoners will be released.) In 12 has increased and the judicial review is known. The magistrate issued an arrest in this country can place such as a driver's license, passport and ID card to obtain the accused or she is prohibited from driving cars, or the defendant if the crime caused by drug addiction or other mental diseases institutions the
government sent for treatment. On the other hand, the legislator 17 Zhoeeyehh 1970 French Government's responsibility precautionary detention unjustified, resulting in the issuance of acquittal or prosecution may be, is accepted. (Code of Criminal Procedure Volume 2, edited by M. Ashori., P. 146). In French law the accused the right to be considered not only a lawyer but also a duty exists in this case for investigation to confirm these requirements prior to the start of any right to counsel to the investigation. France Q.A.D.K paragraph 3 of Article 114 provides: The examining magistrate must notify the accused of the right to counsel and the accused even paragraph 1 shall inform him that he could be silent Regulation and absolutely not a statement. So you can see right to counsel and the right to silence measures to ensure his defense is suspect and represent her innocence before the law.

7. Rights of British

French law is somewhat similar to the above-mentioned provisions in the regulations governing the rights of defendants in preliminary inquiry in Britain and the US, which is normally a charge system in those countries at all stages in the country not only police but also the beginning of the arrest the investigating judge shall he declares that the right to be silent and to refuse the presence of a lawyer from paying any statement about the charges against criminal proceedings English law on the presumption of innocence reads: there is an assumption that the accused is innocent in criminal trials pursuing the task participants without any reasonable doubt provide evidence that convinced the jury of the accused not guilty. Of course, the presumption of innocence in criminal cases, but only in English law the burden of proof in civil proceedings is based on the balance of probabilities. (Badamchi, 43, 2014).

Conclusion

From what was said, we conclude that the presumption of innocence as one of the fundamental principles of constitutional law and the rules of criminal procedure in the advanced countries, they are accepted. The presumption of legal means with what is discussed in Islamic jurisprudence, although in some respects, the similarities are different. The presumption of innocence, the legal issues raised in the opposite principle which means that the original conviction, the accused is presumed innocent unless proven guilty and the accused is contrary to the principle of proving it to be the plaintiff. But legal issues and principles of presumption of innocence means is acquitted of duty. The authority's legal presumption of innocence principle of jurisprudence are similar to. The effects of these two principles are different and that's broad in its scope of authority of our law presumption of innocence in the constitution and the Penal Code and law has been proposed. The judge is entitled to exercise this principle is not absolute, but under the circumstances it is right to judge. Legal presumption can be searched in national laws and international law that the rights of defendants are sometimes in the direction of internationalization. In conclusion, it must be said, however, a series of discussions presumption of innocence (presumption of innocence) is discussed in the Iranian Law, but also to determine the position of the principle of comparative discussion we hope that the pen on the right foot is stepped up. It is essential that the legislator expression seems we should have paid more attention to the rights of the accused to the presumption of innocence should be respected because Justice Kosar Ali (as) said: "If thousands of criminals to escape justice better than innocent person be punished. The
presumption of innocence as ((M principle))) other rights and principles Is criminal that the principle of legality in criminal law, meaning no crime and punishment. This principle has long existed in Islamic Law and Jurisprudence and the explicit verses of the Holy Quran. Hadiths and other permissible reasons and theoretical principles such as the principle, The principle of And other necessities and social requirements, such as maintaining order and rules and regulations in society and the need to maintain a balance of power between the administration and observing the principle of individual rights is a permanent exception Is inevitable.
The presumption of innocence and its acceptance in most of the legal system and predicted the inevitable domestic and international laws and regulations that achieve excellence and spiritual dignity of the human person and validating human values depend on the application of principle Why is the essential aim of any society and realize the old dream of justice and true in a certain sense it is important to realize that there is no choice principles and general rules of human values in all societies and all times there. There presumption of innocence as one of these sustaining the principles of human dignity and safety of all members of society works of any aggression against the rights recognized. Of course as mentioned, the presumption of absolute and unconditional but in some cases and in certain societies the maxim of guilt aside and assume people in this category of crimes prior to the presumption of innocence unless proven otherwise here's presumption of innocence Vassar is open.
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