Interpretation of contrary to the law In Iranian law

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Abstract

Since the beginning of the Islamic revolution, the mind and practice of legislature system just as required was to lay down laws and prevent implantation of laws and regulations that oppose with sharia views. Toward this in mentioned laws and regulations such as conditions, situations and instances of courts verdicts reconsideration, many reformations took place. One of this apply conditions was a new method for verdicts complaint which in amended article number 18 of public and revolutionary courts establishment and once again in article number 477 of new criminal procedure is also authorized so that applicant can take action toward undoing the verdict through the head of judiciary if it’s against sharia law. Considering the set up way, phrases and article content that this new method dedicated for verdict reconsideration, it appears that legislature has provided a situation for high officials of judiciary system in order to supervise majority of votes and decisions of judicial authorities to not only prevent issuing and implanting verdicts in oppose with sharia in the entire judicial authorities (either legal or criminal) but also any order and recognition against sharia would be prosecuted.

Keywords: sharia, Law, legislation, Iranian law.
Introduction

At first it is necessary to lay down the manner complained of vote history review; to study the history of it detailed understanding of the ways that can affect super complaint. The legislator initially formed in 2007 pursuant to Article 18 of the General and Revolutionary Courts held that outcome of the vote is uncertain and may be appealed or. The procedural rules in civil and criminal matters 1999/09/18 adopted by the General and Revolutionary courts 2000/04/09 Parliament's Legal and Judicial Commission.

The second part of this article provides that: "... In the final vote, but through a retrial and third protest in a way that is prescribed in the rules for reconsideration Unless the vote is against the law, or sharia, in which case the request of the sentenced person (whether in civil or criminal matters) and the relevant prosecutor (in criminal matters) may be revised. In Clause 2 of this article is also against the law had been interpreted as: “The meaning of this is contrary to the clear wording of that vote against both Islamic law, or in cases where silence is against the law. Addressing contrary to the law or the law of the branches of the Supreme Court under the branch of the diagnosis was made. The legislator sought to remedy the matter came up in 2007/01/14 And the way forward and held protests in the form of a judicial review That votes of the public and revolutionary courts, the military and the Supreme Court except through a retrial and third protest in a way that is prescribed in legislation is not a review. Unless the decision of the Head of the Judiciary vote is against the law in which case it is recognizable as one of the ways retrial and the case shall be referred to the competent authority for investigation. Precision in comparison with the provisions of this Article and Article 18 of the retrial of former lawmaker has called this way of protest but contrary to the provisions of diagnostic reference retrial Head of the Judiciary and put it in the executive regulations of this law, how to apply this legislation was provided.in notes Clause Unlike the former, unlike the religious meaning of the judgment inconsistent with known facts of law and in cases of disagreement between jurists criterion or practice the supreme leader was appointed jurists. Should be noted that although in this clause contrary to the Sharia law has been interpreted to the contrary Givens but a lack of care prescribed in the Implementing Regulations that the purpose of Article 18 of the retrial amendment to the votes that is contrary to the law and jurisprudence Givens. While the text of the law contrary interpretation was contrary to both Islamic that this is not how the materials with the principles of proportionality legislation and that in practice it would be difficult for law enforcement.

The first section- contrary to Sharia

According to the fourth article of the constitution in the legal system of all laws, whether civil, criminal, financial, economic, administrative, cultural, etc. must be based on Islamic criteria this applies absolutely and generally to all rules and other regulations is dominant.
constitution inconsistent diagnostic reference or the compatibility of legislation with Islamic principles and the institution of the guardian council that after commenting guardian council and the assembly should establish laws against them in accordance with the principles of Islam.

In other words, according to the Guardian Council, which established the compatibility of legislation with the provisions of Islamic law holds so that even without the Guardian Council itself has no legal validity House, It can be said all the laws that the current constitution is their steps setter is legitimate and indeed it is lawful regulations. Of course the differences are Sharia and Law and many things have been said in the holy law that is obsolete in practice it is not mentioned in the law. Therefore, as stated above in the current system, according to Article 4, 93, 94 and 96 of the constitution, every law that is passed in its present system of legitimate and legal constitution. If done in a way that is against the laws can be interpreted as contrary to Sharia. Article 18 of the General and Revolutionary Courts Act and Article 477 of the new Code of Criminal Procedure the vote is contrary to Sharia and a violation complaint has not been seen, But in Article 18 of the Law of Public and Revolutionary Courts (against the law) and in Article 477 of the new Code of Criminal Procedure law between contrary to Sharia, it is considered a violation and review these terms will be explained in the next section.

The Second part- Contrary to "between" Sharia- Contrary to Sharia "between"

To explain contravenes the "between" Sharia and Contrary to Sharia "between" it is necessary that the law and Sharia law and Islamic law to be expressed in. In Islamic law instead of the term "laws and regulations" so-called "judgments" is used to the rules and laws and regulations should be given power and authority between individuals in society. In accordance with the provisions of this law and the jurisdiction of a division that people were observing them, the two are not foreigners.

1. The provisions of the people in their discretion can discard them and run them themselves. These regulations and provisions of Islamic Law (= right) and common law (supplementary rules) called such rules on cucumbers that each party may waive all its rights relating to the mandate.

2. Arbitrary rules that people cannot ignore them and do not run. This category of rules in Islamic law (= sentence) and common law (= the law is) was called. For example, laws relating to public areas such as constitutional law, administrative and criminal proceedings principle of mandatory rules are part of an important and the will of the people against whom the order is not the effect. According to the above mentioned any legal action or decision and the judicial proceedings if it is contrary to the provisions of law no effect and is null and void and it should be seen as contrary to international Sharia. It should be noted that the former provisions contrary to the purpose of the contrast between the text of the law was considered according to the previous description should be interpreted contrary to the clear wording of mandatory because
according to legal principles agreed. Unlike complementary legislation was valid and subsequently charged primarily against the Sharia claims about them does not matter. In discussing the issue of article 18 of the Law of Public and revolutionary courts compared with article 477 of the new criminal procedure law consideration comment. This is a former legislator, unlike "between" the subject of the sentence was concluded that only a clear violation of the ruling of the opposition will be explained, clearly not enough, but also a clear rejection of the opposition, should the law is violated and ignored so that it upheld the objection procedure. The new law Contrary to Sharia Criminal Procedure Code "between" is the topic sentence and between the Sharia and the obvious reason is sentencing and it is understood that if the letter of the law and of objections to be made clear, action and decision is made is violated. In cases where there may be said of the law, other legal reasoning against it is not permissible (such as Fundamentalists diligence against text is not permitted) and the appearance of the term in accordance with the provisions of any law if you violate any (including common and complementary) and any way Conditional on its stated and clarity is signified and what it means to be verifiable and violation. What decision or judgment or interim order is in the form of in fact the new law expressly commands all the votes and appointments and even temporary court has ruled on the issue. The conclusion that can be made from the above discussion this is The former law (Article 18) "opposition" has been the topic sentence while the new law to oppose Sharia law and violates the decision is not taken but Sharia law is clear and indeed of axioms and if, despite the explicit wording of the law, opposition or wrong was done is nullified or address through this way. It was clear, however, that unlike "between" religion that is against the rules and norms (including the rules of substantive and procedural rules), Contrary to Sharia "between" means contrary to the explicit wording of the law.

The third part- Silence law

In former Article 18 of the Law of the so-called "Muslim jurisprudence" is used and when to use it was also determined. And was ordained in Note 1 of this article: "What is meant is that a vote against the contrast between the text of the law or in cases against Muslim jurisprudence law is silent." In this note correctly in line with Article 168 of the constitution and Article 3 of the Civil Procedure Code that require judges to impose sentences based on the text of the law was hostility season here also is the law took precedence. So given that it is impossible to predict all the events in the legal relations of human beings and the infinity of the actions and events and limited number of legal texts, in many cases causes that there is no clear wording on the issue of disputed that judges could issue a warrant issued by it and undertake hostilities season; In the silence of the law used to refer to the spirit of the law and legal principles in the law was intended and now according to the Islamic ruling system, referral sources and authentic advisory opinion decreed know that according to the provisions and Article 167 of the constitution should be as brief silence and lack of or conflicting provisions or refer to sources and authentic advisory
opinion and Muslim jurisprudence sources and authentic advisory opinion to be achieved\(^1\). It is useful explanation. The legislative references to the sources and authentic advisory opinion itself does not rule brief silence or conflict but references to this resource is to deduce Muslim jurisprudence rulings. (Though it was and is self-conflict, but not to express here).

**The fourth part- Muslim jurisprudence**

Muslim jurisprudence in terms of logical propositions that a certain person committed it clear that it considers the argument that the revocation will apply writing his vote, Logicians export and axioms and postulates a situation called Muslim together; Confiscations and assets subject there are cases that the teacher at the beginning of training and teaching and learning based on the principles given the right to reject or accept, but it is reserved for experts. the following rules can be regarded in law as axioms. For example:

1. Any consent, is contract.

2. Contract offer and acceptance and bill researcher not involved in the realization of the contract.

3. The introduction of obligatory is obligatory.\(^2\)

According to the examples listed after "Muslim" should be understood that the principles or principles of jurisprudence and practice is acceptable. For example Base contracts subsidiaries of intent or the woman in a state of disobedience is not entitled to alimony there is no doubt among the jurists have considered\(^3\), these things from the facts, and also about the "credibly."\(^4\)

According to the description and examples that lawyers said they only has been a "Muslim jurisprudence" of what is judged" as well as Muslim jurisprudence jurists have considered it. It seems that the phrase "legal principles are not inconsistent with Sharia." In the last part of Article 3 of the Civil Procedure Code should be interpreted as Muslim jurisprudence another in other words, Muslim jurisprudence and legal principles are valid.

Given that the concept of «Disagreement between embarked» and «a dispute began between» and «Muslim jurisprudence» And took advantage of the "Muslim jurisprudence" was a clear violation of the Sharia on criminal procedure laws in the sense described above.

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\(^1\) In a modern reads We shed assets, and branching Aleykom. To express our principles And restore the minutiae of your- Quotes the doctor Jafar Langroudi- Fan reasoning (logic Islamic law) Page 6 - Ganj Danesh Press _First published in 2013.


The Fifth part - concept contrary to the Sharia on criminal procedure laws

Article one of the Civil Procedure Code is decreed: Code of Civil Procedure, "a set of principles and rules" which as non-litigious proceedings and all civil and commercial matters in the courts, revolution, appeals, Supreme Court other authorities are by law obliged to observe it is used. Code of Criminal Procedure in its substance a set of "rules and regulations" is known for crime detection, and prosecution of the accused. "Handling and judgment is passed. In Article 2 of the law has been emphasizing that criminal proceedings should be based on law. Article 3 of the Civil Procedure Code also primarily responsible for reviewing judges had agreed laws. According to these provisions, the judge in judgment is bound and obliged to observe the law and only a brief silence and absence of conflict of laws refer to sources and authentic advisory opinion. Thus, if a vote is a judge on the basis of legal provisions and the legal system of Iran in this respect is not contrary to Sharia because resources and advisory opinion of scholars as additional source of reliable texts are silent or vague and inconsistent but it does not conflict with legal texts. For legal texts are usually derived from sharia, or at least not against them in other words, the current rules the country according to previous discussions and there is usually Guardian Council also approved texts or stated authorities and branches of the Velayat Faghih and audit been indirect or consequential holiness and damage to the credibility of the legal texts is contrary to the good of society. The procedural rules and principles in nature formalities are divided into two categories; according to the complaint of the vote means that the sanction of absolute nullity and infringement of non-compliance with the principles and norms of due process decision is made is issued. High Court judge in one of the provisions of the fundamental law itself and asserts quoted as saying: "The first duty of a judge is to observe the principles of justice in the case. Otherwise it is possible that any proceedings in accordance with your taste and settle the claims. And disadvantages of doing so is obviously the legislator sought to avoid it and did not want the helm of affairs and arbitrary judicial magistrate will happen. And it is true that all the preparations for the season has been enmity and rights but considering the interests of typical and atypical called the tendency not to respect the conscience ago for certain ways has rights and obliged to follow the proceedings and did not prescribe deviating from it. “according to the decision, as well as the signifier and the signified criterion of paragraph 3 of Article 371 of Civil Procedure Act and Section B of Article 464 of the new Criminal Procedure Code can be abuse implementation of the principles and rules of procedure to be contrary to Sharia because the principles trials is the first duty of the magistrate in judgment. . This directive also states that on 2008/06/16 1 issued by the Head of the Judiciary is stipulated and non-compliance with mandatory rules considered by the court was contrary to international law. in Article 4 of the directive reads: "If a retrial is due to non-compliance with mandatory sentence of supplication to the jurisdiction of the court and as a result of the withdrawal of the judge to leave the territory of the judiciary (which is bound to comply with standards) contrary to the law and subject to Article

1 Circular No. 3137/87/1- Dated 2008/06/16-Head of the Judiciary
18 of the amendment is detected; Retrial will be in court to legally have the authority to address the issue.” According to meaning of this directive, non-compliance with mandatory rules and rules of court, leaving the judge in most cases is known to leave the territory and with the rationale and principles that the judge is bound to observe and implement the law. Non-compliance with regulations and norms was considered contrary to international law. It can even be said that the opposition in accordance with Article 473 of the Criminal Procedure Code "between the" do not but in Criminal Matters with the subject matter and consequently against the letter of the law, even if the rules are not mandatory, it is a violation, because the first duty of a judge in including civil and criminal proceedings is compliance and enforcement of laws. In order to distinguish between principles and rules of procedure of formalities can be criterion provisions of articles 18 and 19 of the new law and dispute settlement councils have decreed that appeal to Search article 18 investigative Judge council in terms of principles and rules subject to the provisions of the Civil Procedure rules is impeding.

Note 1: The principles and rules governing the proceedings contains provisions on jurisdiction, law, participate in the proceedings; address the reasons and the like.

Article 19 also states that the Council address not subject to the formalities of civil procedure and in Note 1 of the formalities decreed that "The procedures governing the circumstances in this matter as a petition, how to convey the designated time to address the hearing and the like”.

Conclusion:

1-contrary to international law should be contrary to the principles and norms (whether substantive or procedural rules), said.

2-Two-Called contrast "between" legal and contrary to Sharia "between" together semantically different in terms of contrast between the religious and the center of gravity means it relied on the apparent mistake or violation is but contrary to Sharia "between" primary reliance on self-evident that the law is contrary to the decision taken. The result:

Contrary to «Between» sharia= Stark contrast with the principles of peremptory norms

Contrary to sharia «Between»= Opposition to the law revealed

3-in-law New Criminal Procedure any decision is made and the interim orders of the courts in case of violation is considered contrary to Sharia which seems by enacting this regulation seeks to provide a mechanism for monitoring public officials are on the Supreme Judicial court decisions and judicial authorities. To not only prevent the issuance and execution of any vote against the letter of the law but any decision as such if it is against the law violated.
4. According to the legitimacy of all the rules (including procedural and substantive) Can be used as a decision of the law to be considered legal and legitimate it's this is the result of contrary to Sharia fact, the same is against the law.

5-laws still prevail on the sources and authentic advisory opinion. And only in cases of silence and brief Paradox, referring to sources and authentic fatwa license is obtained; the concept of the reference in Article 3 of the Civil Procedure Code can be deduced.

6-in-law of criminal procedure contrary to Sharia "between" have been authorized in accordance with the clear wording of any action and decision will be against the law and law violations but given that the degree of compliance with the requirements of the rules for people to follow and it has strength and weakness. In other words, both the form and substance to the Rules and Guidance (Supplementary) divided It should continue to be a violation of the provisions of the applicable law and Peremptory norms is illegal and the law.

7-contact inductive about the use of the term “Muslim jurisprudence” The opinions of lawyers can be legal authentic principles as Muslim jurisprudence or violation of law, and at the time of silence or lack of legal texts used or briefly.
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