Explaining the rights of the accused

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Abstract

Awareness of the issue and the alleged reasons is considered a one of the most important Guarantees of Defensive Rights of Defendant at all stages of criminal proceedings. Code of Criminal Procedure By stipulating this right of the accused has also appointed assignments, for law enforcement and judicial officials that by using of certain forms of notification like as Explaining charge, Notification of the declaration and advertising in the press is intended to answer it. In this study, using descriptive survey, the concept of accused, explaining charge, law, division of Hohfeld from the right has been discoursed, at the beginning and then The position of defense rights of the accused in the Hohfeld division, and eventually Three conditions of explaining charge with the general principles of rights have been investigated. Finally, we conclude that the defense rights of the accused and the result of accusations and look of legislator and Defense rights of the accused is very different than what existed in the previous law in criminal law in 1392. So in this law has been specified that has been fairly well respected the Defense rights of the accused.

Keywords: charge, explain the charge, rights, accused, Hohfeld.

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Accused

Motaham (Accused) is on the weight of Mohtaram in Arabic and is from the material of "Vahm". Tarihy says about the definition of "vahm": "Vahmis defined as the mistakes and what actually occurs in the mind and imagination."

Other definition from the matter of "Vahm" is: "The imagination something in mind, whether or not would have existed out there in the universe." It has been also said literally of accused "Motaham being derived from the word (Tohmeh) who has been accused."

Accused has been meant in Persian language "known as badness and has been considered the case of slander."

The accused is interpreted as "Modayee Alayh" in Islamic justice system and common of Jurists; Of course, with the difference that in common law, The accused has been subject to criminal claims only and in civil claims against an accused is been the lawsuit with the title of "kandeh"; But the title of Modayee Alayh has been common in Islamic law and is include of both civil and criminal claims. Definition and diagnosis of Modayee Alayh achieve meanwhile defining that jurists have presented from the claimant. Famous jurists have suggested three criteria In recognition of the claimant from defendant:

Based on the above definition of the claimant, the defendant is the one who is against these concepts; that's mean, a person who agrees with the principle and appearance and if they leave the bicker, Quarrel will not end.

According to some contemporary Jurists, holy legislator hasn't a special term in the form of the legal canonical or legal truth for these two terms. According to this view, the definitions with close terms has been expressed by Predecessor Jurists for the claimant and the defendant, All of them are related to the recognition of the cases of the claimant from the defendant and will have to turned to the common for the recognizing the claimant from the defendant.

Explain charge

Explain charge, explain the committed crime and its legal consequences to the defendant: So that he has been fully informed from Judicial and Legal status of his obligations and is prepared to defend himself in different stages of Trial. Some knows explain charge as start of preliminary investigation and has defined it this way: "Notified the accused of the charges means by the court bailiff before Start investigation due to inform and take action to defend his legal rights; In other words, the intended purpose of explain charge is that every defendant be informed from the nature of his criminal charge before the Start Research to be able to provide adequate defenses."

Under Article 32 of the Constitution "In fact, one of the rights of the accused is explain charge that guarantee the fairness of the trial process". Historically, in Article 1 of Title 16 of the1670 France Penal Decree (Louis XVI) has been emphasized to the need of investigation within 24 hours from the time of arrest: "As soon arrest and Maximum within 24 hours should be investigated … "In the second paragraph of Article 6 of the European Convention on Human Rights states: "Whoever is suspected, Right in the shortest possible time and in a language that is familiar in detail of the nature of the charges that he has come to know."

Dr. Assury is given such a definition from explaining charge: "The Official Announcement of the criminal act or action to the accused by the investigating judge to the language and the manner in which is understandable due to the specific situation of each accused to him."...
Charges means slander and in the criminal law is attributing the crime to the person; this same short phrase turn on that is necessary three conditions to charge an individual:
1. An action is Attributed to the individual should be crime; it means to be one of the behaviors that has been considered punishment for it in the criminal law.
2. Proofs must be exited based on the commission of an offense by the person until can accused him.
3. The related person should be has potential and liability to commit an offense or In other words Criminal responsibility.

rights
In the present study, the meaning of rights is include of Total Points and specified powers That has been falsified in order to establish Judicial security and justice in order to guarantee the rights and liberties of the accused from And their implementation has been guaranteed by regulations and laws.

Rights of the accused have been found based on the principle of human dignity, the principle of justice and judicial security in the Islamic legislative system, are as follows: Total provisions and legal principles from the Divine Laws that Excretes the evil from someone who has been attributed unlawful act Worthy Punishment to him or realize Advised act to him. Repel evil like impermissibility of torture to obtain confessions, attracting interest such as the right to defend or presumption of innocence to the right of the accused. In this division, right in the first sense has a worth concept of value and is often used Equivalent to be good or true; But right in the second sense is benefit of individual from some points and are often placed in front of the task.

Recent sense of the right has been the product of modern era and has grown in the context of the freedom movement. A defensive right of defendant is meant to benefit defendant from some privileges and legal and judicial guarantees in the proceedings. In philosophy of law and criminal law, when is talked about the defensive rights of the accused, isn't mean as worth load of it, But we intend to examine the benefit of accused from the rights and provided guarantees to him during the preliminary investigation and the proceedings. Thus, the rights of the defense fall under the concept having rights, not under the concept of being right.

Hohfeld division of the right
Hohfeld, US lawyer, has viewed within the meaning of the right in the second concept Scrupulously. From his perspective, the words of right can have four different meanings:
1. Demand (claim)
2. Freedom
3. power (Authority)
4. Impunity.

the right within the sense of claim, that's mean, the owner of the right has claim against the other, and other obliged to implement such right like as the right of the creditor than the debtor, the right within the sense of freedom is that legal system is granted Points And the benefit of that Pointshasn't necessarily seeking obligation of the third person like the right to choose a job or participate in the elections; the right within the sense of power means the ability to do something, like the right of claimant for making quarrel; the right within the
sense of impunity is to support the owner of the right against the other such as the right of workers to join labor unions.

Hohfeld Division is not theoretical issue merely, but depending on which the right is placing in any of the above cases. Differentiated and distinctive impacts will be have with respect to the owner of right and others. For example, the Requisite of the right in the sense of claims is the task of the other side. In other words, «من عليه الحق» has a task of Implementation of commitment towards the «من له الحق». The requisite of the right in the sense of freedom, the right to prohibit others not entitled to use the anticipated benefits for her in the legal system. Right in the sense of power has the Requisite such as the Impressionable of others from the exercise of the right and consequently it has seeking the responsibility of others. The Requisite of the right in the sense of impunity is based on interpellation from the owner of the rights in the sense of due to the use of his right.

The defense Legal status of the accused in the Hohfeld division

The right of defense rights depending on that under which means place will be unique impacts for the accused, the legal system and the government. For example, if the we place defensive rights of defendant under the sense of freedom, the defendant could use these rights, and the government cannot prevent him, if the we place these rights under the sense of impunity, its Requisite will be to using these rights and inability of the government or other people for interpellation of accused due to its use of them. Inclusion of the right in the sense of power over the defensive right has been possible the use of these rights for the accused and has affected opposite sides of accused and puts them in a reactive mode, for example, police cannot arrest him.

Some believe: "Hohfeld division is formal and does not express anything about the content of rights and cannot comment about the defensive rights statue absolutely; but depending on the adopted ethical principles by every legal systems and required guarantees for the protection of a right, we can say that legal system has intended what sense about any right. Defense rights place as sub header of human rights and Human rights documents including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights require governments to respect the rights explicitly; Somehow can know address of these documents about right-oriented people and task-oriented governments. The great thing about the duty of government is to determine the scope of the Direction of the obligation to the result and obligation to the means. Is the government merely has responsible that effort as possible as available Facilities for the realization of the defensive rights Or regardless of their ability has to predict necessary Guarantees to protect the defensive rights? The rights of human rights can be divided into negative and positive rights. The realization of the negative rights doesn't require positive action from governments, but governments should refrain from any intervention to limit them. The realizations of positive rights require government intervention.

Negative rights enshrined in the International Covenant have Civil and Political Rights, according to Article 2 of the same Convention that attends about the realization of the content of these rights to the obligation and it knows the governments obliged to support them. But, about the positive rights and Article 2 of the International Covenant on Economic, Social and Cultural Rights points out to the phrase "... to the maximum of its available resources ..." That
can inferred obligation to task from it. Because, the purpose of the Convention is that governments effort in the implementation of the content of the Convention As much as possible available facilities. Since the rights of the defense are two aspects so that are considered from one aspect :negative and from other aspects :positive. It can be said that the government's obligation to create the Appropriate ground for the Doing the proceedings such as, establishment of judicial proceedings The adoption of appropriate legislation and the training of qualified manpower is the type of obligation to the instrument ; But the government's obligation to non-interference in order to limit the rights of the defense is the obligation of result, and the government cannot step in this direction by intervene.

**Relationship of explain charge with the general and Legal principles**

Explain charge with general principles that govern criminal law has three relationships:

1. Explain charge and the principle of legality: Explaining charge issue has particular importance in its turn and in relation to the right of defense of accused that must be done prior to the beginning of the interrogation of the accused and him authentication. In German law under paragraph 1 of Article 126 of the Criminal Procedure Act in addition to the explain charge, Articles must be announced to the accused. Accuse means to ascribe Crime to the person. So charging is only possible that the legislator has clearly defined them and has considered the punishment for them. So it looks when accuse people is necessary the exact expression of criminal title, even mentioned provisions that act has been criminalize whereby them, so that the accused is well aware of the Incoming charge or charges.

2. Explain Charge and the presumption of innocence: the innocence means being cleansed from error, defamation and acquitted get rid of debt, freedom, liberation, resentment, avoidance and cleanness lexically. In criminal law, it is axiomatic that all individuals are innocent unless proved otherwise. Convention on Human Rights deals with the presumption of innocence by devoting paragraph 2 of Article 6. This principle of the Constitution in Article 37 Is emphasized: "Everyone charged is presumed innocent unless his guilt is proved through legal means." Therefore, charges the individual, is against the presumption of innocence, which must be done cautiously. Accused persons is justified only time that legal evidence and evidence is to be beyond the conjecture stage action and certainly can be attributed to the person and cannot Accused persons with conjecture.

One of the most important impacts of the presumption of innocence is interpret doubt in favor of the defendant. In Roman law, judges are obliged to rule on the presumption of innocence of the accused that they had doubts about his crime. Therefore, no doubt the presumption of innocence contains both the need to secure the rights of defendants and freedom of them before the trial.

3. Explain charge and criminal responsibility: individual who attributes crime to him, should be available and known. Attributing the crime to a person who had died will not cause to open the criminal case. The defendant must also have a clear identity, because of attributing, is needs specific identity that the crime is attributed to who.

The important point is that in cases where the person has no capability of criminal responsibility is not correct to accuse him, like accuse insane people after proving their madness is not look right. The law article 51. D. A. and AH former Article 140. D. A. and the new law article 6 of. A. D. expresses this issue clearly.
In other words, explain charge is primarily necessary to inform people of their legal status as a defendant and preparedness for defense and prevention of violation of their rights, this issue occurs in normal justice And children also because are not informed their specific situation in the case of explain charges against and never able to defend judicial authorities, there is no intention of punishing them.

**Conclusion:**
The process of this study was obtained the following cases:
1. Philologist means "accused "to eerie, inadvertently, imagination to the mind and placing person Subject to badness; these things provide the basis to offer the definition to Lawyers, but from the perspective of jurists ,there are three criteria to recognize the accused (defendant).

2. Different stages of the criminal proceedings are based on the accused knowledge that has attributed to him that this is his inalienable rights. If criminal law in Iran, France and the Convention on Human Rights it is stipulated.

3. The being right and having right is a division of right; The being right has a worthy concept, but having right is the enjoyment of the person of owner right from some privileges that is Often placed against the task and is the product of modern Era and human liberation movements. A defendant's defensive right is meant to benefit accused from some privileges, protections and legal guarantees and judicial proceedings and is consistent with the second meaning of the right.

4. Hohfeld division of the right (demand, freedom, power and immunity) is not just a theoretical issue, But depending on it place in which of these the mentioned types have different operations equipment and consequently it will be has distinct impacts to the owner of rights and other.

5. we conclude by analyzing different materials Code of Criminal Procedure that The legislator Came to support the accused with regard to the presumption of innocence and the Protection of defensive right of the accused at all stages of the proceedings, particularly before trial and in the investigation stage and has analyzed it closely.

6. The principle of legality, presumption of innocence and the criminal responsibility are the three pillars of the justice - oriented Islamic laws system that has been considered from criminal law govern under charge.

7. The hopes is that with the knowledge and application of principles of this research, judicial circles is been closer to their legal justice.
References

3. IbnManzur, Mohamadebne Mokaram, 1405 H. Gh, the Arabian language, Qom, publisher AdabHozeh.