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Nature of Jur's Decision-Making in Iran

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Abstract: An institution called "jury" has a long history but because of its newness in Iranian law and lack of clarification for its jurisprudential bases, it has not found its real place. Selection of the jury by people, judge's attention to its opinion, lack of judicial expertise and non-interference of its members are some of the conditions that must be met today with respect to the developments which have occurred to the nature of this institution. Adherence to these conditions in the Iranian law, can only be realized when we consider a place for the jury in the Islamic jurisprudence. Thus, this study explains the nature of the jury with regard to its origin as well as providing a criticism of national laws. It offers criteria to adapt this institution to Sharia and provides strategies to strengthen law making.

Key words: Trial, judgment, judge's autonomy, jury, Iran

INTRODUCTION

The emergence and establishment of an institution called "the jury" in its modern form is rooted in the law of England. It is commonly held that the jury started to participate in making decisions about criminal matters in 1215. This was a decision made by "the forth Lutheran council" indicating that the Roman Catholic Church should stop its support of judgment by ordeal. However, there is not any doubt that the jury existed before that year, too.

Judicial organizations existed in old Greece and Rome and even among Barbarian tribes which were to some extent similar to today's jury Ali (1953). What is obtained from ancient Greek history regarding this topic shows that they sometimes during their history used the jury on a regular basis. We can see that sometimes they used a method that is precisely similar to the one used in today's juries. A list was discovered in Athens which contained the names of 6000 individuals who were invited to form the jury when required. This list was renovated every year. It is said that in Socrate's case 501 jurors decided that he is guilty of attracting the youth to corruption and pessimism and condemned him to drink the well-known hemlock (Mahindokht, 1963).

Historians state that the jury in its current form is almost a transformed version of the same juries that existed in ancient Greece which were called "Helyat". Helyats were groups of individuals who gathered in public squares and in open spaces and made decisions under the supervision of a group of judges. In their judgments, they mostly considered tangible realities rather than the strict spiritless rules. These juries consisted of people with different professions such as masons, shoemakers, apothecaries, badgers, stonecutters, etc. The number of members in a jury was not specified until 1988. In that year, it was determined to be 12 individuals and unanimity of the votes given by the jury members was considered as an essential point.

In 1670, in the Bushel's case, it was established that the jury has the right to issue verdicts according to its conscience. It was also established that a member of the jury must not have previous or personal information about the topic of the case under investigation. In 1972, the English parliament enacted a law that necessitated the presence of the jury in the proceedings in important crimes of the media including defamation or desecration.

For the first time, the jury as an institution entered Iranian legal system through principle 79 of the amendments to the constitution. In this principle, it was stated that in political issues and in cases related to the press, the jury will be present in the court. On June 1, 1931, the law of the jury was enacted by the parliament and on January 30 1953, the topic was taken care of in detail in the press bill and the provisions contained therein practically replaced the law of 1931. About 175 individuals were appointed as the jury members and for each trial; seven jurors were randomly selected so that the probability of the same individual's being present in different cases would be minimized.

In the law of the press act of July 16, 1955, the lawmaker stressed upon the formation of the jury and stated that the jury must consist of scholars, scientists,

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authors, lawyers, notaries, teachers, landowners, farmers, workers, union members and minor craftsmen. In the governments before the Islamic revolution in Iran, this principle had been ignored. After the revolution, this rule was again paid attention to and it was asserted in principle 168 of the Islamic Republic of Iran's constitution that hearing the political and legal cases must take place in public and in the presence of the jury in the court. The law determines how to select the jury members, conditions, the authorities of the jury and the definition of political crime based on Islamic teachings. On August 16, 1979, the Revolution Council enacted the law of the press in Articles 30-39 of which the method of selecting the jury members, the conditions and the authorities of the members are stated. Article 31 of the same law stated that the jury members must be selected from among the clergymen, university professors, doctors, authors, journalists, lawyers, notaries, educators and teachers, union members, craftsmen, workers and farmers. In a bill amending the press law in the year 2000, artists and Basijies (the mobilizers) were added to the list.

In the same amendment, Articles 36-44 refer to the way the jury members are selected and the conditions that must hold for the juror's participation and decision-making are explained. Article 34 also emphasizes on the proceeding's being public and the presence of the jury as well as necessitating the inherent jurisdiction of the court.

The jury as an institution was not quite active from the time the related law was enacted until the early 1991. Its regular and considerable activity can be traced from the year 1995 until now. How to conduct the sessions of proceedings related to the press crimes was usually determined in the first session of every round in set of regulations and put on an agenda. In this period, the jury was apparently formed but it more looked like a subjective ruling board. The jurors who had to be impartial and fair individuals of the society were actually the ones liked and preferred by the government. Nevertheless, after all those problems and political struggles, the law of the jury was enacted on March 14, 2004 and published in an official newspaper numbered 17223 on April 21, 2004. The operational regulations of the jury were enacted by the respectable council of ministers on July 14, 2004 and published in an official newspaper numbered 17309 on August 2, 2004.

FIRST DISCOURSE: THE STRUCTURE OF THE CURRENT IRANIAN JURY

We know that the western legal system particularly that of England and the United States accepts the decision of the jury in cases of criminal trials. In that system, a special importance is placed on society and the criminal phenomenon. Thus, judges pay attention to the juror's opinions on the guilt or innocence of the accused person and the jurors are selected from different professions in the society. It might be said that such a system accepts the jury as its heart because hearing charges and having a system based on judicial procedure is essential for it. It also seeks to prevent from subjective decisions by the judge. Besides, lack of required laws and non-determination of the results of the proceedings by law is one of the main reasons for tendency to the societal norms and presence of the jury in the legal system. It can undoubtedly be stated that, the English legal system is a forerunner and a model in making use of the jury in the legal system.

This extent of attention to the jury cannot be seen in the Romano-Germanic legal systems since they believe that a system based on the rule of law and tendency towards hearing complex charges would somehow reduce the potential doubt about the judge's despotism and subjectivity. Despite that, the advocates of these legal systems have made considerable changes in their procedural rules. The obvious trace of the jury can be seen at least in criminal trials and even in military tribunals as well. The Iranian legal system which almost started its lawful life in the constitutional era followed the Romano-German legal system and in principle 79 of the amendments to the constitution explicitly accepted the presence of the jury in political trials and the cases related to the press. This was adopted from the Belgian constitution. Up to now, in accordance with changes of law, such assertions and amendments have sometimes been exercised and have been ignored in some cases. These challenges continued until the Islamic revolution. Until 1992, the jury was not practically formed. After the year 1991 when the reformists won the elections and the protests by the intellectuals started, some questions were raised: "Was the jury present in branch 1410 of the public court in Tehran which is the special tribunal for political and press trials? Why in the first 4 year period of the reformist's government many newspapers became licensed but their licenses were soon abolished? Were the juries real representatives of the people or selected according to personal tastes and appointments in those years?" The sixth parliament made efforts to reform the laws of the press and the jury. The Guardian Council has considered the jury as heresy at some points and stated that principle 168 of the constitution indicates a mismatch between the constitution and the Sharia (Islamic jurisprudence). It refers to the times in previous years when the jury appeared to be affiliated with a particular faction: the opinion of the judge in branch 1410

of the public court was given when five members of the jury who for any reason were in the same faction were dismissed and the jury became practically affiliated with one faction.

In a period of time when there is political and cultural development, we sometimes see that the society is unruly. In such situations, the judiciary must be a haven that judges about different cases far from all those conflicts. Impartiality of the judicial system guarantees public balance and improves peace and quiet in the society. Therefore, the judicial system must be the end of conflicts and not the beginning of them. If the parliament, the press, the seminary and the universities are the places where political activities can be done, the judiciary and the court of the press must in turn be the places where just and fair judgment is carried out regardless of any political or foreign orientation. Therefore, the jury is not the ground for the struggle among political factions. Basically, the philosophy on which the practice of the jury is based necessitates that the jurors depend on conscience in their judgments and distance themselves from political and factional hostilities while making decisions.

The principle of impartiality of judges is a robust reason that makes the rules of fairness, govern the jury without any particular attachment to political issues. The court must issue its opinion according to the decisions made by the jury. When it is felt that there is a gap between a society's voice of conscience and a court's decision, the jury must strongly step in. Thus, jurors as representatives of the society's conscience and fairness, must influence and inspire judges in impartial ways and not be affiliated with political parties or factions. Otherwise, they might give opinions against the will of the society in order to affirm a judge's decision because the judge supports a particular political party. Sometimes the jurors are impartial but the judge is affiliated with a political faction. In such cases, the judge dismisses some impartial jurors from the court due to disagreement between their opinion and that of the judge. Disciplinary court of judges might as well consider this abuse of the law by the judge with nonchalance. Thus, instead of issuing verdicts according to the opinion of the jury, the jury is in fact prosecuted!

Eventually, the law of the jury was enacted by the parliament on March 14, 2004 and the implementation regulations were passed by the council of ministers on July 14, 2004 with the knowledge that compared to the living laws of the world and with respect to the court procedure and the legal principles, this rule is not free from shortcomings. However, thanks to God, at least such a regulation has been realized in the Iranian legal system. Principle 168 of the constitution states that dealing with political and press offenses must take place in public and with the presence of the jury in the court. How to define conditions, authorities of the jury and political offense is determined by law based on Islamic teachings.

According to the amendment to Article 4 of the law establishing the public and revolutionary courts enacted in 2002 and the regulations thereupon, the political and the press court is a branch of the criminal court in every province. The difference is that in this court only one judge rules and unlike the criminal court of the province it is not administered by a chairman and four advisors or a chairman and two advisors. Thus, cooperative judgment is conducted with the assistance of the jurors knowing that the opinions of the jurors are judicial not merely guiding.

To exercise Article 1 of the law and the administrative regulations, the jury members must be selected from among different unions and social groups such as the clergymen, university professors, university students, doctors, engineers, workers, farmers, authors, journalists, teachers, lawyers, employees, artists, craftsmen and businesspersons for a period of 4 year (Article 2).

According to Article 5, the number of jurors in Tehran province must be 500 individuals and in the provinces with the population of more than one million, it must be 150 persons. Selection must be carried out voluntarily, randomly and publicly from among the occupations mentioned in Article 2.

The number of jurors randomly selected for each trial session in Tehran is 21 individuals and in other centers, it is 14. The secretary of the jury carries out the selection two days before the trial date and invites the representatives of the judiciary in the province, the representatives of the city council, the accused person and the plaintiff's lawyer or representative as observers of the act (Article 6). Besides, the jurors present in the court must be representatives of all unions and no union must have two representatives. In Tehran, the court is held in the presence of at least 11 jurors and in other Iranian provinces, at least nine members must be present so that, the court would come into force. The criterion, according to which the jury makes a decision is the maximum number of votes given by the members. When any of the jurors has a question to ask in the court, the question must be delivered to the judge in written form. After announcing the end of the proceedings, the jurors immediately start to consult the matter and state their written opinion based on a set of reasons. They say whether the accused person is indebted or not? If the accused is in debt, is he/she entitled to the commutation of the sentence?

When the opinion of the jury about the guilt or innocence of the accused person is declared, the court decides about the case and issues a verdict according to law.

SECOND DISCOURSE: THE NATURE OF THE JURY'S DECISION-MAKING

The equivalent for the word "jury" in the Arabic language is "the board of jurors". It consists of common people who fulfill certain moral conditions have special abilities and possess independent opinions and thoughts. These people represent public thought and are invited to some criminal tribunals to cooperate with professional judges and take part in the process of decision-making.

According to another definition, the jury means "a group of individuals who hear the facts of the case and decide whether the accused person is guilty or not. The following ideas are stated about the nature of the jury: the opinion of the jury is part of the evidence. In this sense, when a considerable number of people (for instance 12) reach a consensus about the guilt of a person without any particular purpose, he/she is undoubtedly guilty and deserves punishment.

This analytical description is given with respect to the origin of the jury and is related to a period of time when the guilt and innocence of the accused person was put to divine test. In other words, the ordeal system of judgment (the judgment of God) governed the case. This cannot explain the nature of the jury that exists today. Jurors play the role of witnesses and according to some scholars the juror's having to take an oath determined in the laws of some countries originates from the same perspective. However, today the witnesses and the jurors are totally separated and jurors cannot be considered as witnesses.

The task carried out by the jury is similar to that of prosecution. This analysis originates from the time when some people who were familiar with the accused person and knew where he lived were asked by the government to attend the court so that they could contribute to the resolution of the case through provision of the information that completed the evidence. In fact, their job was to defend the rights of the public.

Since in current situations, the jurors in reality defend public opinion rather than the government and the governors and do not try to complete the evidence of the case, the nature of the jury cannot be considered as that of prosecution although such an assumption was true in the past. The jury has a judicial role and its opinion is not simply the idea of a citizen but a true judgment. The advocates of this perspective state that the jurors actually turn into true judges by taking an oath. They refer to the fact that the jurors are required to oath but judges are not. Thus, the judgment that is done in this manner is an example of shared or collective judgment.

This viewpoint can be criticized taking two facts into account the jurors are selected by ordinary people and not by the governing systems It is not essential for the jurors to have legal information. Therefore, the work of the jury cannot be considered as a judicial act or a type of shared judgment, although it has performed such a task since late 13th century.

Another perspective is that the jury has the role of providing expert opinion and in cases where it is necessary to find more about the case and determine whether the given act has been good or evil based on the idea of the public. The jury represents the public in this matter (Amid, 1989). In other words, the authority to recognize the subject is given to the jury in some cases that cannot be dealt with by one individual whether he is a judge or not. With this analysis, some points must be taken into consideration in the selection and presence of the jury in the court.

Since, the jury represents public opinion, the jurors must be selected by the people and not be the governmental systems. Attention to public demand requires the judge to consider the opinion of the jury in issuing a verdict. For example, the judge cannot state that a person is guilty when the opinion of the jury is that the person is innocent.

In order for the jury's opinion to be reflective of public opinion, many countries have required that the jurors must be selected from among different professions and some of them have even asserted that the selected individuals must not have legal information. In addition, the jurors must not do any research about the nature of the claim before attending the court or even acquire any information about different aspects of the case. Due to lack of judicial information, the jury can only state its opinion on two matters: Is the accused person guilty or not? If the accused person is guilty, does he deserve reduction in the extent of the judicial sentence or not?

However, determining the type of crime and the appropriate punishment is the responsibility of a judge who is familiar with legal texts. With respect to the recent developments, this last analysis of the nature of the jury can be accepted as a correct and defensible viewpoint. Regarding the number of the jurors and the method of their selection, different countries have adopted different strategies depending on the type of crime and the court which deals with the case. It seems that the best method

is to select a considerable number of jurors by people and randomly pick a required number of them to be present in the court by the magistrate.

The first clause: arguments against the presence of the jury in the proceedings: Several reasons have been stated against the jury's presence in the court and its interference in judgment. For example, it has been said that judicial proceedings and judge's independence are technical issues and presence of the jury negates the principle of technicality of judgment and independence of judges. Its vices might be issuing unjust verdicts or being influenced by the unfair opinion of the jury (Ali, 1953; Zeraat, 2004; Peyvandi, 2009). Issuing two contradictory votes on two similar charges by the jury is a sign of their lack of competence in judicial proceedings and confirms the claim that the jury's opinions are not reliable. Moreover, since the jury does not often have the tolerance to hear long cases and wish to shorten the length of the proceedings, it might disturb the judge's efforts to find the truth of the matter and reach an appropriate verdict (Peyvandi, 2009).

Other arguments have also been raised in this regard (Hashemi, 2009a, b; Hashemi and Mohmoud, 1999). However, giving it a little thought and paying attention to the philosophy of the jury's presence in the court, none of those arguments seem to be serious obstacles for the jury to attend the court and state its opinion. Besides, those negative outcomes could be reduced taking into account some terms and conditions. So, we avoid quoting and analyzing this type of arguments and address the most important concern that is the jury's inconsistency with the teachings of Sharia.

The most important arguments in Sharia (Islamic jurisprudence) against the presence of the jury in proceedings are the following (Zeraat, 2004). If the jurors state their opinions as experts, the judge is not obliged to accept it unless he gains knowledge over the matter. If we consider jurors as consultants, the judge cannot yet be held responsible to affirm the jury's opinion. In any case, there would not be any use for the presence of the jury and statement of its opinion. The jury is an institution used in legal systems where judges are prone to making mistakes and providing biased comments. However, in the Islamic law, the judge is assumed to be just and there must not be any worries about bias. We do not have any examples of narratives or sayings in jurisprudential and religious texts which refer to the presence of the jury in proceedings.

Detection of some crimes such as "Qazf" (accusing someone of committing adultery or sodomy) through the press, requires sufficient information about religious and legal criteria. Thus, we cannot put it to a committee which lacks such information. In other words, recognition of topics related to press or political crimes cannot always be carried out by the jury. Therefore, wherever the issue is somehow related to religious criteria, we cannot pay attention to the opinion of the jury.

In Islam, the judge is a Mujtahid (a person accepted as an original authority in Islamic law) who must have independence of thought. Thus, through the jury's interference in the proceedings, the independence of the judge would be lost.

Analysis: The first reason of the above arguments refers to a judge's independence and is related to the fifth reason. However, about the second reason, we must say it is assumed that dealing with the crime is outside the scope of one's capability. Otherwise, in all judicial schools efforts have been made to appoint judges who have certain characteristics and exercise justice. If we should raise the issue of judge's fault, it should not be related to any legal systems or a particular religion. The third reason is not sufficient either and it is obvious that lack of a jurisprudential background does not mean lack of legitimacy. What matters is that the evidence available must not contradict Islamic teachings and principles. In other words, Islamic jurisprudence is silent about the topic of the jury but its impermissibility has not been mentioned in the texts either. In response to the fourth argument, it can be said that paying attention to the nature of the political crime can solve the problem completely. A crime of the press by the definition provided in Article 30 of the amendments to the law of the press (Act of 1955) consists of: "Defamation by a newspaper, a magazine or a journal of a person or persons in authority, officials or employees or administrative, social or political procedures. However, criticizing the officials or authorities named in Article 2 or the administrative or political procedures in a newspaper, a magazine or a journal that is conducted for the purpose of the public interest is not considered a crime." Therefore, insult, libel or defamation is considered a crime when it is related to a particular political job, position or post or a certain administrative procedure is an example of press offense but when it is due to personal animosity between the author and the victim (and the issue does not have a sociopolitical nature), it is not considered a crime of the press and there would not be any need for a jury to attend the court. In addition, in political crimes, it is essential that the accused person's incentive not be self-interest. The incentive must be based on human and philanthropist ideals and the act must be aimed at improving or reforming the society (Hashemi and Mahmoud, 1999). In this case,

it would not face any of the so-called forms. Thus, what is important is examining the fifth argument which if confirmed can be a reason for the non-legitimacy of the jury.

In appreciation of this reason, it can be said that according to Islam, a judge is required to be a Mujtahid that meets all the conditions set by the Islamic jurisprudence. Since a Mujtahid is fixed in his position as a lawmaker, he does not have the right to follow any other Mujtahid. Therefore, he cannot accept other's interference in judicial matters. In other words having an independent thought is a jurisprudential responsibility for a judge and not a right that can be passed on to others.

For the same reason, the Islamic jurisprudents have referred to narratives to conclude that no one has the right to judge except the Imam or his deputy. A judge is considered Imam's deputy if he is a Mujtahid that meets all the requirements. Thus, he does not have the right to base his decision on people's opinion because a judge must state a religious decree and a decree cannot be dependent upon other individual's ideas. Here, we can ask whether the individuals who are permitted to judge today have those conditions and can be described as Mujtahids or not. The importance of a judge's decision becomes clearer when we know that even if the judge's decision is contrary to other people's opinion, it is a must for him and for others to follow his decision since he has come to that conclusion according to his own ijtihad (process of judgment based on Islamic jurisprudence). This rule cannot be violated unless the judge's decision is contrary to religious texts (particularly that of the Holy Quran) or valid consensus based on Sharia (Toussi, 1989).

Having said this, it becomes clear that in the judicial jurisprudence of Islam, it is only the appointed and the official judge of a court who can decide whether the accused person is guilty or not. It is the judge who will determine if the accused person deserves being sentenced or not and it is he who can issue the proper verdict about the case under investigation. So, there are not any persons, committees or organizations that can play a role in preparing the final decision besides the judge. Considering the points mentioned above, it can definitely be stated that none of the arguments regarding the judicial cases hold true for today's judges especially the ones who make decisions in criminal matters. Thus, it seems that the same arguments necessitate the presence of the jury next to the appointed judge to a greater extent.

The second clause necessity of a judge's following the opinion stated by the jury: Before discussing this topic, it is necessary to pay attention to some points. What was stated, if accepted is particular to the judges who meet all the conditions. However, in current conditions, many judges are actually appointed by the Mujtahids who have all the requirements. The effect is that such judges are only permitted to rule in cases that are within the framework determined by the given Mujtahid (But, according to the Shiite jurisprudence, if the tyrant appoints a judge or a guardian, that appointment does not have any effect (Mousavi Khomeini). If in a rare case, a judge who fulfills all requirements issues a verdict contrary to the law (and the case be within the permitted limits for other judges), it is essential to refer the case to another judge to go through the proceedings.

A judge's independence in making decisions does not mean that he must necessarily ignore other individual's ideas. This point has also been referred to in the Islamic jurisprudence that a number of jurisprudents and knowledgeable people should accompany the judge so that they can prevent him from making mistakes and help him in recognizing offenses (According to the Sunnis, this group of people must be Mujtahids and some even assert that a judge is required to consult them about precepts and cases.

Despite the fact that a judge in Islam is a Mujtahid and must have independence in his votes, there are cases where the judge is required to prefer other's opinions to that of his. One of these cases is when the judge is required to appoint arbitrators according to a verse of the Holy Quran: "And if ye fear a breach between them twain (the man and wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind. Lo! Allah is ever Knower, Aware" (An-Nisa (the Women). According to some interpreters, the judge cannot independently put an end to the dispute between a man and his wife. It is thus, his responsibility to appoint arbitrators and necessitate the parties to accede to their opinion. On the other hand, some scholars argue that due to the dependence of the dispute between a man and a woman on worldly matters, we cannot say that the verse is stating an obligatory rule and the parties themselves can resolve the issue. If this is the case, the point is not relevant to our discussion.

Permission for collective judgment in Islam (Najafi Tabrizi,) (according to some approaches) is also another point that requires a judge to pay attention to other peopl's opinions in making a decision (Mousavi and Abdulkarim, 1987).

Therefore, the conditions of Ijtihad and independence do not contradict for a judge, do not contradict his paying attention to the opinions of others. Based on the same attitude, arguments have been

provided to justify the jury's presence in the Islamic court considering conventional (customary) criteria and principles. These points are as follows.

Some scholars consider a judge's rule in the presence of the jury as a shared judgment system (Shamloo). If we accept this opinion and assume that collective judgment is not jurisprudentially prohibited and any judge's opinion can be dependent on the confirmation of another judge, it would be all right to require a judge to follow the jury's opinion.

However, the problem is that not only do the jurors not have the conditions of a judge but also they are totally unaware of the judgment profession. Therefore, neither can jurors be considered as judges in the eyes of the appointers (since a judge is a deputy of or appointed by the Supreme jurist and not by the people) nor can they be assumed judges according to the requirements that a judge must have.

So, although, this argument can justify the necessity of a judge's following the opinion of the jury, it cannot be accepted due to the above-mentioned shortcomings. As some members have stated in the constitution review assembly, the issue of the jury's presence in the court can be compared to the presence of the scientists and the knowledgeable people in a judicial court which has a background both in the Shiite and the Sunni jurisprudences. Despite this, some scholars argue that the role of the scientists in the court is more similar to that of the prosecutor or the investigating judge than that of the jury because scientists helped the judge in the recognition of a given offense and in preventing him from making mistakes and what is the jury responsible for does not have any history in the Islamic judicial jurisprudence" (Zeinali, 1999). General concepts such as creating turbulence and riots, disturbing public order and peace, practical measures against peace and national security, printing articles against religion or insulting authorities, etc., are the topics that can lead to different interpretations if viewed from different angles. Without mechanisms of popular control there exists the very likely danger of falling into the trap of going to extremes and getting far away from the spirit of law. To decide about issues related to these topics, the judge sees it appropriate to seek the opinion of the jury and the duty of the jury is recognition of the issue and not technical judgment (Shamloo, 2004). As jurisprudents have also specified, the appointment of a judge is dependent on the permission of the person whom he is a representative of and that person can limit different aspects of the judge's authorities. For example, the appointer (a particular Mujtahid) can appoint the judge to deal with issues in a particular region, he can permit him to deal with legal matters only or consider his opinion subject to the approval of another judge (consultative judgment). Similarly, the Islamic governor can deny recognition of an offense to the judge and delegate it to a group of people who are familiar with the topic. In other words, in dealing with press offenses, the judge is appointed and he can be given authority to an extent but be required to follow the jury's opinion. The fact that a judge cannot go against his knowledge and understanding and follow a group of non-specialists in his decision-making, is a proven certainty even in non-Islamic legal systems and in places where the jury has originated. For instance, in the law of the United States, a judge can legally violate the opinion of the jury due to its inconsistency with the uncovered facts of the case (Some experts say in this regard: "when twelve individuals pass a certain agreement, it is undoubtedly based on reasons which confirm the given agreement. If the judge refrains from accepting their agreement, it means that according to the judge, the reasons stated are minimal and the judge's understanding goes beyond such minimal reasons due to his assiduous interaction with law. However, this case pertains to judges who are constantly in touch with the exercise of rules. Therefore, some individuals assert that following the opinion of the jury does not arise from a legal obligation or must but it is demanded in the common practice in the proceedings of the common law (Zeinali, 1999).

Therefore, denying recognition of an offense to a judge and assigning it to the people who are familiar with the topic (according to rational argument) is neither permitted in Sharia nor allowed based on legal reasons. It has been stated that the best reason for the legitimacy of the jury is its establishment in the constitution of the Islamic Republic since all the principles of the constitution have been jurisprudentially verified by the assembly of experts among whom there has been many jurisprudents and specialists (Peyvandi, 2009). Some experts refer to the final revision of the constitution and say that the jury has both a jurispudential background and a jurisprudential content (Hashemi, 2009).

It seems that during the process of adopting article 168 of the constitution, the advocates have said that in Islamic jurisprudence, judges are advised to consult scientists and knowledgeable people. This mentality was sort of brought about in that session that the jury also can help the judge uncover the issues in a better manner playing the role of a consultant committee. Besides, it was argued that including such an institution in the legal system is to the benefit of the country. These statements resulted in many votes for this principle but many of the jurisprudents attending the session considered it contrary to Sharia.

CONCLUSION

After the Islamic revolution, the law-makers wanted to create consistency between the rules and the Islamic jurisprudence. Since the topic of the jury was mentioned in principle 168 of the constitution, it was not possible to omit it from the common regulations. Enactment of the rule and positive votes given to the above-mentioned principle reinforced this view that due to its affirmation by the jurisprudents present in the session, the jury's interference in the process of judgment is not jurisprudentially prohibited. Presence of the jury in the proceedings that deal with political and press offenses made sense only if the judge followed the jury's opinion. This point was just taken into consideration in the act of the Revolutionary Council (on August 15, 1979) and after that since political trials and cases related to the press were not issues to be concerned about, the law-makers remained silent about this topic while enacting the law of the press in 1985. However, the following consequences and higher concern about its being against the sacred Sharia, led the law-maker to vote for the total independence of the judge from the jury's opinion and pass regulations that were inconsistent with the principle of the cour's attention to public opinion in issuing the verdict.

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