



The restrictive interpretation in favor of the accused in criminal law of Iran and England

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ABSTRACT

The findings suggest that the restrictive interpretation of Iran's rights which is the result of the principle of legality of crimes and punishments, in most cases, emerges in favor of the accused. Principles such as "the legality of crime and punishment and the presumption of innocence are among the most important principles of interpretation. The use of broad interpretation of criminal law in restrictive interpretation is much weaker than the restrictive interpretation and it will be used only in case it leads to interpretation in favor of the accused. By virtue of rule of (major penalty is not given in case of suspicious proof), place of interpretation in jurisprudence is not independent. This interpretation is compatible with issues such as principle of innocence, authenticity and principle of permissibility and can be studied under these titles. But in England law, law is interpreted with literal method and text description. They think that the law text should respond to the events. Therefore, the wording of law shall be read according to the meaning understood by customary law. Less attention is paid to intention of the legislator and the spirit of the law. The court is not responsible for filling gaps of law and compensating for its defect and silence because this means that the judge has acted on behalf of the legislator and has usurped legislation capacity and that the judge has rewritten the law.

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Introduction

Perpetration of a crime sometimes extinguishes personal rights of people in addition to injury to the public order and security which should be kept as the main goal of criminal laws. For this reason, enactment of laws and punishments in confrontation with the criminals are of the oldest legal systems up to now which have been different. What should be considered more than ever is detection of the real intention of the legislator about an order or law. This helps protect rights of criminal and prevents him from being punished more than he deserves while helping compensating for damage and suffering of the victim and reparation of the public feelings which have been injured with perpetration of crime. Therefore, role of interpretation in observance of justice is multilateral because correct and logical interpretation is an important factor in prevention of perpetration of crime while the restrictive interpretation and misinterpretation violates the rule of proportionality of offence and punishment on the other hand and permissive and neglectful interpretation leads to expansion of perpetration of crime and reduces power of criminal law system which is in fact manifestation of society's power in confrontation with deviations and offences.

This importance is always necessary in recognition of the meaning of law irrespective of the presence or absence of ambiguity and brevity in law of England. Necessity of conducting this research includes rules of access to a correct interpretation and the role which it plays in criminal laws

and analyzes it particularly when comparative study with England considerably helps reach a relative awareness with necessity of this research.

Problem statement

generality of law on the one hand and flaw of human on the other hand cause ambiguity, brevity and conflict of law as legislation limitations and no dominance of legislator over all issues will lead to silence of law in many cases. To solve this problem, lawyers and judges interpret law which means finding order for each legal case from the viewpoint of legislator. Criminal law claims creating and keeping balance between personal rights and public security but it should be undoubtedly that such balance will not be kept without intervention of judicial interpretations of the law. Evident role of the judicial interpretations in expansion of the concept of law and reduction and addition of domain of security and freedom reminds us of legislation necessity of such interpretations. Law is mainly interpreted in two cases: A- concept of law should not be clear, B- concept of law is clear but it is doubtful in its expansion and restriction (Jafari Langroodi, 2009:170). Principle 73 of Islamic Republic of Iran Constitution stipulates: description and interpretation of ordinary laws is competency of Islamic Consultative Assembly. Provisions of this principle don't prevent interpretation which the judge makes for distinguishing between truth and law. According to the principle 36: only the competent court and law should order punishment and its execution. According to principle 166: judgments of courts should be documented based on the legal articles and

the principles on which basis judgment has been issued. In Principle 167, the judge shall try to find judgment of each claim in the codified laws and if he doesn't find it, he should issue the case judgment and cannot avoid hearing the case and issuing the judgment on the pretext of silence or violation or brevity or conflict of the codified laws. Since the judge cannot avoid issuing the judgment, logic of the case shows that the judge should justify, argue and infer that all are of the themes of the interpretation.

In this research, attempt is made to achieve results about comparison of two legal systems of Iran with Roman – German methods (Civil Law) and Common Law of England by using and studying the importance and place of restrictive interpretation in favor of the accused.

Restrictive interpretation in criminal laws of Iran

Concept of restrictive interpretation

It is a type of judicial interpretation by virtue of which meaning of a law has been confined in the framework of its concept and it is not transferred to cases of silence or the cases which may include those cases. In punishment law, the restrictive interpretation should be done. Restrictive interpretation should be done in the laws relating to evidence in substantiation of claim and legal circumstances and civil responsibility (Jafari Langaroodi, 2008:115).

Some believe that the judge should not go beyond the principle of legality of the criminal law and endanger rights, benefits and personal freedoms due to political and social considerations. Restrictive interpretation method is based on the fact that the judge pays attention to logic of law and the cases which have been mentioned expressly and concisely and infer meaning of the legislator by the words and terms and by observing the grammatical rules. Nevertheless, in case the law is not express and clear, it should be interpreted and construed in favor of the accused (Shambiati, 2001:93). The restrictive interpretation of criminal laws is based on principle of legality of crime and punishment considering principle 36 of the Constitution. According to an old proverb about doubt, interest of the accused should be observed. The restrictive interpretation of the criminal laws can be criticized because this type of interpretation can be correct when the law is flawless.

Fundamentals of restrictive interpretation

Restrictive interpretation is the result of principle of legality of crime and punishment and principle of legality of crime and punishment has been enacted to support rights of the accused on the other hand. For this reason, in case result of the restrictive interpretation leads to proof of crime and punishment, law should be interpreted extensively (Tafzali, 2011:34).

There is no crime without law text*. If the broad interpretation leads to practical criminology which the legislator has not considered, it will be prohibited while this broad interpretation for permitting act and forgiving the accused is legally acceptable because such act doesn't endanger freedom of persons and doesn't relate to principle of legality of crime and punishment but some courts, for example, France Court of Appeal interpret amnesty laws strictly due to emphasis on support of society and its soundness(the same, P. 35).

By deliberating about words of lawyers and finding the cause of accepting such exceptions on the principle of restrictive interpretation, we find that interpretation in favor of the accused is highly important and the restrictive or broad nature has no relevance but instrumentality. For this reason, in case there is an interest beyond benefits of the accused, this exception in restrictive interpretation is neglected in the lenient laws as the lenient laws are interpreted restrictively though they are lenient in France Court of Appeal for supporting benefits of the society which are above benefits of person(Goldoozian, 2008:125).

Therefore, the principle of restrictive interpretation is rooted in the principle of interpretation in favor of the accused and the latter is also rooted in the rule of legality of crime and punishment and rule of legality of crime and punishment is rooted in principle of innocence and the principle of innocence based on the rule of shamefulness of punishment without declaration of law.

Domain of restrictive interpretation

Domain of restrictive interpretation is in cases which law is not in favor of the accused. Regarding the relevant laws of the criminal, the restrictive interpretation can be used whether in substantive laws or the procedural laws. Rule of restrictive interpretation has not been mentioned in Iran criminal laws for interpretation of criminal laws in laws of Iran and precedent of Iran court and the Guardian Council. Principle 27 of the former complementary Constitution mentioned that description and interpretation of laws were the special duties of National Consultative Assembly. Principle 73 of the Constitution of Islamic Republic of Iran regards description and interpretation of ordinary laws as capacities of the Islamic Consultative Assembly and adds that provisions of this principle don't prevent the interpretation which the judges distinguish from laws. In this regard, the Constitution has allowed the judge to interpret law for distinguishing right of laws and broad interpretation of criminal laws seems not be problematic in this way. Of course, if the judge makes determinate mistake in his interpretation such that it causes material or spiritual loss, he will be responsible according to principle 170 of the Constitution particularly Article 58 of the Islamic Punishment Law. Precedent of Iran court is not clear for interpretation after Islamic Revolution but the Supreme Court has used the broad interpretation with conditions in different judgments. For example, it has made comment about robbery of the power according to judgment No. 3008 dated 10 December 1940 and 3509 dated 19 January 1941: inclusion of the robbery with act of the perpetrators is discerned by custom and usage unless it has not been defined in the law. Therefore, if a person uses power more than what he has paid, this act is regarded as robbery in custom and usage of the country. In addition, robbery is defined in the tradition as stealing property of another person without right and secretly beyond the custom and usage of the property and selling and purchasing it...)). Regarding publication de faussenouvelle under Article 269 of the former Public Punishment Law, the second branch of the Supreme Court in judgment No. 2632 dated 30 December 1339 doesn't accept the literal interpretation or announces its rejection ((...although the falsifications and actions have been mentioned in plural in the said article, it

* This rule means principle of legality of crimes.

means type of those affairs and holds true for custom and taking an action ...)). Therefore, we see that precedent of the court of Iran has followed thought of those lawyers who don't want to leave unrewarded the cases which disrupt social order by limiting it in domain of the restrictive interpretation rule (derived from Jaza Weblog article).

Results of restrictive interpretation

The good method of the principles of religious jurisprudence is that the channel of that principle i.e. its execution is dealt with when the legal rule or practical principle is discussed. Teaching method of law in Iran has patent defect which didn't and doesn't regard logic of law important. The result is that the accurate issues of logic of law are not discussed in the legal texts. One of the important issues relating to principle of restrictive interpretation is channel of this principle (Akhavat, 1998).

The principle of restrictive interpretation can be relied only in doubt and this has not been mentioned in the legal books expressly and as a condition and most lawyers have absolutely mentioned that result of legality of crime and punishment in criminal law is the principle of restrictive interpretation and they have only referred to issue of doubt (Noor Baha, the same: 115 and Goldoozian, the same:165).

Another result is rule of limitation in interpretation of criminal laws and the judge cannot sentence an accused person according to an ambiguous law. In other words, when the judge cannot explore meaning of a criminal law, he will acquit the accused.

Results of the restrictive interpretation of criminal laws

These results include:

- 1- Acquittal in case of doubt: the principle of acquittal in case of doubt has been accepted in legislations. When the criminal law is brief or ambiguous so that the judge cannot understand thought of the legislator and matches the committed act with it, he should acquit the accused.
- 2- Forbidding deductive reasoning: deduction is the expansion of executing express law to the cases which have not been predicted in criminal laws in case it finds a similarity and there is an action (taken from Novin website).

Types of restrictive interpretation

A- In terms of exploring certain will of the legislator

In some cases, restrictive interpretation method is based on the fact that the judge pays attention to logic of law and the cases which have been mentioned expressly and briefly and infers meaning of the legislator by the words and terms based on grammatical rules. The judge can only rely on logic of the law, especially the logics which are expressed. Therefore, the use of reasonable requirements, historical record and infrastructural principles of the order, agreeing and disagreeing concepts, the evidence which was referred in the logical interpretation and other affairs all are prohibited. In other words, the restrictive interpretation is contradictory with historical, principal, logical and even verbal interpretation because it only relies on the express logics, for example, the use of radio and television for degrading the persons is the issue which has not been expressed in article 269 of the public

punishment law and is not a part of logics of this article while if degradation of people is done by speech in meetings, perpetration of such act through radio and television with the first method will be crime but it is not permissible to regard such act as crime considering the above definitions.

B- In terms of suspicious will of the legislator

It is necessary in some cases. Instead of being obliged to only define a difficult legal word literally, they should try to interpret legal regulations according to the legislator and can use the governmental bills or explanatory reports of the representatives in enactment of the law and historical records and cause of revelation to detect view of the legislator. After such effort, they should interpret the ambiguity in favor of the accused if available (taken from Alshiei website).

Exceptions to the principle of restrictive interpretation

The restrictive interpretation is the result of the principle of legality of crime and punishment and the principle of legality of crime and punishment has been enacted to support rights of the accused. In this regard, in case result of the restrictive interpretation leads to proof of crime and punishment, the law should be interpreted broadly. The principle is that the lenient laws should be interpreted broadly for the accused and this holds true for substantive and procedural laws. In this way, although definite cases have been predicted as causes of crime in Articles 327 and 328 of French Criminal Law, courts of this country have regarded constraint and in some exceptional cases, consent as instances of the law for broad interpretation of these two articles and have acquitted the accused (Sanee, Public Criminal Law, Vol. 1, P. 116). For example, it has been stipulated in Article 200 of the Islamic Punishment Law:

Punishment of robbery applies in case of the following conditions.

Owner of the property hasn't forgiven the robber before complaint.

If the judge hesitates that this judgment holds for the persons such as guardian, executor or custodian, the restrictive interpretation requires that only forgiving the property owner render punishment null and such interpretation will be harmful for the accused but the guardian, executor and custodian will be regarded as owner of the property based on acceptance of the broad interpretation rule in cases of leniency toward the accused. By studying words of the lawyers and finding cause of accepting such exceptions on the principle of restrictive interpretation, we find that interpretation in favor of the accused is of special importance and the restrictive or broad nature has no relevance but instrumentality. For this reason, in case there is an interest beyond benefits of the accused, this exception in restrictive interpretation is neglected in the lenient laws as the lenient laws are interpreted restrictively though they are lenient in France Court of Appeal for supporting benefits of the society which are above benefits of person (Goldoozian, 2008:125). Therefore, the principle of restrictive interpretation is rooted in the principle of interpretation in favor of the accused and the latter is also rooted in the rule of legality of crime and punishment and

rule of legality of crime and punishment is rooted in principle of innocence and the principle of innocence based on the rule of shamefulness of punishment without declaration of law. Considering this cause, there can be another exception in the restrictive interpretation which is procedural laws. The procedural laws are sometimes contradictory with rights of the parties to dispute, for example, extension of the revision cases is in favor of the losing party and not in favor of the winning party and restricting benefits the winning party and harms the losing party but the procedural laws sometimes don't deal with rights of the parties or its effect is so low that it can be regarded as ineffective. Such laws have been enacted for good performance of the law, for example, laws of local jurisdiction or dispute settlement authority among the magistrates. Anyway, the broad interpretation is permissible in both cases because as we saw before, the main cause of the restrictive interpretation rule ends to the rule of shamefulness of punishment without declaration of law and what is prohibited by this law is punishment not anything else. This rule clarifies that it is not permissible to regard the people criminal and punish them without announcing criminality of the act and its punishment rate, therefore, neither legislator should regard it as law nor the judge should act according to it. But such thing doesn't hold true for the procedural laws because the procedural laws are not applied to regard an act as crime and determine punishment, for this reason, it is permissible to make the procedural laws retroactive until it doesn't deal with the acquired rights[†].

Channel of restrictive interpretation

Different methods which are applied for interpretation of laws are so important that it leads to instability of the legal relations of persons or violation of rights and freedoms of citizens. Therefore, it is necessary to explain different methods for interpretation in laws and particularly the criminal laws for clarification of the scope of duties and powers of the legislator and particularly judges. The good method of the scholars of the principles of religious jurisprudence is that they deal with the channel of the principle and also execution of it when discussing the legal principle or practical principles. Teaching method of law in Iran has patent defect which didn't and doesn't regard logic of law important. The result is that the accurate issues of logic of law are not discussed in the legal texts. One of the important issues relating to principle of restrictive interpretation is channel of this principle. The principle of restrictive interpretation can be reliable only in doubt and this has not been mentioned in the legal books expressly and as a condition and most lawyers have absolutely mentioned that result of legality of crime and punishment in criminal law is the principle of restrictive interpretation (Sane, Public Criminal Law, Vol. 1, P. 115) and they have only referred to issue of doubt. Dr. Parviz Sane absolutely mentions that:

Principle in interpretation of criminal laws is that it is restricted to the express logics of law and this is the logical result of the principle of criminal legality as mentioned above (Sane, the same).

Interpretation in favor of the accused

Concept of interpretation in favor of the accused

One of the effects of the rule of legality of crimes and punishments is interpretation of the ambiguous law in favor of the accused. It means that wherever ambiguity, brevity and conflict of laws allow the describer and interpreter to have different interpretations without saying certainly which of these interpretations are intended by the legislator, the interpretation which is more favorable to the accused is executed. The duty of the legislator is to observe explicitness of the law and violation of the duty by the legislator should not be applied against the accused (Ashuri, 2005:73).

The discussed rule defends the accused and his/her benefits against judge and law and excludes what is not as clear as its criminality from the criminal law and regulations or exposes behavior of the accused to the most favorable regulations and the mildest interpretations. This rule prevents the judge from violating personal freedoms by virtue of the ambiguous and suspicious laws as it forces the legislator to observe more accuracy in definition and description of the criminal behaviors and their consequences (Etedal, 1998:48). It is evident that the discussed rule applies to cases of ambiguity, brevity and conflict of laws. The express law should be executed by observing explicitness and clarity though its executive believes that execution of such law is not useful for the accused or based on character or the actions committed by him and it violates the rules of justice (the same).

Basis of interpretation in favor of the accused

A- Principle of legality of crimes and punishments

Human is a creature with social nature, therefore, he creates societies with other people and groups and possesses traditions and customs and laws to achieve desirable life in this winding way and he forms government which can be durable under auspices of laws and regulations. Therefore, legal sources of a society have high value (Hosseini, 2004:66).

It is necessary to note that issue of guaranteeing individual and social freedoms, prevention of despotic rules of the judges and respect for human character require observation of one of the very important principles of criminal system i.e. the principle of legality of crime and punishment, the principle which defects the people in different societies against cruel attacks of the despotic governments which they have ignored but legislator, judge and executive bodies are obliged to observe it. The dictators regard any act which is believed by them to be indecent as crime due to the absence of rule and law and punished its perpetrator (Ashuri, the same).

One of the important achievements of the principle of legality of crime and punishments is that it has prevented the judges and rulers from dictatorship, self-centrism and administration of justice at his discretion and causes the law to be center of judicial sovereignty acts and makes human society and people present therein aware of the criminal acts including act or omission (Katoozian, 2011:42).

B- Principle of innocence

The second basis of interpretation in favor of the accused for doubtful proof of crime is the principle of innocence. The obligatee who is religious jurist will have three

[†] It is necessary to note that theory of retroactive procedural law is attributed only to the legal doctrine and has no legal documentation but it has rejected judgment No. 19/2/1368-526 issued by the general council of the supreme court of the country.

states regarding any judgment. He will be certain, suspicious or doubtful about that judgment.

If he is certain about one of the judgment, for example, he is certain that drinking is prohibited, he shall act according to his certainty and if he is suspicious about a judgment, he will act according to it and if there is no evidence but it has been proved for him that this suspicion holds valid before the legislator, he will act according to this suspicion, otherwise, his suspicion will be regarded as doubt and if he is doubtful about one of the judgments, he will refer to the practical principles which have applied to doubt (Sarmast Banat, 2008:32).

It is either applied or not applied in case of doubt or the former. If the former is applied in case of doubt, authorization will apply and if the former doesn't apply, there will be doubt in duty. It means the thing of which compulsory duty i.e. the duty which should be performed or omitted is not known or doubt in obligatee means that we know the compulsory duty but we don't know the obligate. In the former, acquittal will apply and in the latter, precaution or right of choice will apply (Zeraat, 2010:93).

The principle of interpretation in favor of the accused is a practical principle and its channel is doubt. Relation of this principle with the principle of restrictive interpretation is generality and peculiarity in some respect and this principle is also based on principle of legality of crimes and punishments which is rooted in the principle of innocence. The interpretation in favor of the accused and the restrictive interpretation are so close that some have defined the restrictive interpretation in favor of the accused (the same).

C-Rule of shamefulness of punishment without declaration of law

Rule of shamefulness of punishment without declaration of law is one of the indisputable rules before the jurists and theoreticians in law. This rule is comparable with the principle of legality of crime and punishment in the case law. According to the Islamic jurisprudence, religious legislation of rules and its prevalence among the Muslims are judicial circumstantial evidence indicating awareness of people as our legislator has regarded enactment of law and its publication after definite period as judicial circumstantial evidence of knowledge and awareness of people and doesn't accept excuse of ignorance of law. It is inferred from the rule of shamefulness of punishment without declaration of law that as far as an act is prohibited by the legislator or such prohibition is not announced to the obligatee, if that person commits such act, his punishment will be reasonably unfavorable (Hosseini, 2004:60). Whereas the Shi'as jurists believe that the unconditionality of the legal duty is dependent on legislation of the obligatee and it is unfavorable to punish the person who is not aware of the legislation. Declaration in the said rule means the received declaration not the issued declaration. Such interpretation is based on reason because it is unseemly to chastise the person without any received duty and since justice and wisdom are of the traits of God, the undeclared duty has not chastisement (Ashuri, 2005:83).

Refer to (the same, P. 26).

The restrictive interpretation of criminal laws in England law

Considering the close relation which the principle of restrictive interpretation of criminal laws has with two other

principles i.e. the principle of non-retroactivity of law and the principle of void for vagueness in common law legal system. These two principles are first explained and then position of the principal restrictive interpretation of criminal laws is discussed:

The principle of non-retroactivity of criminal law has been stipulated in article 7 of the European Convention on Human Rights[‡] and principle 1 of the Constitution of USA and the legislator hereby has been prohibited to levy the penalties which become retroactive. As a result, if the legislator has enacted the laws and made it retroactive, American courts are entitled to announce it contradictory with the Constitution.

Considering this principle, although the legislator is obliged to observe the principle of non-retroactivity of criminal law, the courts aren't bound to this principle because adherence to it prevents progress of Common Law. As a result, the laws are interpreted broadly by resorting to the policy of social defense mechanisms and different principles such as principle of thin ice and called retroactive. Shaw case in 1962 where the public prosecutor prosecuted and indicted the accused on charge of the conspiracy to corrupt public morals and the House of Lords validated this indictment despite the lack of any clear judicial record about this accusation (Mohammad Salim Alova, 1983, Pp. 57-58).

On the other hand, the presence of the principle of nullification due to ambiguity in USA law which requires the principle of Maximum Certainty in Defining crimes has empowered the American courts to announce the ambiguous law in case enact it irrespective of the rights and freedoms of citizens and use the technical terms. While courts have no such right in criminal law of England and despite the scattered criminal laws, there are many customary crimes and even legal crimes which have no certain and accurate definition and this leads the courts to adopt different precedents, for example, by virtue of section 18 of the law of crimes against persons enacted in 1861 for committing crime of several physical injury, the accused should intend to make severe physical injury. Considering that neither law nor the House of Lords have specified the accurate meaning of intention, the courts and members of the jury have shown more flexibility in interpretation of the word "intention" and regarded potential bad intention as the intention. For example, the judge guided the jury in 1975 that if Ms. Hyam predicted death or severe physical injury as probable result of his actions, the necessary intention for realization of murder would be established (Klarson, 1999:53).

The principle of restrictive interpretation of criminal laws which relate to duty of courts in interpretation of laws has been ignored in law of England for long because it has been imagined that if any ambiguity in law is interpreted in favor of the accused, no criminal system will be able to perform the duty and for this reason, it has not been considered by the courts in case of frequency of this principle. For example, courts interpreted the word "sale" in claim of *Coppen V. Moore* No. 2, 1898 as stipulated in Section 2 of Food and Drug Law enacted in 1955 such that they regarded act of the employee as act of his employer. Considering that

[‡] The article 7 of the European Convention on Human Rights. provides that: "No one shall be held guilty of any offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed."

vicarious liability is contradictory with all concepts and principles of the criminal law about the principle of individualization of punishments, it is contradictory with the principle and position of certainty should be applied and position of certainty applies when the legislator expressly has accepted the vicarious liability. In the USA law, the major justification of this principle is that it should be considered as the principles of non-retroactivity of law and the principle of fair warning should be applied by the legislator and court in enactment of law. Of course, the broad law is interpreted in case policy of social defense mechanism requires.

In England law, the restrictive interpretation of criminal and tax laws is one of the rules of interpretation of law and exclusion from explicit logics of the law is regarded as violation of individual rights and freedoms and intervention in work of the legislator (Ashworth, 1992:70-76). The primary concept of this rule has been applied in some cases. The judicial precedent of this country has regarded giving asylum to a prisoner who has escaped from the police department as giving asylum to the individual prisoner because such person has escaped from the police department not the prison (Walker, 1985:113). In 1976, Court of Appeal has acquitted Mr. Charles though he has overdrafted the cheque arguing that what he has done is not included in express logics of the attributed accusation (Ashworth, 1992:70). It has been also said that the law which regards the false percolation of people with voting right at time of election as crime is not adaptable to act of an accused who has introduced him as a dead person (Bailey And Gunne, 1996:398).

The first concept of the restrictive interpretation is criticized and cannot respond to the realities. The restrictive interpretation in this meaning is based on untrue assumption of explicitness and totality of law and its ability to confront with different aspects of the criminal conducts and risky events. The laws for which recommendations of Montesquieu, Beccaria and Portalis about them can be applied have not become real. The presence of full and clear laws free from thought, argument and innovation of the judge is not anything but a dream. Followers of this excessive interpretation have neglected difference of legal descriptions with mathematical formulas. The clearest and simplest legal descriptions also lead to inevitable questions. Article 1-331 of French punishment simply and clearly defined robbery as fraudulent stealing of another person's property but the judicial precedent includes questions such as temporary taking away of another person's property, fraudulent copy of the documents belonging to another person, plagiarism and stealing of electricity and water against those institutions (Desportes And Gunehec, 1998:148). Can we say that it is possible to answer these questions without interpretation of law and its logical analysis? Logic of the restrictive interpretation in this meaning is a verbal logic and restricts role of the judge to the automatic distributor of the articles of law and causes him not to seek help from anything else but his eyes while the judge recovers his real role when he analyzes legal rules and confront with the external events based on the law logic and with taste, knowledge, experience and innovation and protects life of law and distributive justice. The desirable

judgment is that he should find disharmony between logics of law and logic of time and show inefficiencies of legal rules. Judgment and legislation complement each other. Reality of the legal rules and requirements should be sought in link between orders of the legislator and practices and innovation of the applicant. In addition, restrictive interpretation in the first sense causes oldness of laws and violation of events in case of social diversity and is interpreted by the French lawyers to lead to sterilization of law and asphyxiation of legal arguments (Jeandidier, 2003: 109). What are left defenseless are the public order and security and rights of the antisocial behaviors. This interpretation method is mostly in favor of the wrongdoers rather than victims of their wrongdoings. For this reason, it should be said that there is clear difference between such understanding of the restrictive interpretation and social defense issue which is one of the most important functions of law and on which important issues such as responsibility and punishment are based. For this reason, the judicial precedent not always but sometimes has applied such method. Confrontation of this excessive interpretation with social defense caused the English lawyers to criticize the principle of restrictive interpretation rule. They believe that in case there are enough social reasons for conviction of the accused, one can hardly resort to the restrictive interpretation rule. According to their writing, it is not so difficult to give list of the items in which the discussed rule has been ignored. Today, this country particularly the House of Lords has pitiful position and doesn't make doubt and delay in development of law. The legal doctrine has regarded some judgments such as Charles' claim as sign of deficiency of the judicial precedent (Bailey And Gunne, 1996:399). Such criticisms modify the excessive positions of the past.

Interpretation in favor of the accused in England law

In England law, criminal laws and tax regulations are interpreted restrictively and in favor of the accused as far as they have criminal aspect. Ambiguity and brevity of these laws prevent from believing in realization of criminal responsibility and imposition of its effects. Despite ambiguity of law, one cannot interfere in rights and freedoms of the people. The judicial precedent has accused a person who has given shelter to an escapee from the police department. Regarding accusation with conscious holding of the explosives, the judicial precedent is that realization of such crime requires awareness of the accused with explosive property of the said matters and it is not only sufficient to own it. It has been said that the law which stipulates that false identification of the people with voting right is punishable at time of election is not adaptable to act of the accused who has introduced him as the deceased person (Bailey And Gunne, 1996:263). The discussed rule with validity of defending the rights and freedoms of accused lacks necessary solidarity to confront with rule of literary interpretation and sitting in its place. As far as the legislator introduces a crime and conditions for its establishment aside from any ambiguity and brevity, the court has to apply provisions of its orders though administration of such orders seems to be unjust.

Conclusion

Results of this research are as follows:

- Despite the old rule of non-interpretability of criminal laws and despite consent of the legislators with explicitness, totality, magnitude and dignity of what has been drawn up and enacted long before, the law needs to describe and interpret an undeniable fact. Fact of law should be sought in its interpretations.
- The judicial precedent is not one of the sources of criminal law but the fact is that the criminal laws cannot be regarded independent of its judicial interpretations. Its law is a valid text which has been interpreted by the judicial authorities. The judicial precedent practically ignores the most accurate limitations and the clearest borders. Even it is not loyal to what has accepted the view and emphasized on its truth. The delicate art of interpretation mixes the individual rights and public security while utilizing the rules, methods, presuppositions and useful tools which it possesses based on the cases and positions.
- It prescribes application of the tools such as deduction and adoption of methods such as restrictive interpretation in some fields but it allows the same tools and methods in prohibited fields and sometimes prohibits their application in the permissible fields.
- Law interpretation is similar to a delicate art not a fixed knowledge. The judicial precedent tries to strengthen functions of criminal laws by selecting the interpretation methods and tools and particularly helps establish very delicate balance between individual law and public security which the criminal law requires.
- Interpretations of criminal laws are sometimes restrictive and sometimes broad when it relies on conventional meaning of the law wordings and when it takes step beyond the words and terms of law and passes through border of prohibitions such as deduction and broad interpretation.

Unlike what was said by Montesquieu, Beccaria and Portalis (Bouzat, 1970), the criminal law is not able to perform its mission without getting help from the judicial interpretations.

- Methods and limitations of law interpretation should be predicted in the law itself. It is not enough to rely on implicit meanings and implications and hope for compassion of the judicial precedent.
- Laws of England are not codified usually in Roman-German system. In England, the legislators try to define all things before and respond to all potential conditions. They don't deal with the brief and rule building.

The English judges mostly deal with literal method and text description. They think that the law text should respond to the events. Therefore, **the wording of law shall be read according to the meaning understood by customary law. Less attention is paid to intention of the legislator and the spirit of the law.** The court is not responsible for filling gaps of law and compensating for its defect and silence because this means that the judge has acted on behalf of the legislator and has usurped legislation capacity and that the judge has rewritten the law.

- Some members of the House of Lords have called the judicial precedent to turn to logical interpretation of law. The literary approach of the law interpretation has encompassed the judicial precedent. The logical and purposeful approach of interpretation is applied

exceptionally only if necessary to prevent unreasonable and unpleasant results of literal interpretation, description and interpretation of the international treaties and conventions and those local laws which lead to their execution.

- Observation of some of these rules and presuppositions at time of law interpretation contributes to stability of the legal system and protection of legal position of people and support of their freedoms. The restrictive interpretation rule of criminal laws and presuppositions such as lack of change in structure of legal system, no intervention in fixed rights of people and lack of absolute criminal responsibility are among these classes.
- Law interpretation tools are not agreeable. If the goal of law interpretation was to establish intention of legislator, there should not be logically conflict on tools and ways of reaching this goal but nature of literal interpretation and law text description which has been imposed on mind and language of the English judges led to doubtful competency of some of these tools.

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