

The Position of Interpretation in the Criminal Law of Iran and England

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ABSTRACT

The main objective of this study was to examine the judicial interpretation of the criminal law and the UK. The research method in this study is a compilation of the analytical method. In this study, we reviewed the legislative history and the current laws in Iranian law and international law, as the events that happened to be addressed. The findings suggest that the narrow interpretation of Iran's rights as a result of the principle of legality of crimes and punishments, in most cases, to be interpreted in favor of the accused emerges. Principles such as "the legality of crime and punishment and the presumption of innocence are the most important principles of interpretation. The use of broad interpretation of criminal law restricted interpretation is very weak and only if it is used to interpret the benefit of the accused. Narrow and broad interpretation of the origins rooted in the science of law and jurisprudence can safely be said that such a title is no independent status. The interpretation of concepts such as the presumption of innocence, integrity and the principle of Abahh is highly adaptable and can be studied under this title. In English law, but more in the way of words and text descriptions to interpret the law Myprdaznd.az they must respond to events. The meanings of words and phrases common law must carry conventional notions Nmvd.qsd legislator and the spirit of the law is paid to compensate for the defect and Skvthay Ast.prkrdn legal vacuum and it is not the court, because the work, instead of sitting judge and legislator blatant usurpation of legislative authority to rewrite the law to the judge considered.

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Introduction

Law generality on the one hand and human fallibility on the other hand cause ambiguity, brevity and conflict of law as limitations of legislation and no dominance of the legislator on all issues will lead to silence of law in many cases. To solve such problem, the lawyers and judges interpret law which means finding judgment for each legal subject from the viewpoint of legislator. The criminal law claims for creating and keeping balance between individual rights and public security but it should be said that such balance will not be created or kept without intervention of the judicial interpretations of law.

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

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 legal system of England, the judicial precedent with the approaches, rules and presuppositions which it has made analyzes laws and recognizes their domain. Lawyers always emphasized on necessity of following special rules and principles of interpretation of criminal laws and regulations. The literal interpretation is the most common method of law interpretation. This interpretation method was common for years in common law of England but courts of England violated this method and tended toward goal-oriented interpretation. Membership of England in European Union directly affects our traditional approach toward interpretation because methods of drafting laws and rules of legal interpretation are very different from the similar methods in England in most legal European systems. When it is necessary to interpret an article of a treaty or bylaw of Europe by an English court, article 177 of the European Society treaty allows the Justice Administration of Europe to settle the interpretation conflicts. England courts should follow precedent of the European Court of Justice and give effect to the bylaws which are issued to conform to the European instructions (Forth, 1990). Since determination of judgment is regarded as one of the dignities of the legislator, the legislator should resolve the mistakes of law. For this reason, the Muslims referred to Islam's prophet (PBUH) and the twelve imams to solve the legal issues and judgments and the Islamic Consultative Assembly is the reference of interpretation is ordinary law in the civil laws according to principle 73 of the Constitution. However, in case of no access to the legislator which we confront with in religious issues or difficult access to views of the legislator which we confront in civil laws, the jurist will solve the mistake of law in legal judgments to infer the judicial judgments. In conceptual mistakes of fact, if the fact is one of the innovations and establishments of the legislator, he will be source of resolution and if the case is customary, the custom and letter will be used and if a case is specialized, the related specialists will solve the problem. In mistake of meaning, since determination of meaning relates to the external affairs, the inquiry and search group will solve it in the external and objective affairs. Any mistake of fact will finally lead to mistake of law that is the mistake of law will cause the mistake of fact but any mistake of law doesn't necessarily result from mistake of fact. Therefore, it should be noted that once law of an issue is ambiguous, it should not be regarded as a mistake of law. Brevity means that meaning of a word is not generally ambiguous but hesitates between two or more cases. , brevity is a type of ambiguity and its milder form. There are many affairs which cause brevity of word which have been mentioned in the book of logic (Mozafar, 2007:142). Defect occurs when legislator has not mentioned all of the required issues in the law.

Silence literally means avoiding speaking and not talking and silence.

In legal concept, silence means failure to announce the explicit or implicit will or a negative case because silence is nothing but lack of something. One of the other problems of codification which causes difference of opinion and different judicial precedents in criminal courts is dispute of laws. To define such problem, it should be said that in case the legislator enacts two or more legal articles about a legal subject at different times or as a law so that two laws violate each other, the laws will have conflict with each other and render them ineffective. These laws are contradictory with each other. In such conditions, it will be impossible to follow both laws for a criminal act and will cause different judicial precedents in criminal courts. In this research, attempt is made to achieve results about conformity of two legal systems of Iran to Roman-German methods (the Civil Law) and criminal system of England (Common Law) by utilizing and studying importance of position of interpretation. This research seeks to answer the following questions:

- 1- What are the judgments for the harmful act in undue interpretation in decisions of legislator or judge in criminal law of Iran and England?
- 2- What are more preferred among keeping public security, support of the injured plaintiffs and observance of the interests of the accused for interpretation of ambiguous criminal laws in England laws?
- 3- Which of the broad and restrictive interpretations are more applicable and closer to justice from the perspective of the interpretation method?
- 4- What factors cause fluctuations and flexibilities in self interpretations in law of Iran and England?
- 5- Can the criminal laws of Iran and England be interpreted considering public interests and necessities of social life?

Theoretical concepts of research

Interpretation is defined literally, legally and naturally:

Interpretation literally means manifestation, unveiling the hidden case and mentioning meaning of word (Dehkhoda, 2010:142). Ebn Manzoor writes in the book "Lesan Al-Arab": «الفسر كشف المغطى و التفسير كشف المراد عن اللفظ المشكل» (Ebn Manzoor, 1994:103). Fasn which is root of the word tafsir means expression and clarification. Fasn means unveiling or showing the covered thing and interpretation means discovery of the meaning which has been intended from a difficult word.

Interpretation in legal term means the process in which real concept and true meaning of the law are sought with emphasis on some approaches, presuppositions, rules and tools. Interpretation is a subjective effort to discover intention of the legislator, explain ambiguities, settle disputes, compensate for defects and gaps and identify meanings and borders of law sovereignty. Difference between interpretation and explication is that interpretation is idiomatically related to the words and terms but explication which means bearing word from the dominant meaning to the dominated meaning based upon the reason, to reasonable meanings and the inner meaning of the words and terms (Albasooti, 1987:92). Interpretation describes the letter and is based upon literal word and mystical understanding but explication means reasonable

fundamentals of word and reasonable intentions of the speaker. Some believe that meaning of letters and words is considered in interpretation indicating that the intention of the speaker is that very same but explication is only domination of one of the potential meanings of the word without certifying what the meaning of the speaker was (Almahali, Bitā :76). To describe and explain the legal rules and infer their orders, both interpretation and exploitation are considered that is description of letter of word and also expression of the fundamentals and the intended meanings in them (Alzahabi, 1976:19).

Law interpretation which is sometimes an abstract process and is done apart from external events and problem of adoration and execution and sometimes takes concrete aspect and is done to manage the external events by adapting concept of law on them is a question of law and it is dealt with formally only through the authorities and institutions whose competency has been predicted by the legislator (Principle 173 of the Constitution).

Nature of Interpretation

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Types of interpretation

Types of interpretation from the perspective of the interpreting position and authority

Interpretation has types. Historical interpretation was more common among all types of interpretation. Such interpretation had some problems. Another type is literal interpretation which mostly deals with letter. Logical, principle-based and positive school interpretations are of the other types of interpretation. Interpretation is divided into validity of authority and interpretation method. Interpretation is different in that the law is ordinary of the constitutional law or substantive or procedural law.

A-Legal interpretation

Legal interpretation is an interpretation which the legislative authority performs and the legislator expresses the intention of the ambiguous and brief legal article and makes inference as interpretation of the former law i.e. expressing intention of the legislator. Legal interpretation in fact is the law and is binding for all.

When interpreter of law is the authority who has enacted it, such type of interpretation is legal interpretation. These interpretations are valid for all courts and people and since they are not regarded as new law, they become retroactive. Of course, considering principle of legality of crime and punishment and the principle of non-retroactivity of criminal laws which have been stipulated in different principles of the Constitution of Iran e.g. principles 36 and 169, a fair and honorable legislator should not enact a new law as interpretation of former laws and make it retroactive. Legal interpretation is more valuable than other types of interpretation because it conforms to principle of separation of powers and prevents from adopting different procedures.

B- Judicial interpretation

It means the interpretation of law which the judges make when investigating claims and cases and adapting cases with law and infer from the legal article and act according to that inference in special cases. The interpretation of the legal article by the judges holds valid in special cases but it is not binding for the judges or other authorities.

The judges are of the people, who are mostly related to law for settlement of claims, and for this reason; they should be mainly responsible for interpretation of law and law interpretation is one of their inseparable tools and they are more competent than the others in terms of long exercise and direct involvement and their repetitive reference to law. The Constitution has also referred to right of law interpretation by the judges in Principle 73:

Description and interpretation of ordinary laws are the responsibilities of the Islamic Consultative Assembly. Provisions of this principle don't prevent the judges from interpreting the laws to distinguish the right.

The judicial interpretation in England law has been criticized from some respects. Writer of the book "Principles of criminal law " writes:

Many laws created by the Parliament have been interpreted by the parliament and such work certainly transfers some powers of the legislative power to the judiciary power (Ashworth, 2008:17).

Beccaria says about the judicial interpretation: it is not possible to transfer right of interpreting criminal laws to the judges. The reason is only one thing. The judges are not legislator(Nourse , 2012:72).

As observed above, all of the above problems relate to interference of the judiciary power in affairs of the legislative power. In fact, the legislative power should determine limits of crime and punishment while the judge practically does so through his interpretation.

It should be replied that although judicial interpretation has some consequences such as interference in powers of the legislative power in some cases, however, the judicial interpretation is inevitable because it is not possible for the legislative power to respond to all problems and questions which the judges encounter in process of judicial work. On the other hand, apart from the problems in legal

interpretation which we mentioned before, what can give more value to interpretation of the law by the legislative power is investigation of law in a selected gathering with the considerable number while all lawyers were not selected in the legislative power and if there was a distinguished lawyer, they were specialized in fields such as private law, international law and criminal law. Therefore, belief of few people will be proved in the legislative power while law interpretation by the judges allows us to take advantage of the most professional and specialized beliefs of the people in judgment and to achieve a valuable judicial precedent which is result of their work in long term.

Tools of criminal law interpretation

Tools of interpretation are the tools and ways which considerably help understand concept of law and recognize its borders and evidence in some cases. Topics of the law determine domain of the articles which have been affected by them. The accessory notes are the weakest guide and don't have any role but introduction of the subject for which the law intends to find a solution (Walker, 1985:201). It is necessary to recognize and separate different parts of law and introduce role of each of them in interpretation of law.

Research method

Subject of the present research is of the applied type and it seems that the research method is a combination of the descriptive and analytical methods. The descriptive studies investigate condition of one or more variables irrespective of their relation with each other (Sabri, 2003:57).

These studies are used for creation of a hypothesis.

In this research, I study records of legislation and the current laws in law of Iran and international law as the events which have occurred. Therefore, it can be said that the research method includes a combined method in the field of law like other legal researches.

Research findings

Restrictive interpretation and its types 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 framework of its concept and is not transmitted to cases of silence and the cases which may include those cases. In punishment law, the restrictive interpretation should be done and in the laws relating to proof of claim and legal evidence and civil responsibility, restrictive interpretation should be done (Jafari Langroodi, the same).

Some believe that the judge should not go beyond principle of legality of criminal law and endanger individual rights, interests and freedoms due to political and social considerations. The restrictive interpretation method is based on the fact that the judge pays attention to logics of law and the cases which have been expressly and briefly mentioned and infers from meaning of the legislator from concept of words and terms and by observing grammatical rules. Nevertheless, in cases the law is not express; it should be interpreted in favor of the accused (Shambayati, 2001:93). The restrictive interpretation of criminal laws is the principle of legality of crime and punishment considering principle 36 of the Constitution. According to an old proverb about the 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 law is always perfect. The number of reformed laws per year is higher than that of the laws which are established and enacted for the first time. In addition, resort to the restrictive interpretation causes the law to remain in the primary form while the law is a case which is changing with progress of society and legislator can coordinate him with the said changes considering the long legislation formalities. B-Interpretation by comparison in criminal issues in execution of the principle of legality of crimes and punishments: the judge cannot generalize the punishments which law has defined for criminal actions at his discretion to other actions which have not been judged by the law though there is much similarity between criminal and noncriminal actions. It means that it is prohibited to interpret the criminal issues by comparison. However, in some countries, the judges have been empowered to compare the antisocial actions which the law has mentioned generally with the definite crimes which have been stipulated in law and in case there is similarity between the said actions and crimes, he should impose punishment on the perpetrator for the definite crimes (Babaei Mehr, 2010:110).

In law of Iran, pretending to do prohibited action in the public places or the action which injures the public chastity or the issues relating to quality of legal veil in Article 638 of the Constitution and its note and the alcoholic liquors under Article 165 of the Civil Code are general concepts and sometimes imposition of punishment on these cases and its evidence requires the presence and keeping of similarity between the said actions and crimes with the general concept deserving punishment while using legal and customary sources. Therefore, although comparison is denied, the court recognizes evidence of the law (Goldoozian, the same).

Results of restrictive interpretation of criminal laws are as follows:

- 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).

3- 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).

Discussion and 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.

* 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."

- 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.

Recommendations

At the end, the present research recommends studying these subjects for the new researches:

- 1- Restrictive interpretation is a barrier in change of law because many believe that law is the way with which social relations are controlled while social relations are changing due to change of society. Rigidity of the words of law doesn't respond to these changes and as a result, it is not possible to administer criminal justice.
- 2- If we are bound to the restrictive interpretation, the criminals will escape from punishment and administration of justice since the criminal law cannot predict all actions contrary to the social order.
- 3- Despite adherence to the restrictive interpretation, the criminal system will be able to have necessary efficiency.
- 4- if the restrictive interpretation is correctly defined and is applied in its own place, none of the above problems will not be justified because many believe that if there is deficiency in law, the legislator not the judge shall fill the legal gap and remove ambiguities of law as law will not change with broad interpretation because each of the restrictive and broad interpretations has advantages and disadvantages and it is possible to make final judgment about anything after adding all of these advantages and disadvantages and this is not the reason for rejecting it only because it is a method with disadvantages. Such case holds true for dictatorship and democracy because each of the two methods has advantages and disadvantages but disadvantages of dictatorship are more than its advantages but advantages of dictatorship are more than its disadvantages.

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