

Parliamentary immunity of representative in Iran and other countries

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Abstract: The most important privileges that the representatives hold are freedom of speech and immunity of detention. No one can detain the representatives from presence in the parliament and expressing his/her ideas freely. The Immunity principle, although is in contrast to the principle of equality of citizens, but is has been accepted due to defending parliament performance and also for the sake of the necessity of parliament meetings. It has been accepted so that the representatives would be secure in front of the state despotism or any other intentional action from the Executive side. This principle also protects the representatives from any foreign impression and obstacles which may prevent the representative from showing up in the parliament. Consequently, in the fundamental law this principle has been considered as an example of public order.

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1. Introduction

Security is needed for undertaking any job. And whatever the jobs and responsibilities are important the need for security would increase. Security would increase the ability of doing the job. Being the representative of parliament is one of the responsibilities in which due to its importance and sensibility there is a severe need for security; it's because a representative have the right of expressing his ideas on every issue of the country and observing the performance of all issues. So, in most of the countries, the representatives have a kind of immunity during their serve in the parliament. The parliamentary immunity is part of political immunity that according to it no one has the right of making any interference with the representatives without the awareness and approval of the Legislature. In legal terms, the immunity means exempting some people, property or statues from general rules of the country in Judicial or regulatory or tax matters. But in this paper, we discuss personal immunity.

2. Parliamentary Immunity

According to the principle of equality of people in front of the law, all people should follow the defined Laws and Regulations and on one can include a certain right or privilege. But for some people this rule doesn't apply and they include in another Laws and Regulations. The representatives are among them. (Khosravi, 2010) in fact, the immunity is a legal cover for protecting the representative in front of judicial execution or police actions (Qazi, 2010). In fact, the rule of immunity may have the quality of discrimination or the quality of preference. But, in fact it is an instrument by which the representatives can

defend their freedom and liberty in order to maintain the main duty of themselves in preaching, writings and doings. These actions for ordinary people may provide some legal and judicial responsibilities. Based on the concepts and rules of parliamentary immunity, the principle of 88 explains substantive immunity or the lack of responsibility of the representative. But the second pillar of parliamentary immunity that is the immunity from attack has not been foreseen in the Constitution and the representatives have been supported in doing their duty of being a representative imperfectly. Although in the draft of the constitution the principle of inviolability has been predicted, but finally it was not confirmed because some of the representatives considered it as certain privilege for being a representative. (The detailed proceedings of parliament)

3. The Philosophy of Parliamentary Immunity

From a historical perspective it seems that Britain and France are the two countries in which included the Parliamentary immunity in their laws more than any other country. In the system of division of powers, it has been foreseen for the parliament and the Legislature duties that are of high values. These are such as the Legislation and monitoring the proper implementation of laws; Investigation of the affairs of state and governmental organizations; investigating people's complaints from the abuses which are done by the three powers; impeaching ministers and even the president as the head of executive branch; Commenting on domestic and international issues and etc. it's obvious, being committed to these assignments will require some laws to be foreseen for the representatives so that they could adhere to their

own duties with a complete freedom and without any fear of being prosecuted. Measures should be taken in order to no one whether natural or legal person put pressure on the representatives or made them some obstacles. It should be the same as a judicial person and the judicial immunity that they possess. In the past, the representatives were prosecuted, threatened or attribute some false and unfair charges in order to prosecute and detain them from doing their parliamentary duties. Some of the professors of law have said that immunity is a title that the French Lawyers introduced in the early French revolution. It was because at that time no one was eager to accept the responsibly of being a representative. So, they made this law in order to persuade some people to undertake this responsibility (Shikh- Al- eslami, 2006). It's obvious, if the ideas and opinion of the representative face him/her with some kind of difficulties he/she prefers not to speak frankly and be indifferent to issues of the state. For preventing this matter the parliamentary immunity was introduced. Although a representative is using this immunity but the main reason for this immunity it's not the personal interests of the representative. The main reason for this immunity is to prevent the House of Representatives from being useless. The main reasons are also safeguarding the public benefit of the society and protecting freedom of the parliamentary regime from any other potential abuses of foreign forces (Hashemi, 2005). The representative is immune from any kind of intervention even from the judicial acts performed by courtrooms for what he/she has said in the public meetings or closed meetings or in the committee of parliament. So, he/she cannot be prosecuted for the charge of insult or Defamation or Disclosure of state secrets. Congresses of Legislations for the preservation of this freedom and supporting it from any Infringement by the executive or legislative branch or any other individual would react harshly.

4. Kinds of Parliamentary Immunity

Parliamentary immunity has two aspects: 1. Substantive immunity (the lack of responsibility) 2. Superficial immunity (inviolability).

Substantive immunity: According to this immunity the representative can fulfill his/her duties in complete tranquility and without any pressure from organizations and various groups. So, the representative should not be prosecuted for the sake of his/her sayings, writings, performances or decisions. The representative should not be prosecuted because he/she is the representative of the people and is implementing demands of the people (Qazi, 2010). In Proper implementation of substantive immunity the following conditions should be observed:

1. The immunity should be Continuous and absolute: even after the period of Legislations it's not possible to prosecute the representative for his/her performances during the time of being a representative.

2. The comments of the representative should be around the public affairs and interests of the nation.

3. Upholding the principle of accountability: the representative should be responder for his/her comments in front of the people.

4. No abuse of his/her immunity (Qazi, 2010).

The representative of parliament does an important part of his/her duties outside of parliament that doesn't have any freedom concerning them. So, if he/she says something in his/her Constituencies that is not allowable for ordinary people he/she would be responsible (Bushehri 2006).

5. Superficial Immunity (Inviolability)

The representatives of the parliament in some of the countries especially in countries that have confidence in the judiciary are not immune from being prosecuted and executed for the charges of doing a crime although their arrest is forbidden without any permission from the parliament. But in a lot of countries, the representative is immune from Deterrence or pursuing criminal unless, the parliament deprives him/her from immunity (Bushehri, 2006). In Iran for the sake of respecting the representative as the representative of the people and so respecting the authority of people and based on this pre- assumption that the representative is the proper and suitable person and trustworthy by the nation he/she should not be prosecuted same as other people, in case of any infringement or crime (Khosravi, 2010). According to the principle 86 of the constitution, Representative enjoys immunity against criminal procedure code. Inviolability means Prohibition of attack to the representatives concerning the things they do outside the parliament (Qazi, 2010). If the representatives do things which are a crime outside the parliament, again they are protected by the constitution. Superficial Immunity means in case of doing a crime or infringement by the representatives, the usual methods of arrest and detention mentioned in the criminal law and criminal procedure would not be applied for them. Firstly, they refer to the parliament to ask for the deprivation of their immunity. If the parliament permitted, the representative would be placed at the disposal of the judicial organizations such as an ordinary person. Deprivation of immunity from the representatives with the approval and ratification of the majority of representatives allow judicial authorities. But in this case there are two conditions:

1. In case the crime is evident the officers can arrest the representative. It means the doer of the crime is detected easily.

2. The period of Inviolability is confined to the period of designating a session or Legislation. Therefore, the representative is the same as ordinary people in front of the constitution after the period of designating a session. So, he/she must be prosecuted according to the principle of equality of the people in front of the constitution (Khosravi, 2010).

6. Range of Parliamentary Immunity

The principle 86 of constitution says "the representatives in the place of doing their representative duties in expressing their ideas and opinions are completely free and cannot prosecute or arrest them for saying their ideas in parliament." The parliamentary immunity is confined to the representative only and is not applied to his/her friends, relative, house or his/her place of work. The principle 84 of the constitution says "every representative is responsible in front of all people and has the right of commenting in all domestic and foreign matters of the state".

7. Duration of immunity

Inviolability of the representative is limited only to the period of designating a session (from beginning to the end of session). Out of this period; the Representative is subject to the provisions of the Criminal Procedure Code. The only limitation that exists is that, for prosecuting a representative the Jurisdictions should have the permission of parliament. After the next session, the parliament can let the prosecution of the representative suspend or if he/she is not arrested let him/her to come back to the House of Representative. Concerning the deterrence or prosecution of the representative between the two sessions the constitution varies from one country to another: in France it's not possible to detain a representative between the two sessions (that usually two session in a year) before asking permission from the Board assembly of the parliament, unless in evident crimes. In countries in which the periods of legislation are not divided into sessions, the representative is immune from detention throughout the course of legislation (Khosravi, 2010).

8. The representatives' immunity in the law of the countries

8.1 Iran

In the Constitutional Constitution, the parliamentary immunity was respected. The principle 12 says this: no one is allowed to oppose its members without the ratification of the Legislative assembly. If one of its members made a crime evidently and he/she

was arrested red handed, the implementation of reprimand should be with the information of the parliament. In the Internal Regulations of the National Assembly there have been some complete regulations that were replaced by the principle 84 and 86 of Islamic Republic Constitution. Thus, the parliamentary immunity was highly respected and emphasized because this immunity kept the representative immune from any attack. In the article 168 of rules of procedures has been emphasized if a representative was arrested red handed outside the parliament yard the defendant must be sent to the Legislative assembly immediately. Based on the article 189 of rules of procedures of the Legislative assembly no one can prosecute a representative for expressing his ideas or making a speech or voting in Legislative assembly or in its committees. Based on this article, the parliamentary immunity is only in the scope of parliament issues. Thus, if a representative made a crime his/her detention, prosecution and punishment are legal. In these cases there is no need for the parliament permission. The jury should inform the parliament about the limitation they have imposed upon the representative and the parliament have the right of depriving the immunity from the person who was arrested by the Executive or even put him/her on a trial itself.

8.2. England

The principle of immunity has not been foreseen clearly in England but in action this immunity is available and necessary for the representative intention. They induce the same immunity which exists in other countries and they believe it is forbidden to insult the parliament representative for his/her ideas and opinions which were said or expressed in the House of Representatives. And whenever a representative commit a crime his/her judicial detention need the permission of House of Commons. Impartiality of the head of parliament is only the guarantee of the independence of the legislative power against any possible aggressions. (Dadfar, 2012).

8.3. Syria

According to Syrian constitution, it's not possible to drive criminal or civil prosecution against the members of the People's Assembly for their criticism of affairs or the ideas they express in public or in private meetings of parliament or its committees. Also, the members of people's assembly are immune during the period in which they are representative. In committing an evident crime any Criminal action against them is forbidden unless it has the permission of the parliament. In case there are no parliamentary meetings, approval of the head of parliament is required and this detention would be declared to the

representatives in the first meeting of the parliament (Madani, 1996).

9. Conclusion

Inviolability of the representative is confined to the period in which he/she is in a session and according to the Islamic Republic of Iran's constitution the representative of the parliament is immune only due to operating parliamentary duties. So, in other crimes and cases, the representatives are equal to ordinary people and their accusation would be considered in Tehran's courtrooms. The accepted immunity which has been confirmed in the constitution has two important Constraints. The first one is that the Acts which is committed should be in line with the duties of the representative. If the representative opines a criminal idea out of the framework of parliamentary duties he/she won't be immune. The second limitation is that the only criminal actions are concluded the immunity that they would be in the category of commenting an idea.

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