

A Brief Study of Principles and Conditions of Certain Authorities of Religious Minorities in Iran's Law

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Abstract

There is hardly a country or a government in the world which all its citizens are of the same race or ethnic background, speak the same language or follow the same religion. Indeed, there is one majority in most countries in the world which have the same history, culture, language, religion and nationality. Besides, there are some small groups in those countries that have their own ethnical, lingual and religious characteristics called minorities. The religious minorities which are part of each society are citizens of that society and as a result, they have the rights and promises like other citizens in the same society. Religious minorities have always been given special attention in holy Sharia of Islam and they have lived next to Muslims during centuries and, consequently, they have had rights and promises. One of the privileges given to the religious minorities is their legal independence for taking civil action by religious minorities. Such issue has been considered by legislator in different laws in Iran. So that it necessitates an analysis of its principles and conditions for taking civil actions concerning the approved laws in legal system of Iran. The present paper aims at shedding some lights on the same subject.

Keywords: religious minorities, special references, individual status and non-litigious matters, confirmation of decisions

1. Introduction

Religious minorities form a small group of people in a country which with different beliefs bring social and cultural diversity to every country. Therefore, it should be mentioned that minorities because of their certain religions must have their rights in a society. Formally accepting religious minorities, holy Qur'an respects their rights. To do so, Prophet Muhammad and great Shia Imams made an attempt that each individual or group to choose his/her religious belief freely although the only accepted religion for God is Islam. The prophet Muhammad (Peace be upon him) made a peace contract with people of the book and enforced such law. As a result, since the political systems are based on majority, such law has been implemented and determines the legal system. Questioning the place of minorities is one of the important concerns in legal justice discourse. So that, this paper tries to answer the following questions: Is there any certain law for regulating relationships between Islam and new religions in Islamic legal system? And if yes, on what principles and grounds is it based? What kinds of authority are legitimate enough to regulate such relationship? How? And based on which principles? Finally, this present study investigates the legal independence of religious minorities in Iran, their certain legal authorities to appeal to in individual status and litigious matters.

2. The Concept of Religious Minorities

To come up with precise concept of religious minorities, it is necessary to understand it from different aspects:

2.1 Definition of Minority

Minority means individuals who are a few and in comparison to main population of a society are in a small number. Such a word can be used in different ways such as political minority, religious minority and madh'hab (doctrine) minority. Religion is a group of practical plans in accordance with certain world-views that humans determine to reach their eternal glory or accept others' world-view (Dekhoda, 1995). Also, madh'hab (doctrine) refers to schools of thought within a religion (such as four or five madh'habs in Islamic jurisprudence). However,

for both religion and madh'hab the same word "religion" is used in western countries.

The religious minorities are those individuals who are in minority concerning the religion in comparison to that of the main population. In other words, the religion of minorities is different from the religion of the majorities. Since this study focuses on religious minorities in Islamic societies so it includes those who live in Islamic societies but they are not Muslims. They are member of religious minorities since there are a few of them in that society.

2.2 *The Religious Minorities in Qur'an*

There are lots of verses and narratives about the rights of Muslims and non-Muslims in Islam. According to Al-Hujurat (Private rooms) verse 13; People, We created you all from a single man and a single woman, and made you into races and tribes so that you should recognize one another. In God's eyes, the most honoured of you are the ones most mindful of Him. As the verse puts it, Islam condemns ethnocentrism and racism. According to a narrative by Prophet Muhammad (PBUH); People, your God is one single God and your father is one. There is no privilege for Arab against non-Arab and for non-Arab against Arab and for black against Indian and for Indian against black except for piety (Al-Amini, 1986). Not only does not Islam impose any of its legal and dutiful regulations on particular cultural standards of any nations but also according to some Qur'anic verses and other jurisprudence principles, other faiths are free to choose their thoughts and beliefs (Ja'fari, 1991). The verse 8 of Al-Mumtahana (Women Tested) bears testimony to such claim: "and He does not forbid you to deal kindly and justly with anyone who has not fought you for your faith or driven you out of your homes: God loves the just." Imam Ali (PBUH) in his commanding letter to Malik al-Ashtar says: "Develop in your heart the feeling of love for your people and let it be the source of kindness and blessing to them. Do not behave with them like a barbarian, and do not appropriate to yourself that which belongs to them. Remember that the citizens of the state are of two categories." (Dashti, 2007; letter: 53). Islam respects religious minorities and no other religion in the world except Islam guarantees the freedom and national rights of them.

2.3 *Religious Minorities in Shia Jurisprudence*

Religious minorities are known as "People of the Book". People of the book are followers of the prophets who had a book revealed to them through God for guidance of the humans. The origin of such a phrase goes back to Quran and tradition (HorA'meli, 1979). According to Quran and narratives, jurists give the first place of people of the book to Jews, Christians and Zoroastrians and then to the followers of other religions such as Sabians. So that, the Jews and the Christians are considered as the infidel believing in scripture and those who are suspicious to be people of the book are the Majus; whether the latter are liable to Jizya (tax payment) like those of people of the book is controversial among jurists (Najafi, 1986; Bahrani, 1984; Tabatbaiee, 1997).

a) Jews

The Jews are the followers of Moses (PBUH) and their holy scripture is Torah or Old Testament. Moses (PBUH), his holy scripture and the Jews are mentioned in several verses in Qur'an. Moses is called God-sent, one of the Ulu'lazm prophets (prophets favoured by God) and Kalimullah (The one who talked to God). However, according to Qur'anic verses, those parts of Torah which was not in line with Jewish ideas (such as the expecting of Prophet Muhammad appearance and so on) were omitted or twisted later (Al-Baqara [The Cow]: 75, Al-An'am [Livestock]: 91, Al-Ma'ida [The Feast]: 13, Al-Nisa' [Women]: 46).

b) Christians

Christians are the followers of Jesus Christ (PBUH) and their holy scripture is Gospel or New Testament. Indeed, Christianity is the continuation of Judaism and therefore Gospel mostly deals with moral and social issues, and in the case of Christina religious issues refers to Torah and its religious law. Mary, daughter of Imran, is mentioned with honorific title and Jesus is called the spirit of God in Qur'an (Al-Nisa': 75) and one of the Surahs (chapters) in Qur'an is named after his mother (Mary).

c) Zoroastrians

Majus (Magus) and Zoroastrians are those who are considered by Qur'an in line with Jews and Sabians so they can be categorised as people of the book. Although there are some uncertainties about their belief in monotheism and holy scripture, jurists referring to verse: "As for the believers, those who follow the Jewish faith, the Sabians, the Christians, the Magians, and the idolaters, God will judge between them on the Day of Resurrection" (Al-Hajj [The Pilgrimage]: 16) and the narratives of Imams (PBUH) deal with them like people of the book and the same laws are observed for them.

2.4 Religious Minorities in Law in Iran

According to the first article of constitution of Iran the form of government is that of an Islamic Republic and referring to article 12, the official religion of Iran is Islam and the TwelverJa'fari School and Other Islamic schools, including the Hanafi, Shafi'i, Maliki, Hanbali, and Zaydi, are to be accorded full respect. Additionally, according to article 13, based on well-known Shia jurisprudence, Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies and to act according to their own canon in case of individual status and religious education. Comparing articles 12 and 13, it can be understood that the terms Mazhab (sect) and Din (religion) are not synonymous and sectarian minorities are different from religious minorities although they have equal rights are free to perform their religious rites and ceremonies and to act according to their own canon in case of individual status and religious and sectarian education.

3. The Rights and Promises of Religious Minorities in Islam

Non-Muslims who, keeping their beliefs and customs, live in an Islamic country and refrain from engaging in conspiracy or plotting against the Islamic state or government, can enjoy all political, social, economic and legal rights. Some of these rights and promises will be discussed below.

3.1 The Rights of Religious Minorities in Islam

Islam seeks the public peace and security for all. As a result, some privileges are given to religious minorities (non-Muslims) some of which will be mentioned shortly.

a) Total immunity

According to an agreement, religious minorities have all rights including financial and life immunity. Drawing on such an agreement, religious minorities enjoy some rights and privileges: those who are dhimmie allies (non-Muslim citizens of an Islamic state) with Muslims, their life, property and dignity are inviolable; secondly, their life, property of dhimmie should be protected against others invasion to Islamic states. As Imam Ali (PBUH) puts it: "Those, people of the book, who have reached an agreement with us, they pay Jizya to be supported and their properties like ours and their blood like ours be secured" (Khoiee, 1999). Prophet Muhammad (PBUH) made lots of treaties with people of the book especially the Christians each of which can be considered as an essential source for Islamic human rights concerning religious minorities. One of the treaties with people of the book is the treaty he made with the Christians of Najran (is a city in southwestern Saudi Arabia near the border with Yemen). According to this treaty, all of their rights in observing their traditions, life and property safety are respected. To secure the traditions, life and properties of the people from Najran, they attest to their promise, God's help and agreement: "and for the people of Najran and its suburbs God's support and promise and the agreement of Prophet Muhammad, the messenger of God, concerning their properties, life and traditions and about the hidden and seen and the tribes and temples and whatever they own, more or less, are observed." (Vahab, 1999; Mianji, 1999)

b) Judicial independence

Legal independence is one of other rights of religious minorities. In other words, one of the rights of the citizens of a country which guaranties the grant of their rights is the right to appeal to legal justice. These rights include the right of hearing, equity against the court, the right of self-defense and ...although the rights of religious minorities is granted based on dhimmi contract (residence in return for taxes), they are subject to adversarial disputes, in the cases which it is legally necessary, such a right should be granted. Similarly, not only have they right to claim lawsuit in public courts in Islamic states but also they have legal independence and they can attend their own courts. The dhimmis whose adversarial right is granted in Islamic courts have the freedom of choosing the kinds of adversarial right. In other words, they can refrain claiming lawsuit in Islamic courts and attend their own courts and it is because of the same reason it is obvious that Islam reserves the right of legal independence for its allies (A'midZanjani, 1988).

Although such right can be granted if both parties are non-Muslims but if one of the parties, either claimant or defendant, is a Muslim it is not permitted to claim lawsuit in non-Islamic courts. According to Qur'an: "If they (the Jews) come to you [Prophet] for judgement, you can either judge between them, or decline" (Al-Ma'ida: 42). It is in this verse that God tells Prophet Muhammad that if non-Muslims come to him for adversary or judgement, he can either judge between them or leave it to their religion. As MohagheghArdebili states: "opposing tyranny in Islamic society, either by Muslim or non-Muslim is obligatory and leaving the dhimmis to their own court is not tyrannical and it is necessary to follow the rules of their (people of the book) courts" (MohagheghArdebili, 1982). The holy Qur'an explains the reason behind such free will: "But why do they come to you for judgement

when they have the Torah with God's judgment, and even then still turn away? These are not believers." (Al-Ma'ida: 43).

Holy scriptures include divine laws but if the judgments of Islamic courts are for their benefits, they refer to them (Islamic courts). As a result, Islam gives such authority to Islamic courts to fully recognize to judge or not. However, the legal independence is a privilege given to religious minorities in Islam.

3.2 Promises of Religious Minorities

According to jurisprudence sourcebooks and treatments reached during the early Islamic period between Prophet Muhammad and the people of the book or the religious minorities, they are subject to some promises which they must observe: one of these promises is "Jizya". Holy Qur'an defines Jizya as: "Fight those of the People of the Book who do not [truly] believe in God and the Last Day, who do not forbid what God and His Messenger have forbidden, who do not obey the rule of justice, until they pay the tax and agree to submit" (Al-Tawba [Repentance]: 29). Jizya is what the dhimmis must pay and it is the tax they pay to guarantee their life and property. On the other hand, Islamic state should provide their total security. Jizya never means degradation or humiliation since neither the etymology of the word implies it nor it fits with Islamic educations nor it is compatible with other laws concerning rights of religious minorities. Those who interpreted the aforementioned word as a kind of humiliation, they gave rise to misunderstanding, indeed. Jizya shows respecting Islam and a way of living a peaceful life mutually. Those who question the jizya on the ground that it is inhumane are on the wrong track since jizya is a reward to Islamic state given by non-Muslim citizens or people of the book for the sake of measures taken for their well-being. So that it is not a fine or tribute (Motahhari, 1989).

3.3 Jurisprudence Principles and Law Sources of Authorities of Religious Minorities

The jurisprudence and law principles of authorities of religious minorities in procedure can be considered as following:

Part 1: Jurisprudence principles of certain authorities of religious minorities

The most important jurisprudence principle is narrated rules and regulations on which religious laws are based. So that the principles will be analyzed according to narrated rules and regulations

a) Qur'an

According to holy Qur'an, all scriptures and prophets are sent to bring justice and equity to society. All believers are asked to serve justice without putting any restriction on a certain kind of justice. Prophet Muhammad (PBUH) like other prophets was responsible for doing justice in all cases. God says Prophet Muhammad: "If they come to you [Prophet] for judgment, you can either judge between them, or decline— if you decline, they will not harm you in any way, but if you do judge between them, judge justly: God loves the just" (Al-Ma'ida: 42). According to Qur'an, dhimmis must attend the Islamic courts while Prophet Muhammad was free to choose to judge or decline. Of course, the judgment is possible only if both parties are of people of the book but if only one party is Muslim it should be judged according Islamic laws. Indeed, of general rules of attending public courts, only one is exempted. To be more precise, the Prophets free will to judge or to decline is possible only if the dispute is between them and it is obvious when it is said, "you do judge between them": here "them" refers to the people of the book. Also, "decline" in the sentence "if you decline" means the Prophet can refrain judging and send them to their due courts, authorities and scholars. So that the opposite parties do not have to be left unjudged. Consequently, it can be concluded that the people of the book are able to bring justice to themselves according to their own sects and traditions based on the assumption that they have certain courts for judicial procedure. In other part of holy Qur'an, the likeliness and probability of people of the book who may refer to Prophet Muhammad says: "but if you do judge between them, judge justly: God loves the just"

b) Sunnah

Observing justice for all humans of any sect or religion is highly emphasized by Prophet Muhammad and Imams. According to Imam Sadegh (PBUH) narrative about the inheritance difference between Shia and non-Shia concerning the right of religious minorities to have certain judicial authorities based on their own laws: "take them, whatever they take from you in terms of traditions, judgements and laws (Sheikh Toosi, Vol. 1, Part, 20, Hadith: 9). Although the narrative is about finance and inheritance, the noun "judgment" has broad connotation: it means expect them what they expect themselves in their own judgments and according to their own laws. According to the hadith, judicial procedure among them according to their own traditions and laws are legal.

c) Pactasunt

Pactasant as a kind of act is specific to Shia jurisprudence (Muhammad HadiM'arefat, Al-Fekr Al-Eslami

[Islamic Thought], Issue: 21-22). It is said that Imam Kazem (PBUH) in reply to a man who asked him whether it is possible to marry a Muslim woman who is divorced according to Sunni's traditions after a specific time, said they have to be committed to their commitments concerning divorce (HorA'meli, Book of Separation, Hadith: 5).

Pactasant means that all non-Islamic religions and non-Shia Muslims whose beliefs in terms of legal laws are against those of Islam or Shia, they have to meet their commitments (BahramiAhmadi, 2009) and they have to abide by their own rules. Religious minorities are of the belief that they have to be expected to preserve their own legal rules and judicial system in line with their laws. They are committed to this and as such they have to have their own judicial authority.

3.4 Law Sources of Certain Authorities of Religious Minorities

Respecting rights of religious minorities and not discriminating among them is of those topics which have always been paid special attention in Iran on the side of legislator. To observe equity and justice regarding Islamic religious educations, special measures have been taken within established laws such constitution of Iran in different times of legislation based on the context of time and place. Some of this measure will be briefly discussed below;

a) Constitution of Iran

Constitution as the name suggests are a set of rules and regulations which include the relationship between governments and its different parts, individual freedom and society. Constitution, in contrast to other rules, does not include a certain group or class of people but it refers to the rules and duties of all individual who live in a country regardless of their status, skill, occupation and position (Sha'bani, 2011). The aim of constitution is to provide proper scientific grounds to preserve Islam in all aspects of an Islamic state, both domestic and abroad. The constitution of Iran was written by an assembly of jurists, experts and scholars based on Islamic criteria and many of the rules are rooted in Qur'anic verses and prophets narratives.

Constitution of Iran, as its name suggests, are set of rules and regulations according to which there is a relationship among government, state powers, laws and, individual and social freedoms. According to the constitution of Iran, "religious minorities" are those who are followers of either Judaism or Christianity or Zoroastrianism and are citizens of Islamic Republic of Iran. They are also known as "people of the book". The constitution of Iran values religious minorities and guarantees their national freedom and rights. This is one of the privileges of Islam that provides social justice for all humans regardless of their sect, religion, race, ethnicity, language and color. The articles 19 and 20 of constitution of Iran bear testimony to such a claim:

As article 19 clearly states: "The Iranians of all ethnic backgrounds and tribes observe the equal rights and there is no privilege in their color, race, and language and so on."

And article 20 emphasizes: "all individuals in a country, either man or woman, enjoy the same right against law and all humane, political, economic, social and cultural rights, observing Islamic principles, should be provided for them".

Although according to article 12 of constitution of Iran the official religion of the country is Islam and the TwelverJa'fari School but article 13 first introduces the religious minorities of the country and confirms that they are free to perform their religious rites and in individual status and religious educations act according to their canon. As article 13 puts it, "Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies and to act according to their own canon in case of individual status and religious education". Article 67 which is about taking vow of parliament members at the early stages of election and the first session of the parliament says: "The representatives of religious minorities have to take vow based on their holy scripture". Nothing is mentioned about the establishment of certain judicial authorities for religious minorities in article 13 but certain degree of independence is taken into consideration in terms of observing their individual status. This article set the ground for the establishment of certain judicial authorities.

b) Observing non-Shia Iranians individual status approved in 1933

Individual status of religious minorities such as marriage, divorce, inheritance and will is related to their religious documents and can be categorised under individual laws and rights. Observing such individual status in an Islamic state is not socially immoral. On the contrast, if such principles will not be observed, particularly when the followers are devoted and it is part of their beliefs, it can cause social tension (Sharifian, 2010). As mentioned above, according to Islam, individual status of religious minorities should be based on their own religion: since to be compatible with their religion, it is necessary to be valid and it should be permitted according to religion. Of course, it should be born in mind that such status is true in Islam as far as they are true

in their own religion. Besides article 13 of constitution of Iran, the single-clause bill of observing individual status of non-Shia Iranians approved in 1933 which several acts of it were approved by the general council of Supreme Court based on a unified judicial precedent no. 37 dated December 10, 1984 and also, it is approved by State Exigency Council titled the law procedure of disputes about the individual status and religious educations of the Zorotarians, Persian Jews and Christians in July, 1993 as following:

“According to article 13 of Constitution of Iran and due to single-clause bill of observing individual status of non-Shia Iranians approved in 1933 concerning individual status and inheritance and will laws of non-Shia Iranians whose religions are officially accepted observing indisputable common rites and customs of their religions must be stipulated except the law regulations which are about public disciplinaries so that courts responsible for the law procedure and will accreditation must observe indisputable rites and laws of their religions except the law regulations which are about public disciplinaries. The vote is the same as article 43 of litigious matters laws and the article 3 added to criminal law procedure approved in August, 1958 is binding for all courts in similar cases.”

The law procedure of claimed disputes concerning individual status and religious educations of the Iranian Zorotarian, Persian Jews and Christians is approved according to act 8 of article 110 of the constitution by Exigency Council dated 24 June, 1993 as a single-clause bill. However, as it can be seen, observing individual status of religious minorities lacks a regular common law to say that why observing individual status of religious minorities in courts in Iran should not be enforced the minorities themselves and these paved the way for the legislator to include the new laws in Family Protection Law approved in 2 March, 2013.

c) Family Protection Law approved in 2 March, 2013

Analyzing article 13 of Constitution of Iran and common laws, it can be seen that religious minorities are given independence in terms of substantive rules of individual statuses. In other words, if their claims concern issues such as marriage and divorce, the law procedure must be based on their religions but still they should attend the judicial courts where the judges are of different religion of the minorities. Therefore, it was a question remained unanswered that why besides observing individual status, there should not be special judicial authorities chosen among the same religious minorities who are familiar with the laws, traditions and rites. The note 4 of Family Protection Law was approved dated 2 March, 2013: “the parties’ claims concerning article 12 and 13 of the constitution according to the law observing non-Shia Iranian individual status in courts dated 22 July, 1933 and law procedure concerning claimed disputes about individual status and religious education of Iranian Zorotarians, Persian Jews and Christians by State Exigency Council dated May 25, 1993 must be considered”. The decisions of high authorities of aforementioned religious minorities in litigious matters and individual status including marriage and divorce are valid and they can be enforced with judicial courts without formalities.

4. Competence of Certain Authorities of Religious Minorities

The Competence of quasi-judicial authorities means that the legislator considers that authority as a proper agent to distinguish right from non-right. Therefore, their competence includes the duty and the right that these authorities have to investigate disputes and complaints and certain issues based on law. The dispute should be claimed in a proper court otherwise it is probable that the judicial authorities’ themselves consider it as improper and send it to a proper court. So the competence of a court is necessary and indispensable. The legislator has considered two competences in act 4 of the New Family Protection Law for the judicial authorities of religious minorities:

4.1 Individual Status Disputes

Individual status is a set of status concerning human attributes regardless of his/her occupation or position in a society. These attributes cannot be dated or exchanged with money and from civil rights point of view, they are influential. Individual status is of an individual’s and it is not related to one’s occupation or position in a society and it cannot be priced or exchanged with money. Individual status includes domicile and capacity. The domicile is an attribute set by law and it brings duties such as: age, gender, nationality, being single or married. Capacity, besides, is the legal ability of an individual to have right or to enforce right. Capacity and domicile are related and the former is rooted in the latter; for instance, a ward may not have the right to marry or divorce or citizens of other countries do not have the right to participate in political and economic activities. Indeed, individual status is those attributes that determine the status, individual and legal identity, and his/her duties in a society. The extensions of individual status are not the same in laws of all countries but they are conditions under which an individual is formed and usually includes issues such as marriage, divorce, annulment, child custody, legal guardianship, capacity, alimony, kinship and so on (Imami, 1995).

On the other hand, there are property laws which are determined by the nature of the property and it are about property such as ownership and divorce; however, it is possible to consider property as a subsidiary issue in individual status. The extensions of individual status are not completely determined in laws of Iran. The acts 6 and 7 of civil law and articles 12 and 13 of Constitution of Iran imply that issues such as marriage, divorce, inheritance, will and capacity are extensions of individual status. In single act of observing non- Shia Iranian individual status, adopting a child is one of the extensions of individual status. In addition, all contracts made between Iran and other countries which according to act 9 of civil law is considered as a law is one of the important sources of individual status. It should be said the aforementioned issues are not the only extensions of "individual status" but it includes its associations and derivatives such as Mahr (mandatory payment), dowry, financial condition of husband, kinship, fathership, child custody, annulment and so on. However, they are not explicitly mentioned in the law. According to the article 1: "litigious matters are those matters that courts are obliged to act and make a decision, and the judicial procedure must not be abandoned if dispute is not provoked and claimed among individuals." Some good examples are passing on inheritance, debt payment (liability) and will administration, determining and refuting the legal guardianship for the orphan and the insane and appointing an honest to manage properties of a missing.

4.2 Non-Litigious Matters

The litigious matters is a term used in Islamic jurisprudence and it includes all proper actions asked to be exercised by Islamic laws but nobody is directly responsible for doing them. Supporting individuals without guardianship in the form of determining of a legal guardian and supervising his deeds, some affairs such as inheritance, will and managing the properties of the missing are some examples of the litigious matters. According to a theory in Shia jurisprudence called guardianship of Islamic jurists concerning the litigious matters, jurists have the priority to take such responsibilities. The concepts of litigious matters in Islamic jurisprudence entered laws of Iran and degrees and means of implementation are discussed in detail in litigious matters laws of 1933. Indeed, litigious matters are against adversarial affairs that is in contrary to judicial decision, litigious matters are taken into consideration by court even if there is no dispute. To recognise the litigious matters in laws of Iran, not only should be analysed whether there is any dispute or not, but also it should be clarified whether the court should be engaged. Generally, if the nature of the required affairs necessitates that there is no party against and at the same time a judge intervene is necessary, it is a litigious matter which results in litigious action (Shams, Vol. 2, p. 255). So that" in cases that as it is requested there is no demand to hold a party or demandant does not ask compensation against another party, the case should be categorised under litigious matters. In contrast, when a claim is made against another party in the court it should be considered as adversarial even if from the outset it was assumed to be among litigious matters.

For example, if during the judicial procedure of inheritance concerning appointment or quality of distribution and ownership there would be a dispute among the inheritors, since then judicial procedure should be based on public court laws and the sentence given is categorised under adjudicated case (Katouzian, 1997). In the case of adversarial matters, the judicial procedure and giving sentence should be taken by court. However, litigious matters, if a complaint or dispute are claimed, such as marriage and divorce disputes and will refutation dispute, it can be called adversarial.

5. A Short Review of Law Procedure and Conditions of Certain Authorities of Religious Minorities

Despite the fact that according to constitution of Iran the law procedure of individual status of religious minorities (The Jews, the Persian Jews and the Christians) is considered inter-religious and apart from official laws of the country even in civil laws procedure and also, due to lack of written resources and researches about the same topic, the following researches are the result of field studies about certain authorities which will briefly be discussed:

5.1 Procedural Law and Conditions of Certain Authorities of Zoroastrians

According to field studies (by the writer of this paper with Mr. Moubed [Zorotarian priest] Rashid Khorshidian, head of The Zorotarians Marriage and Divorce Office) conducted on Zorotarians' Association in Tehran, it was revealed that the highest religious rank of Zorotarian priest or clergies association, it is the highest religious authority accepted by ministry of interior. The election of the Zorotarian priest is held every three years and those who are elected will be introduced to the ministry. After accepting the capability of the candidates introduces them to Zorotarians' Association. However, law procedure of individual status is of capability of Zorotarians' Association. The procedure of the association is one-stage procedure and there is no appealing authority. The associations have seven members both in Tehran and Shiraz but there are five members only in Yazd. The claims are mostly resolved by intervening and bringing peace to both parties. However, in order to

resolve special and exceptional cases, the parties are referred to Tehran Zoroastrian Association (The highest Zoroastrians' Clergies Authority) or if the claim is a serious issue they directly take part in the procedure without being investigated by Zoroastrians' Association earlier.

But it should be noticed that it is as such when there are special cases at hand and the major authority in charge is Zoroastrians' Association not Zoroastrians' Priest Association. For example, if the law procedure will be delayed in Zoroastrians' Association it should be referred to Zoroastrians' Priest Association. Indeed, Zoroastrians' Priest Association plays the role of major authority or the supreme court of the country. The minimum age of the members is 25 and there is no maximum age for them. Concerning education, all members should have BA/BS degree at least. The members of Tehran Zoroastrians' Association are elected by Zoroastrians community who live in Tehran. During each election, twenty one candidates are elected of whom seven members are responsible for Law commission of the Association or Dispute Solving Councils for four years. Among them, at least one or two members must be a lawyer or attorney at law. However, the Zoroastrians' priest members, seven members, are elected among priest communities or those whose father has been a priest.

The association law procedure does not include issues such as rejecting the pursuer and if there is a complaint about the pursuer, the association carries on procedure. In the law procedure the rules of civil law is not followed but if it is divorce dispute it should be called in through petition and the formalities should be observed otherwise such false petition is not considered in law procedure. Also, the date of complaint is announced after removal of the fallacies. The client is informed by a special officer from the Association or one of its staff at the door of his/her house or one of the houses of his/her relatives but before all these it is usually common to phone the person in order to meet him/her. The ground for giving sentence is based on majority sentences given by Zoroastrians' Association or Zoroastrians' Priest Association (in cases they are in charge). The law procedure is held only once and after giving the sentence it can be appealed later. The law procedure in Zoroastrians' Association or Zoroastrians' Priests Association is free of charge or it is optional to pay.

Individuals on their own rights have to claim a dispute or ask official attorneys in law but they cannot ask lawyers. However, it is not necessary that an attorney at law to be a member of Zoroastrians community. Moreover, the law procedure is not of that of civil but it is based on the internal by-law concerning individual status which is regulated in a written form for Zoroastrians community. Official court experts are not legally responsible for observing the individual status of Zoroastrians for determining the alimony of wife and children and but the lawyers members of the Zoroastrians Association are in charge of it.

The given verdicts of Zoroastrians Association concerning individual status for authorisation is sent to judicial courts (Family Court) according to article 4 of Family Protection Law approved in 2012 and after authorisation by judicial courts, it is delivered as a judgement, and as a rendered judgement it is implemented through enforcement of judgement.

5.2 Procedural Law and Conditions of Certain Authorities of Persian Jews

According the field studies (the writer of the paper and Dr. YounesHamamiLalehZar, cultural deputy and religious expert of Hakham of Tehran Persian Jews Association) it was made clear there are a few Persian Jews in Iran and there is no independent Persian Jews Association and if there is a question about religious issues or individual status it is referred to Tehran Persian Jews Association. Also, if a question is raised by the country judicial courts, it is referred to Tehran Persian Jews Association as the only official association since in Judaism each case the judge have to judge based on subject and extension concepts to be legally valid.

Based on the questions raised by the writer of this research paper, it seems that despite approval of New Family Protection Law in 2012, as before the disputes concerning the individual status of Persian Jews are claimed in the judicial courts and courts question cases (divorce, marriage, inheritance and so on) and after being answered by the expert it is signed and sealed by the head of the association to resolve the dispute. Therefore, there is an organization called Dar-Al-Shara' (House of Religion) within Persian Jews Association which include members who as an intervener are in charge of pursuing the disputes but since they do not have the executive authority both parties have no inclination to resolve the dispute.

There have to be at least three hakhams or clergies to establish a Dar-Al-Shara' in Iran. The authority is dispute solving committee and the election of the clergies are held every three years under the supervision of ministry of interior. There are not any special conditions for electing the hakhams but it is mostly due to social popularity and public acceptance of the Persian Jews community. Among those who are elected, one hakham as an official authority is introduced to the government and the same person, in contrast to other members, is always the same person and never changes. To discuss the professional issues it is probable that the experts who are familiar with the same issues to be invited but only hakhams or clergies are considered as the authorities competent of giving

verdict.

The claimant is not needed to attend the Dar-Al-Shara' and one can ask one's lawyer to attend and the lawyer should not be attorney and if one's lawyer is an official lawyer one's letter of attorney should not be an official one except there would be an objection. Also, to advocate the lawyer should not be a Jew but in some cases, for example, divorce the lawyer should be a Jew with special conditions.

There is not any formalities of law procedure in Dar-Al-Shara' for notification of both parties and all notifications and invitations are done through phone except the parties do not attend or respond. Then, one is formally called in. the legal term is not like that of civil law procedure and it is mostly based on the agreements of both parties. For example, if there is an agreement for divorce, there is not any certain time to attend the notary office and as long as the parties are agreed they can go there. The law procedure is free of charge in Dar-Al-Shara' and all the charges are paid by charity units of the Persian Jews Association. To claim a dispute, it should not necessarily be written in special papers of petition but it is a kind of demand and such demands can be given orally. The given verdict is usually based on unanimity but sometimes the majority view is valid.

5.3 Procedural Law and Conditions of Certain Authorities of Christians

The Christians have different sects and ethnic backgrounds in Iran. According to the field study (by the writer of the paper and SeroujOhanian, the head of Armenian Church in Tehran and North of Iran) to pursue the law procedure of disputes concerning the individual status and litigious matters have special courts some of which are trials and others handled by bishop. In other words, there is one church trial in Armenian Gregory Church religious authority which consists of seven members. This authority is the primary authority and the Armenian or Tehran archbishop decisions are considered as the appeal authority. Most of the law procedure in the primary authorities is mostly in intervention form but in the case of appeal it is done as trial on merits. The number of authority members in primary step is seven members two of whom have to be a lawyer, two of them of the public, and two of them psychologists (a child and a family psychologist) and also one member is a religious priest who attends the law procedure on behalf of the church. The law procedure is based on majority decisions. The minimum age of the members is 30 and they all have to be married. The members are elected for the period of two years and they can be re-elected. The members are not paid for their responsibilities.

The primary and appeal authorities of Gregorian Christians concerning the individual status if the judge is rejected, it is not accepted and the procedure can carry on. The law procedure does not follow the formalities of civil laws. The law procedure do not have to be necessarily in petition and it can be a demand. However, in the case of differences, they can follow civil laws procedure. For example, if there is a difference concerning testimony or during the procedure a special case such loyalty in marriage is available, the law procedure concerning the individual status is halted in judicial courts till the cases are clarified. The notification is posted and there is no notification agent and to post the notification with express post is of highest importance. The law procedures of primary and appeal are free of charge.

Both parties have to attend during the primary and appeal stages or their attorney at law. However, they cannot ask lawyers to attend their case but there is no difference whether the lawyer is Muslim or Christian. The law procedure is not based on special laws but it is based on common custom/ normative usage of the past. If cases are liable for the judicial courts, the judicial experts are involved otherwise it can be determined in primary or appeal stage from among the same members. The given verdict in the primary stage can be objected but it should not be more than 20 days after giving the verdict. Furthermore, the given verdicts of supreme authorities or the appeal court if the re-trial is asked as it is clarified in act 426 of civil laws procedure according to common laws it can be pursued in judicial courts.

The judicial courts of Iran consider the religious laws concerning individual status of primary or appeal authority of Gregorian Armenian Christians according to New Family Protection Law approved in 2012 on trial on merits and the decree given should be authorized but the enforcement of the judgements is the responsibility of judicial courts and based on the common rules and regulations. However, to register some cases such as divorce, there are special notary offices. The notary office of Gregorian Armenian Christians is part of monastery council where both parties have to register the divorce case there. It should be mentioned that since this research is not supposed to go into details, studies of other certain Christian authorities are not taken into consideration.

5.4 The Conditions of Verdict Implementation According to Authorities of Religious Minorities

Concerning the way of giving verdicts by religious minorities, it should be said that according to act 4 of New Family Protection Law approved in 2 March, 2012 it is completely clarified by the legislator but under the condition that the given verdicts of the authorities of religious minorities should be approved in courts but

observing the formalities such as giving petition, judgment fee and time of judgement are not needed. According to the same act, “the parties’ claims concerning article 12 and 13 of the constitution according to the law observing non-Shia Iranian individual status in courts dated 22 July, 1933 and law procedure concerning claimed disputes about individual status and religious education of Iranian Zoroastrians, Persian Jews and Christians by State Exigency Council dated May 25, 1993 must be considered and the decisions of high authorities of aforementioned religious minorities in litigious matters and individual status including marriage and divorce is valid and they can be enforced with judicial courts without formalities”. Moreover, act 4 of the aforementioned rule approved February 16, 2015 emphasizes that “The supreme authorities of religious minorities as mentioned in the constitution are introduced by Churches, Dar Al-Shara’ of Persian Jews and Zoroastrians associations to ministry of justice. The aforementioned authorities verdict, after being given, investigation and without formalities, are given through the Family courts in cases such as marriage, divorce”.

6. Conclusion

It can be concluded from what have been discussed that as God values justice and equity among Muslims, it is valued among non-Muslims and it should be accomplished by Islamic state and all Muslims in all time. One of the effective and essential measures to come to a just judgment is to come up with special structure appropriate for a judicial system according to the judgments of Imams and the infallible (PBUH) in dealing with religious minorities in a country. According to peaceful and mutual life principles and verses and narratives about respecting other’s views and beliefs and special principle of Shia jurisprudence, “Pactasant”, it should be concluded that Islam always takes into consideration the rights of religious minorities.

Concerning the legal system based on principles of Islamic Sharia, there are elements that brings judicial justice to judicial system and among individuals especially its religious minorities as members or citizens that are based on true understanding of common affairs and usages. Such justice is impossible unless certain competent authorities of religious minorities are recognized to pursue the claims in the framework of laws and regulations of a country. As a result, Law and justice necessitate that law procedure of certain disputes of religious minorities have to be pursued by themselves when they have familiarity with the case in cases when it is specified by the legislator. However, it is just that if the religious minorities themselves demand other courts, except themselves, according to common principle of law procedure and complaining against injustice emphasized in Constitution of Iran, it would be possible for them.

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