

# Legal Basis of Common Approaches to Object to a Criminal Judgment in Iran and England Penal Systems

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Received: September 19, 2016

Accepted: October 19, 2016

Online Published: January 9, 2018

doi:10.5539/jpl.v11n1p1

URL: <https://doi.org/10.5539/jpl.v11n1p1>

## Abstract

One of the basic discussions in criminal procedure code which has a direct relation with defendants' rights in civil procedure process is the matter of objection to criminal judgments that have seriously changed and transformed after the Islamic Revolution. According to the criticisms received by Iran's legal procedure system, the legislator has tried to make closer their position to the world's standards in the field of objection to criminal judgments by referring to its former rules especially the law of criminal trials' principles in the law of criminal procedure code approved in 2013. In addition to the final nature of the sentences in common law system, today, different ways of objection are predicted in England accusatory system. The present research tries to deal with the matter that on the prediction of common ways of objection how much its legal basis is considered and how much Iran and England legislators succeed in this path, in addition to analyzing the real examples of the ordinary ways of projection (objection, research appeal, and review appeal) and legal foundations of each one of them in two penal systems of Iran and England. The results of the cases above can be the guide of Iran's legislator in approving and reforming the regulations related to the objection the votes and approximating the regulations to world's criteria in this field.

## 1. Introduction

The human experience during legal proceeding history has shown that giving the opportunity and the possibility to object to orders which are not based on sound judgment in the higher authorities, though it suspends the performance of the justice, since in every criminal system judicial mistakes are unavoidable, providing the justice and figuring out the truth required that at any system of the Rules of criminal procedure different ways to object to criminal sentences are predicted and most countries' legislators do not consider the review of sentences and judgments and reconsideration even in few stages in conflict with social interests.

In Iran and England's criminal systems, ordinary ways of objection to criminal sentences include objection, research appealing, and review appealing. The final and common purpose of the mentioned ways of protest is discovering the truth and performing the justice in the base of the fair proceeding. For this reason, the breaking of some basis of fair proceeding prepares the philosophy and the basis of the ordinary ways t object and reconsideration of the cases .

In the prediction of ways to object to the Rules of criminal procedure, the equal guarantee of the two rights, society and defendant is essential. If the legislator's trend in the collection of the formal rules is more towards one of these two rights, then it will be considered as a deviation and it will distort the performance of justice and fair. The desirable and particular Rules of criminal procedure are those which implement the adjustment between the two rights and do not prefer one right to another and guarantee the performance of the both of them by the judicial organization (Goldoost, 2010).

In this paper, we tried to analyze the regulation of the ordinary ways of objection in England and Iran's criminal systems as a member of the Common law system (unwritten rights), while discussing the following cases: 1. Which cases is the basis for the ordinary ways of objection to criminal judgments? 2. How is the balance kept between the objection right of the defendant and the complainant in Iran and England's criminal systems? 3.

What is the difference between the institution of research appealing and review appealing?

### *1.1 The Principle of Procedure's Presence and Adversarial*

The principle of proceeding's presence and adversarial as one of the fair proceeding's principles requires the defendant to be present at the court session and be aware of the charges against him/her and defend him/herself according to that and the possibility equal contrast to the opposite side (prosecutor) (Nikouei, 2006). The presence and the adversarial of the proceeding are so important that France's supreme court considered the right of presence and the equal possibility of defend dependent on the "natural right" and announced : according to the fact that defense is a natural right, no one can be sentenced without being questioned and being addressed to defend his/herself (Shams, 2006).

In the great systems of the proceeding in addition to respecting the principle of proceeding's adversarial nature , the regulations of notifying the warning , and so on are formulated in a way that with their implementation, the defendant become aware of the litigation against him/herself to have the chance and the possibility to defend thus defendant's lack of presence at the proceeding and/or doubt in his awareness of the proceeding will have no barrier in the proceeding and the issuance ex-parte decree. Thus, proceeding's lack of possibility because of defendant's absence can paralyze the conduction of criminal proceeding and result destroying proofs , the expiration of prosecution period , and failure in justice . For this reason, in one hand, at different proceeding systems, the absentia proceeding is performed for preventing the violation of complainant's right and defendant's escape, and on the other hand, the contestable absentia conviction rules are predicted from the defendant for the proceeding to be fair and respecting defendant's defense right and it is called objection. So the principle of objection is that the defendant's accusation is audited in an adversarial manner (Cherine, 2000).

#### *1.1.1 The Principle of Procedure'S Presence and Adversarial in Legal Systems and International Documents*

In legal systems, no equal encounter is performed with the matter of absentia proceeding, in the accusatory system, the absentia consideration is barely accepted. The reason of absentia proceeding's prohibition in the accusatory system is adversarial nature of the proceeding in this system and the proceeding and proceeding concept is based between the parties (defendant and prosecutor) as a challenge but in the inquisitorial system, the opposite of accusatory system, the absentia consideration is necessarily accepted because the proceeding in inquisitorial system is nonadversarial and the judge collects the research and proofs not only for the prosecutor but also for the defendant. Therefore, when the trial of proceedings begins, the court has also possessed the proofs in favor of or against the defendant and is in the position to evaluate the reasons against the defendant (Kesse, 2008). In complex proceeding system that first appeared in France after its revolution and after that in other countries like Iran (Ashouri, 2001) and it is a combination of two former systems (inquisitorial and accusatory), the equal possibility in the stage of consideration in the court does not exist in terms of the sovereignty of the inquisitorial system and the prosecutor's control on the court because, in the stage of the court, the principle of proceeding's non-adversarial and non-publicly which both are the characteristics of the inquisitorial system is implemented and in spite of the presence of complainant and the prosecutor's agent in this stage, the presence is not necessary and his/her lack of presence is no barrier for the consideration. But on the stage of the court that the accusatory system is performed, defendant's presence and proceeding adversarial is one of the guarantees of the fair proceeding and the lack of respecting to proceeding's adversarial will cause defendant's objection right to his/her condemnation sentence. The principle of hearing's presence and adversarial is emphasized in international documents and human rights. Paragraph 3 of Article 14 of International Covenant on Civil and Political Rights indicates: "the defendant has the right to be present at the trial and defend him/herself personally or with the help of his/her selected lawyer." The European court of the human rights thus issued that the subject of article 6 of the convention is that the defendants possess the participation right in the court session. The human rights committee suggested in the general interpretation of this guarantee that the defendant and his/her lawyer must possess the right to participate in the practical defense at all stages of the research and consideration (Aghaei Jannat Makan, 2010).

#### *1.1.2 The Principle of Procedure'S Presence and Adversarial in Iran and England Criminal Systems*

The session of proceeding adversarial is that complainant and defendant, like the legal proceeding, are in the position of Plaintiff and defendant. The complainant suggests his/her proofs and the defendant rejects his/her reasons and in an equal position with the complainant awareness of the proofs of the opposite party and at last, the judge, considering the judicial battle of the parties, issues the sentence (Khaleghi, 2014).

In Iran's criminal system following different proceeding systems, the consideration in the criminal courts must be adversarial due to the article 359 of the rules of criminal procedure approved in 2013. But the absolute acceptance the principle of procedure's adversarial causes the violation of the complainant right, for this reason

for the crimes related to the rights of the people and public, the judge is bound to consider the accusation of the absent person and issue the judgement for maintaining and preventing the violation of complaint right; unless requires the presence of the defendant and receiving his/her explanation is necessary; in this case the defendant call up for the determined day and time. but if the defendant's presence in the court does not require and the subject does not relate to the right of God, the court issued its vote and consideration without the presence of the defendant and if the court's vote is his/her conviction, for the dimensional respect to the procedure's adversarial principle, because of the convict's request, it can be objected at the same court for twenty days from the exact date of the conveying and the court is bounded to determine the date of consideration and call up the parties and after the consideration of defendant's defenses and reasons, issue the appropriate decision. If the objection does not present at the consideration time and does not defend him/herself, their lack of presence will not a barrier for the consideration and the issued vote in this stage will in the base of presence anyway.

In England's accusatory system, the presence of the defendant in the consideration is essential according to the indictment. In other words, the absentia trial in considering important and heavy crimes at the criminal court is forbidden but the possibility of the short consideration in the convict's absence exists and in this case the convict can object to his/her conviction proving that she/he didn't know about the procedure's time (Caherine and Quine 2002). Note 2 of Article 11, the law of the compromising court approved in 1980 appointed in this field: "if the defendant does not present at the determined time and place for the brief consideration, the compromising courts have the authority of deciding in the absence of the defendant." According to the article 14 of this law: "in the cases that the proceeding begins with the issuance of summoning and the absentia defendant judges, he/she can present a legal request about that they were unaware of the proceeding or the issuance until the date after the beginning of the proceeding to the secretary of the court. If the request presented within the 21 days legal time, it invalidates the absentia consideration but the complaint remains still valid and the prosecutor can begin the process of prosecution again (Sprack, 2013).

Here is an important matter and it is whether the physical presence of the defendant at the court's session is sufficient or the presence at the trial should be along with some requirements? In other words, are there any differences between the absentia trial and the trial in which the defendant does not defend him/herself, or for some reasons is not capable of defending him/herself? For instance, the defendant may be present at the court session but does not defend him/herself or the defendant at the session does not understand the court's language. In this case is the defendant's physical present necessary at the procedure session or the meaning of presence at the court is something more than the physical presence? According to the principle of the proceeding's adversarial which forms the base and the philosophy of the objection, the defendant's physical presence has not relevance but the defendant's presence at the court is one of the ways to access the adversarial of the proceeding. But it is possible that the defendant achieves the proceeding's adversarial by choosing a lawyer for him/herself or sending the defense bill. In this base, if the defendant does not present at the court but sends a lawyer or a defense bill, the judge's vote will be a presence. So, the meaning of presence at the trial is a presence with the understanding and knowledge of trial and proceeding's different stages and it is something more than a physical presence. For this reason, the Iranian legislator in article 367 of the rules of criminal proceeding approved in 2013 bounded: if the defendant could not speak Persian, the trusted translator determined among the translators. Finally, we can say that because the principle of adversarial in the absentia proceeding is practically not possible, for this reason, so the judge gives the right to the convict and against the absent to object to the absentia sentence at the same issuer court to respect the principle of adversarial (Shams, 2006).

### 1.1.3 Are Trial's Which Are to Be Performed in On's Presence and Are of Adversarial Nature Considered to Be Judgment or Right?

The principle of the verbal trial is both judgment and right. It is a judgment because if the court requires the presence of the defendant or in the cases that the defendant's explanation be essential, then the court requires the defendant to present at the trial by a summon because of the observation of a defendant's mental status can help the court to discover the truth. It is a right because the defendant has the right to be aware of the gathered proofs against him/her by presenting at the court so he/she can defend him/herself against the accusations. Therefore, the principle of the absentia trial considered as a right because it is the base of the principle of the proceeding's adversarial nature. In Iran's criminal system, the principle of the proceeding's presence and adversarial has the preemptory characteristics. Because first, the principle of the proceeding's adversarial in article 359 of the rules of a criminal proceeding is predicted and criminal rules are considered as the preemptory rules as well. Second, if the proceeding carried out without the presence of the defendant or his/her lawyer or without the defense bill from them and the defendant sentenced absently, he/she still has the right to object the sentence unless the defendant be aware and informed of the exact time of the proceeding and presented at the court. But in England's

criminal system, though the base is in the proceedings adversarial and presence, if the exact time of the consideration correctly issued to the defendant and the defendant, in spite of the real issue of the consideration time neither presented at the court and nor sending an agent, it is assumed that the defendant surrendered his right about the presence and adversarial trial, in this case, the court can carry out the meeting and the sentence will anyway be in the base of presence (Hossein Zadeh, 2013)

The rehearing court of Jones' file reminded that in general, the defended does has the right to present at the trial and can send an agent in instead of himself. Yet, it is possible the defendant surrenders his right for example the defendant does not present at the trial by his will, in this case, the court can continue or begin the trial in defendant's absence. The rehearing court suggested that this authority must implement with more accuracy and only in rare cases and in the exceptional situations.

Accordingly, in Iran's criminal system, the principle of adversarial and presence as protestation's source and philosophy is a commanded rule and even if the defendant is aware of the consideration time and purposely not presented at the court the conviction sentence will be issued non-verbal the defendant has his protestation right; but in England, if the defendant does not present at the court in spite of the knowledge of the consideration time, in this manner, the court's consideration and vote about the defendant will be verbal. It seems England's law position is logical about this matter and Iran's legislator with the edit of article 406 of the rules of criminal proceeding can approve a regulation that with its cause, the real informing of the consideration time to the defendant causes the verbalization of the consideration and the sentence.

## **2. The Principle of Substantial Proceeding's Two-Stage Nature**

The principle of substantial proceeding's two-stage nature which is one of the elements and concepts of the human rights in the criminal proceeding and another legal base of ordinary ways of objection required that the judicial proceeding of one file performs at two levels that the second level is higher for the court. Nowadays, the proceeding of the second stage not only accepted at every legal system in spite of the heavy economic costs and human force with the main purpose of supporting the lower part of the legal case from the wrong and optional decision of the court of first instance's judge but it is confirmed by the international regulations and documents such as International Covenant on Civil and Political Rights (paragraph 1 of article 2), The African Charter on Human Rights (paragraph "a" of article 7), Additional Protocol to the Convention on Human Rights and Fundamental Freedoms (paragraph 1 of article 2), American Convention on Human Rights (line "E", paragraph 2 of article 8), and in the articles 81 and 82 of international criminal court's statute (Fazaeli, 2013).

### *2.1 The Principle of Iran and England Criminal Systems' Two-Stage Nature*

In Iran's criminal system, even though after the victory of revolution and was affected by the Islamic system has doubted in the substantial proceeding's two-stage nature principle and there was a confusion in this way, with the approving the law of criminal proceeding rules in 2013, along with paragraph 5 of the article 14 of The International Covenant on Civil and Political rights which have been approved by the parliament since April 1975, it recognized the principle of proceeding's two-tier. Article 427 of criminal proceeding rules approved in 2013 required in the same field that: "the votes of the criminal courts, except the cases below that are certain, in the reviewing court of province of the same reviewable judicial department or in the country's supreme court is finishable: a. the punishment crimes of eight degrees b. the crimes required blood money and Arsh if the amount or the total be less than one tenth of the full blood money."

In England's criminal system thus, the two-stage nature proceeding system was extremely limited at first so that until 19<sup>th</sup> century and before the year 1907 there were no objection to the conviction sentence and only the court of first instance's judge, with his discretion could send a sentencing matter of the specific files for analyzing to the royal court (Sprack, 2011); but because of the heavy judicial mistake that occurred in Adolf's file, the court of criminal appeal established in 1907 (Zander, 2007) and the second stage proceeding accepted in the specific limitations and conditions.

The second stage proceeding in Iran and England's criminal system performs in two different ways like the world's different criminal systems, according to the type of crime (crime's magistrates or criminal) and the primary consideration court (criminal or magistrates' court): the first one is rehearing and the second one is review or reviewing the file's documentation and records (Shapiro, 1980). The legal foundation of each of one thees two methods of proceeding review is different and will be analyzed as follow.

#### **2.1.1 The Legal Basis for Rehearing**

A rehearing as one of the normal and ordinary ways of objection to criminal rules include the reconsideration of a matter that has been considered before, with occurring a new reason or cause. The base and philosophy of file's

rehearing and reconsideration are granting a new opportunity for the defendant or the file's parties to challenge the results that they are not satisfied in the first stage. For this reason, in rehearing, defendant's request for the researching consideration is enough and the appellant is not required to annex his/her reasons and documentations to his/her rehearing request but the dissatisfaction of the sentence's result is a right for rehearing and the reference of the rehearing should accept it and reconsider with a full freedom and independence (Akhoundi, 2011). Therefore, rehearing is considered as a right and for this, in The International Covenant on Civil Rights, it is recommended to the member countries to predict and perform the rehearing as the defendant's right in their local law. Paragraph 5 of article 14 of the Covenant bound in the same field that: everyone that committed a crime has the right his/her Conviction and sentence be reconsidered by a higher court, based on the law.

### 2.1.2 Appeal of Research in Iran and England's Criminal Systems

since in Iran and England's criminal systems, the consideration of magistrates' crimes is generally performed with the judge's unity system or summary and without the presence of the jury and finally, the implementation of criminal justice in the magistrates' trial has less trust and confidence than the criminal trial that considers with the judicial plurality system or with the presence of the jury (Sanders, et al, 2010). For this reason, the issued sentences from the magistrates' judge can be considered and audited again to the higher reference. In England, a person who convicted after his guiltiness' lack of admitting in the magistrate court has the right to request for a second research and audition without being required to permit the court; but if a convicted person admitted his guiltiness in the magistrate court, he can request for rehearing only against his punishment (note 1 of article 108 of the law of magistrate courts approved in 1980) and in case of defendant's rehearing the court is required for reconsideration and a second audition.

In Iran's criminal system, before the Islamic revolution and based on criminal trials code (1911) inspired by France's law, the votes of magistrates' judge was researchable but the Islamic revolution's victory, the department of research omitted from Iran's criminal procedure system and a newly founded method name "review" replaced with the research. in criminal procedure code approved in 2013, although the legislator does not obviously use the word "research", with analyzing and scrutinizing the fourth section of the recently approved law and specialized to protest the criminal votes, we can say that Iran's legislator, with referring to the criminal trials code (before the Islamic revolution) accepted the consideration of research about the issued sentences from the magistrates' judge includes the public courts of the criminal section two, the military court two, and the revolutionary court with the system of judicial unity. Thus, even though the title of objection to the mentioned courts is called "review", naturally, the effect and manner of the act are matched with the rehearing department. The sides of research's lack of counting in criminal trials code (1911) and in England's criminal system are adopted with the nature of this complaint but counting and recognizing the directions of the review (research) in article 434 of criminal procedure code approved in 2013 is criticizable. With this logic, that research is subject's second consideration and audition, so we should not require the appellant to stipulate specific direction or directions (Hosseini Zadeh, 2013). Nevertheless, forasmuch as one of the appellant dimensions in article 434 of criminal procedure code approved in 2013 is "the claim of vote's disagreement with the law" that is an unlimited and vast title and include all cases that the law is not respected in them (Akhoundi, 2011). Thus, we can research for reviewing with an extended interpretation of that title referring to the request "vote's illegality with the law". The court of appeal thus must determine the time of consideration and invite the parties for consideration according to the paragraph "W" of article 450 of criminal procedure approved in 2013.

### 2.1.3 Those Who Are Entitled with Research Right

In England, according to the article 14 of International Covenant on Civil and Political Rights, the consideration is only the defendant's right, because the prevailing form of the research is supporting the convicted person and not a way for guaranteeing and confirming his conviction, for this reason, the prosecutor has not the right of appeal. In other words, the rules of issued conviction and punishment from the compromising court in case of the defendant's request and without presenting a reason cannot be researched and auditioned again in the criminal court; but the prosecutor has not the right of case appeal and reauditions in terms of objective affair (Sprack, 2011). Research consideration in England is for maintaining and guaranteeing the defendant's rights, but the prosecutor's appeal contravene the Article of the source of the second trial.

In Iran, the appeal is right for the file's parties means the defendant, prosecutor, and the complainant or the personal claimant and as much as the defendant has the right for appeal against the conviction rules, prosecutor and the complaint or the personal claimant has the right for appeal against the judgment of acquittal. Thus, based on the written law, the procedure is a two-stage process that after the second stage means the consideration, the

research becomes final (Fazaeli, 2013). Therefore, the appeal is predicted for both guaranteeing the defendant's rights and the community's rights. The foundation and philosophy of appeal which includes granting the second opportunity for challenging the results that the party or parties are not satisfied, the legislator's explanation in article 434 of criminal procedure code approved in 2013 that announced cases in the title of directions (research) is extremely criticizable in both the requirement of such article and the number of the directions. So according to the nature of the research, it is required that with omitting the mentioned article and creating the situation that rules in England's criminal system, it must predict the possibility of considering the second research and audition in the court of appeal. Of course, in practice, based on the performed judicial procedure the appellant can request the second research and audition in the court of appeal in terms of "the claim of the issued vote's illegality."

## *2.2 The Legal Principle of Review (Review of File's Documentations and Records)*

In the review consideration, the authority of the review generally reviews and revises the sentencing affairs judicially and in some cases, as well as the sentencing affairs, it reviews and revises the objective affairs based on records and documentations existing in the file. In Iran and England criminal procedure systems thus, the issued votes from criminal courts are researchable and reviewable towards the reviewing court. Some of the juristics of our country, in addition to criticizing this matter, suggested: if the research's consideration is essential for guaranteeing the defendant and society's rights, so we may come across the question that what kind of guarantee is this that is special to magistrates' affairs and does not include the criminal affairs (Akhoundi, 2011). It seems that since the hearing of the lower courts in Iran's criminal courts is performed with judge's multiplicity system and in England's criminal court with the presence of the jury and naturally the adopted decisions in the criminal courts have more judicial accuracy and quality than the magistrates' courts, for this reason, the second stage procedure of the issued votes from the criminal courts is based on the review consideration and revise of the file's documentations on account of compensating the judicial mistakes. So, the basis and the philosophy of review's consideration is to reform judicial mistakes and injustice in the procedure of the lower courts, not a convicted person or a complainant can try his/her chance by a second consideration (Sanders et al, 2010). For this, unlike the appeal, in making an appeal, being reviewable of the issued vote and beneficiaries request for review is not sufficient for this request's acceptance but the appellant is also required to announce his/her legal evidence or aim for making an appeal (Akhoundi, 2011).

The term of "review" is coined in Iran's law system after approving of the law concerning the establishment of public and revolutionary courts enacted in 1994 and replaced the old terms "research" and "appeal" before the Islamic revolution. In the approval of criminal procedure rules approved in 2013, the legislator in addition to distinguish between objection to issued judgments from the magistrates' courts (the public courts of the district, criminal two, military two, the revolutionary court with judicial unity system) and that of criminal courts, it has called the title of objection to the votes of magistrates' courts as "making appeal" and the title of objection to the votes of criminal courts "appealing" appellant of end." but in the base of both nature and the performance method and effects, objection to the issued judgments of the magistrates' courts are in conformity with the appeal of research (second audition) and objection to issued judgments of the criminal courts is in conformity with appeal of review (file's revision). So, the legislator's mean of the votes of criminal courts' end is the same as appealing of review in the country's supreme court (Goldoost, 2014); because not only the whole issued votes from the criminal courts (criminal one etc.) can be protected in the country's supreme court but due to the paragraph "B" of article 469 of criminal procedure code approved in 2013 the branches of the country's supreme court as the review resources have the authority review the sentencing and objective affairs, while the appealing of end is the great ways for objection and limited to the specific sentencing directions (Vahedi, 1998).

In England's law, the word appeal in the field of the term and in a general meaning is objecting to the judicial votes and has different forms based on the considering authority. The objection that can be considered in the court of appeal (criminal section) is actually for reviewing and revising the file's records and documentations (Mansour Abadi, 2005). Therefore, in both Iran and England's criminal systems that issues votes from the reviewable criminal courts are in the form of reviewing the existing documents of the file with this explanation that in the England, the review authority is the court of appeal, and in Iran is the country's supreme court.

### *2.2.1 Is the Review Consideration a Judgment or a Right?*

According to the philosophy and the foundation of review consideration which is as the same as the judicial mistakes of procedure of the lower court. The nature of appealing of review cannot be considered as the absolute right but the reviewing appeals is a relative right and limited to the judicial mistake occurred in the first stage. Because of this, unlike the appeal of research, appeal of review is limited to the dimensions that mentioned in the law, however, in Iran's criminal system even though appeal of review is bound to the legal directions, in case of

the review request, the authority of the review (country's supreme court) is bound to consider the review (reviewing the file).

In England's criminal system, unlike Iran, the reviewing appeals is not the defendant's right but is the court's authority with this explanation that the request of review is accepted when: 1. The criminal court issues the certificate of the review's right 2. The judge of the unit or the court of appeal issued the permission for appeal. The court issues the permission for appeal when that it recognizes the issued conviction incorrect. According to the law of criminal appeal approved in 1995, the directions of review from the criminal court in the court of appeal is that did the court of appeal believe in that the conviction was incorrect or not? (Slapper, 2011)

If the court recognizes the conviction incorrect it issues the permission of the review's consideration otherwise it declines the request of review (Taylor, 2012).

### *2.3 The Concept of Judicial Mistake*

There is no unified definition of the judicial mistake. Basically, the concept of judicial mistake depends on the concept of "criminal justice" and the balance of this decision that is it better to exonerate ten guilty persons or to convict one innocent person and/or the exoneration of a guilty person like the conviction of an innocent person is considered as a judicial mistake (injustice). Nowadays, making the rebalance in criminal justice system turn to the main purpose of the policies and the exoneration of a guilty person as much as the conviction of an innocent person is considered as the judicial mistake and injustice; even in the opinion of Tony Blair, the former prime minister of England, in the today system the biggest judicial mistake (injustice) is when the guilty person goes on living without being punished (Qurik, 2007).

In the criminal system of Iran, the rules of conviction and innocence, both are reviewed in the same concern; as much as the conviction of an innocent person is an injustice, the exoneration of a guilty person is injustice too. In other words, as if a defendant convicted in the criminal courts can appeal for review against his conviction sentence and punishment in the country's supreme court, prosecutor, the complainant or the personal claimant also have the right for appealing the review against the innocence sentence. The complainant or personal claimant's right of appeal for review towards the public aspect of the crimes is not matched with the principles of criminal procedure. For this reason in England, the victim of the crime has not the right of appeal the involvement of the claimant and the disadvantaged person are only as a witness in the process of the criminal procedure (Taylor, 2012).

In England, the illustrations of judicial mistake (injustice) mostly include the conviction of an innocent person and the one who convicted in the criminal court can request for the issuance of the appeal of review against his conviction sentence and the manner of his punishment in the criminal court of appeal. As a principle, the prosecutor has not the right of appeal against the sentence of innocence but since the year 1987, the prosecutor had been able to appeal for review against some of the votes before the trial in the criminal court of appeal. This authority of the prosecutor was actually limited to the strengthen fraud files, but in 2003, this authority developed and included the whole long and complicated files. The criminal justice law of 2003 presently allows the prosecutor to appeal about the issued votes and by the judge during the trial based on the bill of indictment; but if the prosecutor in the court of appeals does not succeed, the defendant will be exonerated. The prosecutor's appeals usually include legal notes and up to lately, the prosecutor could not request for an appeal against the innocence in the court of appeals. One of the documents of this rule was that the prosecutor in 1996 has authorized to challenge the exoneration sentence that tarnished on account of violation against the jury and witnesses. In 2003, the criminal justice law allowed the prosecutor's appeal against exoneration sentence, in the heavy files that the new and important reasons about the guiltiness reveal after the trial (Ashworth, 2010) and these two cases are the exceptions in England's principle of the prohibition of the second pursuance for the unit crime.

### **3. Conclusion**

The principles of procedure's adversarial and two-stage nature are the important principles of the fair procedure that the violation of each one of the mentioned principles forms the legal foundation of one of the ordinary ways of criminal objection in Iran and England's criminal systems.

The foundation of objection is from the absentia judgments of "the principle of procedure's adversarial." If the procedure of the first instance does perform adversarially, the defendant has the right of objection and the physical presence of the defendant is not enough in the procedure of the first instance but the effective presence and defense is the required condition for the occurrence of proceeding's adversarial. With this explanation that in Iran's criminal system, the principle of criminal procedure's adversarial has possessed the preemptory

characteristics but in England's criminal system, the criminal procedure's adversarial is the defendant's right and if the defendant is not present at the court in spite of the real awareness of the proceeding time, it is assumed that defendant has withdrawn his right. therefore, the proceeding of the court is considered as one in which the defendant is present, but as for Iran's criminal regulations, if the non-adversarial procedure implemented even if the defendant be aware of the proceeding time, it is considered as an absentia consideration, anyway and the defendant has the right of objection. So the position of Iran's law is mostly in favor of the defendant compared with England's legal system.

The departments of review and research are two different ways of objection. The second audition or research is the ordinary way of objection to the issued sentences from the magistrates' judges of Iran and England, but file's review or revision is the ordinary way of objection to the issued judgments from the magistrates' judges and also issued criminal session from all judicial resources.

The foundation of the appeal of research is granting a second chance for the second audition to the higher source, for this reason, the appeal for research is sufficient for the second consideration. In England is for maintaining and guaranteeing the defendant's right of defense. For this, the prosecutor has not the right for research but in Iran, in addition to the defendant, not only prosecutor as the society's agent has the right of research, but the personal claimant or the complainant also have the right of appeal for research to the public aspect of the crime that does not conform to the principles of criminal procedure.

The foundation of review is compensating the judicial mistakes and injustice in the procedure of the lower court and the review cannot be auditioned without citing to the judicial mistake in the procedure of the lower court in England. Moreover, the review in England depends on the citing to the judicial mistake and the issuance of review's permission from the court that is matched with the foundation of review. In Iran's criminal system although a review of the criminal judges' votes is bound to specific legal directions, in the case of the request of appellant of review, the source of review (country's supreme court) is bound to consider the review and it is not matched with the principle of review. It is required that Iran's legislator prevent the baseless appeals of review, like England with the prediction of required shape situations for reviewing like the requirement of a request for permission of the court.

The right of review in England, unlike is asymmetric between the prosecutor and the defendant so that the defendant does have the right for appeal of review against his conviction sentence and punishment but the prosecutor basically has not the right of the object to the defendant's innocence sentence. In fact, in England, unlike Iran, the exoneration of the guilty person is not basically considered as injustice and mistake in the justice.

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