Pathology of Law in Dispute Resolution Councils in the Iranian Legal System

Salman Ghasemi Falavarjani and Jamshid Sharifian

Naragh Branch, Islamic Azad University, Naragh, Iran.

ABSTRACT

What is studied in this paper, it is a criticism of law in Dispute resolution councils. Since the critique encompasses both positive and negative aspects of the problem and confirms it, the main question of this research is that what are the flaws and ambiguities in the theoretical and practical in law of dispute resolution councils? It seems to be a lack of awareness of the law by members, the lack of clarity of job status, the questioning of institutional autonomy and etc those are the most important flaws in Council dispute resolution so that it is pointed out in this article. As noted, these injuries are discussed in the theoretical and practical in each case, the prediction is a solution out of the crisis. With respect to the question at hand, author found this assumption he chose a descriptive and analytical methods for conducting research using library resources.

INTRODUCTION

Legal Procedure Law enacted in Iran in 1329 AH, articles 757 to 779 was allocated to arbitration (arbitration) and Dispute resolution. In March 1927 adopted a law entitled "Arbitration Law" in Article Seventeen and compulsory arbitration for the first time this law was replaced, instead of the anticipated 757 to 779 of the Law on Legal Procedure as the judge put it into the hands of the parties and in 1341 formed the guild houses of the legislature was to pass to address the offense in the villages and in 1966, the Arbitration Councils formed to address some of the alleged crimes in the city. The law "On amending some laws of the Judiciary Act of 25 June 1977 with subsequent amendments in Article 331 of Chapter VIII" was set to "Lawyers should try to achieve a compromise between the parties in lawsuits or criminal cases, as with the passage of the complainant, the prosecution will be suspended before a lawsuit and define this task in a lawsuit or to defend" in the Procedures in Public and Revolutionary Courts in civil matters in the seventh (subject to arbitration); Legislature allocated 48 articles and 5 shall bring the matter to arbitration to resolve the dispute and in article 454 provides that "all persons have the capacity to fight the suit, they can refer their dispute or difference by mutual consent to arbitration of one or more persons whether or not the court and if provided, it is at any stage of the proceedings" and ultimately, law of Dispute resolution councils is the source and origin of the Dispute resolution and finally, with the passage of Act 189 of third Plan Development, Councils Act of Dispute resolution has recognized legally as it is a source of reference and Dispute resolution states in Article 1: "In order to resolve disputes and peace and reconciliation between natural and legal persons of private, dispute settlement councils in this Act referred to briefly (council), which is formed under the supervision of the judiciary and the conditions set forth in this Act".

Then in 1381, the Dispute resolution Regulations adopted after several years, the Council adopted resolution 2008, adopted on the basis of experimental and then in 2009 and so far the criterion is addressed in the Council's claims. Although the Dispute resolution is a nascent institution as a quasi-judicial body, a symbol, a symbol of mediation, arbitration and promote a culture of reconciliation but its performance and results is in the short time (since establishment until now) so that it reflects the fruitful results and already justice officials have promised to work with the Muslim Judicial health in the near future, it will be more correct. In this article, the author discusses the theoretical and practical criticism of the institution.
Statement of Problem:
Law of Dispute resolution Council has major drawbacks as a quasi-judicial body as it refers to the practice of the law or because of the mistaken impression of the law. In this article, the author seeks to solve the problems related to the law.

The necessity and importance of research:
Since there is not a scientific resource for the dispute resolution Council and less focused lawyer in earnest on this subject, it seems important to address this issue.

Research Questions:
The main question:
What are the flaws and ambiguities in the theory and practice of Dispute resolution Council?

Sub-questions:
1. What is the legal basis for the Dispute resolution Council?
2. What are the benefits of the Dispute resolution Council?

Research Hypothesis:
The main Hypothesis:
Ignorance of the law by the Member, contrary to the constitution, reasons provide, temporary order, are the most important flaws in the theory and practice of Dispute resolution Council.

Secondary Hypothesis:
Dispute resolution Council have jurisprudence and legal and speed in handling, restorative justice can be seen as the most important files and reduce their benefits.

MATERIALS AND METHODS

Theoretical objections to law of Dispute resolution Council in respect of Pathology:
Initially paid to theoretical objections, then, will be explained in practical objections. The first objection is the lack of legal regulations in some council members.

Lack of knowledge of some members of the legal provisions:
Article 5 of Council Regulation implementing Dispute resolution stated membership in the councils. One of these conditions is the relative familiarity of members to standards of legal and regulatory provisions. It provides that:
1) The membership of the Council includes having sufficient knowledge, acquaintance, relative to legal standards and legal regulations.
2) Graduates of Law, Jurisprudence and Islamic sciences and humanities, social sciences or equivalent, they are biased with the other terms of priorities.

It is uncertain whether a sufficient knowledge and understanding of the principles of jurisprudence and comparative law, however, partly due to members’ awareness of legal and regulatory norms in the drafting of regulations but in practice, most people who are active members of the council, have little knowledge of the law, both procedural and substantive.

Applying careful in selecting the members of the Council:
One problem is related to the arbitration councils some of those who are working as a member of the council, they both are different people with criminal records or legal justice. However, although their numbers may be small, but the number could be a little buggy and delivered. On the one hand, the problem arises of how to develop a Bylaw Dispute resolution Council on the other hand; it is the lack of precision in the selection of its members. We have already noted that Article 5 of Council Regulation membership. One of these conditions is no record of criminal conviction and it is very rare. Article 5 provides that: "Membership in the Council is the lack of an effective criminal conviction". The number of cases where a criminal conviction is effective, it is very rare. Frequent Article 62 of the Penal Code states: "Deprive the condemned criminal conviction of certain crimes against the social rights of intentional as follows and it is eliminating the effect of the expiry of the period specified and execution:
1) Convicted of crimes punishable by the amputation, one year after the execution 2) Convicted of crimes punishable by the lash, one year after the execution.
3) Those sentenced to imprisonment for more than three years, two years after the execution".
However, the number of cases where an offender has a history of criminal conviction, it is rare. The punishment of whipping is defined in the Penal Code further imprisonment for crimes so based on the above matter, a person who has been convicted of the whip, he is not a criminal conviction effectively. In many cases, prison terms are less than three years, criminal convictions of perpetrators of these crimes are lacking. Thus, with regard to Article 62 and Article 5 of the Executive Bylaw frequent, join the many people who may have committed a crime, it is forbidden in the Soviet unless was told who that have a record of criminal conviction (other than criminal convictions impact) he enjoys the reputation of justice is required and according to paragraph (g) of Article 5 (Goodwill and justice required), he is not entitled to membership in the Council. Coma of law, justice, courage is required he is someone who has the courage and modesty and chastity and moral virtues. Thus, someone who has previous convictions for ineffective, he is barred from membership in the Council's lack of humanity and justice.

Consultant selection among judges of court staff:
Dispute resolution in accordance with Article 13 of Council Regulation, the agency employed or retired or resigned uses of judges, lawyers, unemployed or retired faculty members or graduates of law select a judicial adviser to the judiciary. In practice, most consultants are selected among the judges employed and sometimes a person employed as a consultant appointed judge of the judicial branch of Dispute resolution. This is a corrupt Tally; for the purpose of Dispute resolution councils are reducing referring to the Branches of Justice and the reduction of cases referred to the courts. What happens in practice is that after consideration and decision of the Council to fights in the constituent documents of the Council, it is submitted for comment to the judge and, thus, the trial judge who must spend part of their time to review the records of proceedings of the Council. The judge should have made sure that its members comply with the rules on competence dispute settlement councils and other substantive provisions or not; Definitely, check the file is too time consuming in particular, if we consider that the Council may not have many people in need of legal information and legal therefore, the judge shall order the case to the Council reviewed and commented on many occasions. The regulations, judicial authority to appoint judges employed consultant is very broad and in addition, can be used by retired judges, lawyers and university faculty members. To solve this problem and avoid sending the case to court it is recommended to use the other persons employed in the selection of judges, judicial advisors. The number of lawyers working in the city, faculty and staff in large cities, not reduce them.

Judges who retire each year, they are less and graduate law degree at Masters level or higher are particularly high. The judiciary should use their expertise to provide legal advice to the arbitration councils to prevent judges from practicing law for compression of files.

Apparent lack of job and organizational:
The twentieth constitution stipulates: "The people, both men and women are equal in law and enjoy all human, political, economic, social and cultural rights, in conformity with Islamic criteria". This issue has been frequently adopted in various international instruments today; less government is indifferent towards this issue. Therefore, the constitution does not exclude the leader of this Article and put him equally against the law. This issue can be analyzed and evaluated on the one hand, it is mentioned in the constitution, and on the other hand, if it was, did not notice any legislative act contrary to the rule of law. But contrary to the principles of the legal system, some rules have been oblivious to this topic and individuals and entities have been considered exempt from coverage of the rule. For example, prohibits the employment of more than one government job to justify and evaluate a variety of ways. For example, in a country that is developing or underdeveloped, having more than one job is inexcusable because people have been deprived of the advantages of public office contrary to the principle of equal on the other hand, multi-job person can not do all the things they have done their duty well apart from addressing the general exceptions to the principle that is taught in universities, membership in cooperatives and associations, charities, ban taking over a government job the law excludes individuals to serve in one of the state machines worked. It seems clear to criticize the law for various reasons.

Away from the main philosophy in forming Soviets:
The main purpose of establishing dispute settlement councils, its Dispute resolution through compromise and settle them by Arrangements and Article 1 of this law Dispute resolution councils emphasizes but according to other laws and regulations of the Executive Council, which is a clear Dispute resolution these councils have a sense of peace and reconciliation institutions and on the other hand, they have a judicial nature they are also used as courts of justice. Dispute resolution Councils Act indicates that the drafters were away from the main philosophy of the would forming Soviets accepting the nature and functioning of the judicial council is a legal flaw in this institution, for various reasons it is so important and how it is selected council members, handling and verdict and can in some cases provide a possible violation of the rights of individuals. While it makes the task of damage and compromise the functioning of the council.
Failure to abide by the rules no retroaction:

The expression domain of the law, Article 4 of the Civil Code says: "The effect of the law with respect to future and the law has no effect unless the decision is his to us before specific provisions in the law as to this issue". The ruling is derived from Article 2 of the French Civil Code, it contains two important rules:
1. The law does not work than we already own: namely, the rule of law only on events that occurred after its enactment and what happened to the former authority of law, is subject to the law laws have the effect of past actions.
2. The effect of the law of the future: once the new law is applicable, it will rule on all matters and former law loses its dominance.

The law is ineffective compared to the absolute and the law demand that determines the quality and how to fix it other than by a court of law and it does not change the nature of truth, it is retroaction and it is related to the law that it involves stating the nature of the relations of individuals to each other and it indicates the source of truth and it shall and not to be retroaction examples are the penal code for law and case law is a matter of civil law.

There is a major flaw in this law and it leads to a violation of civil rights, it is retroaction the provisions of Article 45 of the councils. According to Article 45, is not the case that led to the decision until the implementation of this Act, this law will be dealt with in Council Dispute resolution observing the regulations and will make decisions about them. While in the former the bylaws in Section 3 of Article 7, the right to respect for persons was acquired, not to be retroactively law in Article 4 of the Civil Code as well as Article 11 is explicitly emphasized. Although some rules like turning leads us to retrospectively but it must be said that this principle is not absolute but it is not retroactivity in cases where retroaction is a contradiction with the obtained right people including provisions relating to jurisdiction, as a result of its failure to observe the effectiveness of the appeal reference and as a result will lead to a violation of individual rights.

Conflict with individual autonomy and organizational:

The principle of supremacy of constitution demands that the normal rules and regulations shall not be contrary to the constitution for this purpose, the Guardian Council has considered constitution to prevent the contravention of laws with the constitution. Despite the above, it appears that the law in Council Dispute resolution and regulations in some of his material contrary to the principles of the constitution. The first case is in conflict with Article 59 of the constitution. This Article provides: "Justice is the official complaints" Therefore, obligation to refer the Dispute resolution to the Council is contrary to the above, as it is a non-judicial institution. Also, it is inconsistent with Article 163 of the constitution. This principle requires, the characteristics and conditions of judges should be based on legal principles as was mentioned in paragraph (c) of Article 5 of the Regulations relative to familiar legal principles and legal regulations as it is in conflict with the principle. There is no conflict with Article 158 of the constitution. According to this principle, judges are elected judiciary powers but council members are chosen by the city council and village and one by the President of the Board of jurisdiction, governor, police chief and imams, to Article 4 of Council Regulation exception. Also debatable is inconsistent with Article 161 of the constitution. According to this principle, the actions carried out by the Court of Justice of the Judiciary, as it is a symbol of national sovereignty not through Dispute resolution councils. Another case is that under Article 36 of the constitution, the sentence and the sentence must be competent to resolve the dispute through the courts rather than the Council. Conflict with Article 34 of the constitution to accommodate the public's right of petition is competent only by court and Dispute resolution councils not considered as a court.

Objection against the composition of the council members:

Executive Bylaw in Article 4, Article 189 of Act III development program for council members is predicted and in Article 5 of the Regulations referred to in subparagraph accept members so that (e) of paragraph 1 of Article 5, have sufficient literacy and familiarity with legal principles and legal regulations establish membership criteria were considered in the Council. In Section 2, graduates of Law, Jurisprudence and Islamic studies and other humanities and social sciences have tended to prioritize. Select one of the three members of the judicial council, with elected city council or another and trusted one place by the Executive Committee in paragraph 1 of Article 4 of the Regulations. Indeed, with regard to the Dispute resolution authority in Article 7, can a person who is uneducated and relative familiarity with the legal provisions and that the verdict will be able to oppress or social science graduate knows the difference between eviction and discharge so that he can make good decisions? Do the conditions and obligations of the transactions and contracts, even if the primary can imagine be in all humanities graduates and if all members are qualified to Dispute resolution provisions of the Civil Code, the Law on Procedure and non-litigious matters?

It seems, religion was a clear priority for law graduates while considering the multitude of unemployed graduates in public law schools, free, and non-profit specifically, the priority was determined that it was more appropriate as a condition of enforcement and adjourned the case against it was not possible to recruit graduates.
in law. The action was in line with the overall objectives of job creation as it is one of the Guardian Council in the documentation retention of Article 187 of the Third Development Plan.

Subject of the appeal of votes to approval by a majority of council members:
According to the Article 18 of Council Regulation Dispute resolution, appeal of decisions of the boards when it is accepted that the majority of council members agreed with it revising and ask for feedback. This is in no way compatible with legal logic, in addition to the accuracy with which the Issuer believes Vote we did not allow him to vote Issuing revised and reviewed at a higher court. Despite court judges are elected by exercising great care professionals, they are usually appealed decisions of the higher authorities and transferable by several branches of appeals judges despite the specialized councils and elected members, their final blazon, in any way not consistent with legal standards. While the effects of a fair trial and the principle of legal certainty is a two degrees-of-hearing investigations as a way to prevent this is so much mistakes of Justice and decisions are more tally with principles of justice.

RESULTS AND DISCUSSION

Practical drawbacks in Council Dispute resolution as to the pathology:
In this section of the article, we will examine some of the practical objections to the Dispute resolution councils including the presentation of a petition, execution, temporary order, garnishment and jurisdiction.

Practical objections to time of petition submitted:
First, people who are in a position to refer the petition, they are the people who are not judicial posts and therefore, they do not have enough information to peers and referring petitions. For example, I've referred several petitions submitted to the Council for Dispute resolution and saw that the people in charge do not have enough information and knowledge to refer to subsidiaries with related records while the position Court has referred to the judge and how to refer the complaint to be made faster when it is in conflict with the goal of reducing the prolongation of the proceedings of the council. Another objection is that in this case, it is time of submit the petition all papers filed in a way that must necessarily be accompanied by a stamp cost Procedure and Appendices attached and is dedicated to readers given that it is the duty of the Director of the Office of the Court, it is not referred to position balanced this helps to ease and expedite the proceedings and referred the petition to the branches and it leads to a waste of money and become more costly procedure. In addition, some claims the bonds is not equal to original and in principle it should not be so demanding it can suit the purpose it the appendix.

Practical objections at the time of Implementation of Sentences:
According to Article 26 of the Civil Enforcement Act, all disputes arising from the enforcement authorities in the court that the sentence be carried out by it Court and it is executed by the same judge who issued the warrant for execution while with respect to the enforcement of the Dispute resolution, is not branch other than the branch execution judge and disputes arising from the implementation of the provisions made by the chief judge and the most noble judge, it will be run more easily but in Council Dispute resolution, enforcement is handled by the judge in the case, which leads to prolongation.

Practical objections to the institution of temporary order:
Given that the Law Council does not Dispute resolution resolve affirmation of the provisional agenda on the basis of the Civil Procedure Code, the interim order must be approved by the Head of Jurisdiction after the issuance by Judge but in Council Dispute resolution, Dispute resolution council is not president as head of jurisdiction and this leads to confusion and uncertainty in failing to address the temporary order in council and given that this is a legal vacuum and interim injunction proceedings in Council Dispute resolution can lead to a loss of the right people benefits Act filings and that in most claims you can apply for an interim order in the case of circumstances. Here are legal vacuum leads to the exclusion of individuals from a range of legal privileges in this regard, legislative measures should thin and in this act of justice to be clear and transparent.

The practical objection to the jurisdiction of the Court and garnishment:
4. The practical objection to the jurisdiction of the Court and garnishment
Since its competence in financial claims of up to fifty million dollars, in the absence of the actual amount required may be several billion as is not the nature of its competence but asked people to donate to the amount of fifty million dollars citing Articles 63 and 64 of the Civil Procedure Code and have attempted to provide payment with a possible minor damage and the abuse of law and by the way, those rights remain protected in the future, so this is a consequence of the law of reflection and revision.
Practical objection regarding procurement reasons:

Another practical objection is entered into the Dispute resolution relating to the provision reasons the Council. For example, the city council Dispute resolution is to work on certain days as courts of justice, it is not able to serve the office every day and in time, in these circumstances, given that the supply reasons the items associated with urgency, there is the possibility of obtaining supplies reasons immediate and reasons can not supply the right time and it would be ineffective to the reasons so it is inconsistent with the philosophy of providing a reason. For example, if someone is going to provide reasons day and time, but the council is closed at time of mentioned, there is no reason not to provide these institutions forced to work on the other hand, will seek to violate the privacy of individuals. In this context, it seems, there is a conflict between public law and private law, although privacy rights prevail over the public interest but also to be excluded and should not be attributed to it negligence. So the problem must be resolved to the correct procedures and rules.

The practical objection to the judge regarding the disagreement between the president of the Branch Advisor:

The practical objection is the difference between a judge and counselor, branch president so that in many cases the hearing, council members will proceed to vote Worker but opinion is against them judge the Council and even before the verdict, in many cases disagree with each other although the vote, according to the Justice Council, the Council issued however, disputes between members of the council of Branch Council and Branch leads to an uncertainty and ambiguity and uncertainty in the opinions issued by the Council as it is inconsistent with the original independence of thought and judges comments. However, the composition of Council members, including the judge, the Council is a vain thing, and it leads to a difference of opinions votes.

Failure to comply quorum of judges in appeal:

Another disadvantage is the lack of quorum of Judges uphold in appeal. Councils Act essentially put the Dispute resolution in the revision of votes in the Council's Local Law General Court Dispute resolution Council and is composed of one judge and placed in a position to appeal the verdict. While the aim of establishing an appeals court is composed of judges with experience and reference as it is formed by two or three judges and criterion validity of a verdict of supreme court judges unfortunately, the council voted to appeal proceedings by a court of law can be contrary to the judicial hierarchy and consensus however, the revision authority as a great reference while reviewing the case, it is also the court of law, both within and equal to Judge councils and there is no superior position to judge of the supreme council as anticipated in the law; therefore, this shortcoming should be overcome and the quasi-judicial Dispute resolution as a reference, reference should be made up in their head and are dedicated solely to the Dispute resolution Board of Appeals of the decisions.

Conclusions and Recommendations:

In this article, the author seeks to examine the theory and practice of dispute resolution councils and he says the answer to this question is that what theoretical and practical objections can be resolved into making a difference in the councils. The main question of this research is theoretical and practical flaws and ambiguities in the law the main hypothesis is discussed and some of its members on issues such as the lack of legal regulations, conflict with individual autonomy and institutional, organizational and occupational status is not known, choose a consultant employed by the judges of the court so that they are no objections and its practical flaws in the agency temporary order providing reasons the garnishment. Despite criticism that the council looks into the dispute resolution referred to in this article, dispute resolution councils are so many very positive things with it tips and strengthen it bid to strengthen the quality of work of the councils. These points to the time when the cash is in the positive aspects and negative aspects purpose pathology is not also something else. The following can be cited as examples.
1. The training of human resources must be considered. Unlike traditional societies today, has become a complex technical issues as in all areas of skilled workers need to be educated so it specialized with the necessary training and specialized courses.

Dispute resolution councils are also not an exception to the rule. What are the legal issues raised in the inquiry process are fairly complex and they need to be resolved properly qualified and trained persons as authorities shall consider the training necessary in order to further enhance the ability of councils and use of existing professionals such as retired judges to achieve this.
2. With respect to the above proposal that the board of trustees must be real people and the pious and compassionate elders in the community they can easily be adapted to achieve the desired peace and Dispute resolution councils.
3. One of the aspects of an organization's development and financial support of it goals. As councils in the field of Dispute resolution are also facing shortages and problems the proceeds of the cancellation stamp that goes against Article 24 of the Council's annual running costs of the councils, not as they ought to help councils what it amounts collected hardly cover the running costs of the Council and its development.
Further, the Council and its staff need sufficient rights to subsistence as is usually not and the term of the council, an honor is not conducive to the goal of membership in it In addition to reducing the quality of work that can produce overwhelming negativity towards the council members. Therefore, it is suggested that an appropriate annual budget allocation will provide training for workers and employees and members. The criticism of the council in terms of pathology can be understood as follows;

1) The inherent jurisdiction of the dispute settlement councils files out of the main factors causing the disappearance of evidence of offense, as it prolongation of the proceedings.
2) In the case of the Soviets, causing the files is not set by order of the judicial due to lack of adequate supervision, lack of personnel and judicial staff.
3) Confusion client files in Council Dispute resolution scheme Because decentralization of council offices at the same branch.
4) Lack of technical expertise in terms of workers councils deal.
5) Lack of an appropriate mechanism to lack of facilities and funding councils law and human resources specialists.

REFERENCES