

Access to Justice for Victims of Sexual Violence in Iran

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Executive Summary

This report examines how Iranian authorities handled four cases of sexual assault or rape. The details of these cases demonstrate the unwillingness of various state institutions to investigate sexual crimes, punish perpetrators, and provide appropriate social services to victims. In one case, for example, a law enforcement official suggested to a victim that instead of filing a complaint she should hire someone to kill her abusive boyfriend. In another case, a police detective accused a sexual assault victim of being a sex worker and stated she had probably got into a dispute with the perpetrator over the price of her services, and that she had decided to file a complaint for that reason.

Iran's Islamic Penal Code (IPC) does not classify rape as a distinct crime. Instead, it defines it as *zina* (adultery and fornication) without consent. . As for punishment, rape may be a capital offence. Yet, if a person charged with rape repents to a judge's satisfaction, he can receive a prison sentence ranging from six months to two years, or 31 to 99 lashes, or both. This disparity between possible punishments points to arbitrariness of Iran's penal laws with respect to sexual crimes. Another concerning aspect of the IPC is that it does not criminalize marital rape.

Beyond rape, no other form of sexual assault is specifically criminalized under the IPC. The IPC treats coercive sexual acts in the same manner as consensual ones, with just one difference. While in consensual sexual acts both parties are punished, in cases of sexual assault only the perpetrator faces punishment. Yet, the perpetrator's punishment is the same as it would have been if the act had been consensual. In other words, use of coercion does not render the crime more serious in the eyes of Iranian law.

Both Iranian law and the manner in which Iranian authorities have handled cases of sexual violence violate Iran's obligations under the International Covenant on Civil and Political Rights (ICCPR). The failure to adequately criminalize violent sexual behavior violates Article 9.1 of the ICCPR, which ensures liberty and security of persons. The accounts of victims discussed in Section 2 of this report also demonstrate how Iranian authorities fail to protect women and children against sexual violence in contravention of Iran's obligations under the ICCPR. Furthermore, Iran's laws governing sexual violence violate Article 26 of the ICCPR, which requires equality of all citizens before the law. By limiting the definition of rape to a limited range of non-consensual acts committed by men outside of a marital relationship, Iranian law fails to protect similarly situated victims who have been subject to other forms of rape or sexual violence.

To provide access to justice for victims of sexual assault, the Iranian government should consider the following recommendations:

- Amend the Islamic Penal Code to include a broader definition of rape, in accordance with international human rights instruments such as the Istanbul Convention.¹

¹ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Nov. 5, 2011, CETS No.210, available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

- Amend the Islamic Penal Code to add sexual assault as a crime.
- Decriminalize consensual sexual acts between adults in order to enable victims of sexual assault to come forward.
- Pass legislation to protect children under the age of 18 from rape and sexual assault.
- Increase the age of marriage to 18 for boys and girls.
- Implement a new law enforcement approach that will respect the victims of sexual assault.
- Provide adequate counseling and other social services to victims of sexual violence.
- Repeal the death penalty, stoning, and other corporal punishments such as flogging for sexual crimes.

Introduction

Atusa² escaped a car in which she was being sexually assaulted. The detective who was supposed to investigate her case, however, accused her of being a sex worker. He further alleged that Atusa had gotten into a dispute with a client and had decided to make a false report of attempted rape. Unfortunately, Atusa's experience is not unique.

The failure of Iranian authorities to investigate and prosecute crimes of sexual violence is, in part, due to an outdated statutory framework that falls short in defining sexual offences. The first section of this report examines how narrowly Iranian law construes the crime of rape and how it fails to address sexual assault.

The second section of this report examines four cases involving rape and sexual assault. As cases discussed in this section demonstrate, various Iranian law enforcement and judicial authorities have shown unwillingness to investigate and prosecute crimes of sexual violence. In a high-profile case involving sexual abuse of children, the head of the Iranian judiciary intervened in order to circumvent the judicial process and protect an accused sex offender who had ties to Iran's Supreme Leader. The report's final section discusses how laws governing sexual crimes in Iran fail to protect Iranian citizens in contravention of the ICCPR.

1. Rape and Sexual Assault under Iranian Law

Although punishable by death³, rape is not a separate crime under Iranian law. Instead, it is a subcategory of the crime of adultery or fornication (*zina*).⁴ The fact that rape is not a distinct crime

² Pseudonym given to protect the identity of the witness.

³ Under international law the death penalty is only permissible in response to "most serious crimes." The Human Rights Committee's General Comment No. 36 explicitly excludes numerous offences from the category of "most serious crimes" eligible for the death penalty. The Committee declares, "The term 'the most serious crimes' must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes not resulting directly and intentionally in death, such as attempted murder, corruption and other economic and political crimes, armed robbery, piracy, abduction, drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty."

⁴ Similar classifications of rape have been implemented in penal codes of other majority-Muslim countries, although some have been amended. In 2009 Afghanistan passed the Law on Elimination of Violence Against Women, criminalizing sexual assault as a separate offence for the first time. Pakistan, which had a law similar to Iran's, passed a law in 2006 through which rape was no longer treated as a subcategory of *zina*. Saudi Arabia does not have a statutory penal code; therefore, Shari'a law definitions apply. Iraq and Malaysia define rape as a separate crime.

illustrates the inadequacies of the legal framework within which sexual crimes are addressed in Iran.

1.1. Definition of Rape under the Islamic Penal Code

Article 221 of the Islamic Penal Code provides the definition of adultery or fornication (*zina*):

Article 221– *Zina* is defined as sexual intercourse of a man and a woman who are not married to each other, and also provided that the intercourse is not done by mistake.⁵

Note 1- A sexual intercourse occurs when the sex organ (penis) of a man, up to the point of circumcision, enters into the vagina or anus of a woman.

Note 2- If both parties or one of them are non-pubescent, *zina* occurs but for the non-pubescent [party(parties)] the *hadd*⁶ punishment shall not be given, but instead they shall be sentenced to security and correctional measures mentioned in the first book of this law.⁷

Article 224 specifies certain types of adultery or fornication (*zina*) that are punishable by death:

Article 224– In the following cases the *hadd* punishment for *zina* is the death penalty:

- (a) *Zina* with blood relatives who are prohibited to marry.
- (b) *Zina* with a step-mother; in which case, the man who committed *zina* shall be sentenced to the death penalty.
- (c) *Zina* of a non-Muslim man with a Muslim woman; in which case, the man who committed *zina* shall be sentenced to the death penalty.
- (d) *Zina* committed by coercion or force [i.e. rape]; in which case, the man who committed *zina* by coercion or force shall be sentenced to the death penalty.

Note 1- Punishment of the woman who has committed *zina* in paragraphs (b) and (c) shall be in accordance with other provisions of *zina*.

Note 2- The conduct of anyone who commits *zina* with a woman who did not consent to engage in *zina* with him, while she is unconscious, asleep, or drunk, shall be regarded as *zina* committed by coercion [i.e. rape]. In cases of *zina* by deceiving and enticing a non-pubescent girl, or by abducting, threatening, or

⁵ In this context, the term “mistake” refers to a situation in which a man and a woman have sex while mistakenly believing that they are married.

⁶ *Hadd* crime is a crime whose elements as well as its punishment are defined under Shari‘a law.

⁷ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 221, available at <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#44>

intimidating a woman, even if she surrenders herself as a result of that, the abovementioned rule shall apply.⁸

As these provisions indicate, rape is a capital offence under Iranian law. The definition of rape, however, is very limited. Under the provisions of the Islamic Penal Code, only a coercive vaginal or anal penetration constitutes rape. Furthermore, the penetration must be by a penis, and it must go beyond the circumcision point. Therefore, a wide variety of coercive sexual acts that should constitute rape are excluded. For instance, if a man forces a woman to perform oral sex on him, he has not committed rape under this definition. Nor has he committed rape if he penetrates a woman digitally or with a device. It follows that a woman cannot be found guilty of rape regardless of what she does to the victim.

It should also be noted that marital rape is categorically excluded from the Islamic Penal Code's definition of rape. For male-on-female rape to occur, the perpetrator and the victim must be unmarried.

Given that adultery and fornication (*zina*), sodomy (*livat*), and all sexual relations between individuals who are not married to each other are crimes under Iranian law, reporting rape or sexual assault may expose the victim to prosecution. If the victim cannot establish that the sexual relationship was coercive, he or she may be in serious legal jeopardy. This legal framework creates a significant disincentive for victims who seek access to justice.

1.2. Evidentiary Burden for Proving a Charge of Rape

Adultery or fornication (*zina*) is a *hadd* crime, which means that its elements as well as its punishment are defined under Shari'a law. Under Shari'a law adultery or fornication can only be proven through four confessions⁹ by the perpetrator or through the testimony of four male witnesses, or alternatively, through the testimony of three male and two female witnesses, or the testimony of two male and four female witnesses.¹⁰ Given that rape is a subcategory of adultery or fornication (*zina*), proving the charge of rape is very difficult under traditional Shari'a law requirements needed for proving adultery or fornication (*zina*). A 1977 law in Pakistan, for example, resulted in failed rape charges by women because they could not provide four witnesses.¹¹

⁸ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 224, available at <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#44>.

⁹ Under Islamic law, a single confession is not sufficient for finding a person guilty of adultery or sodomy. Instead, four separate confessions are required for this purpose.

¹⁰ Article 199 of the IPC states:

Article 199– The standard [of proof] for testimony in all offenses shall be two male witnesses; unless in *zina*, *livat*, *tafkhez*, and *mosaheqeh* which shall be proved by four male witnesses. In order to prove a *zina* punishable by the *hadd* punishment of flogging, shaving [of head] and/or banishment, testimony of two just men and four just women shall be sufficient. If the punishment provided is other than the above, testimony of at least three men and two women shall be required. In such cases, if two just men and four just women testify for the offense, only the *hadd* punishment of flogging shall be given. Bodily offenses punishable by *diya* shall also be proved by one male witness and two female witnesses.

¹¹ Asifa Quaraishi, *Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective*, 18 MICH. J. INT'L L. 287, 290 (1997), available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1467&context=mjil>.

Iran's Islamic Penal Code adds another evidentiary pathway to solve this problem. Article 160 of the IPC declares,

“**Article 160**– Evidence [admissible] for proof of crimes are confession, testimony, *qasaameh*, and oath in the cases specified by law and also knowledge of the judge.”¹²

The term “knowledge of the judge” is defined in Article 211 of the IPC:

Article 211– Knowledge of the judge is defined as a certainty resulting from manifest evidence in a matter brought before him. In cases where a judgment is based on the knowledge of the judge [as the proof of the offense], he is obliged to stipulate in the judgment the manifest circumstantial and hearsay evidence that has been the source of his knowledge.

Note- Means such as an expert opinion, examining the place, local inquiries, statements of people aware [of an issue], reports of law enforcement officers, and other circumstantial and hearsay evidence that typically results in knowledge [about a matter] can be referred to as sources of the knowledge of the judge. In any event, a mere perceptive knowledge that typically does not result in the knowledge of the judge cannot be regarded as a deciding factor in delivering a judgment.¹³

Through this article, Iranian law opens the door for customary evidence-gathering in addition to traditional methods of confessions and testimony of witnesses. Furthermore, Article 161 of the IPC states,

Article 161– In cases where the criminal claim can be proved by relative evidence prescribed by Shari‘a, the judge shall deliver the judgment on the basis of that evidence, *unless it is contrary to his knowledge* [emphasis added].¹⁴

This provision effectively means that a judge's findings can supersede Shari‘a law evidence such as confessions or testimony of witnesses. This is a positive development in the most recent version of the IPC compared to its predecessor. The previous version of the IPC framed evidentiary requirements in a different manner. Instead of having a broad provision similar to Article 160 of the current IPC that lists all types of acceptable evidence, the previous version of the IPC listed the acceptable evidence for each crime separately. Notably, “knowledge of the

¹² QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 160, *available at* <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#35>.

¹³ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 211, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#39>.

¹⁴ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 161, *available at* <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#35>.

judge” was not among the types of admissible evidence listed for the crime of adultery or fornication (*zina*).¹⁵

There is at least one case in which a rape conviction in the court of first instance was overturned by Iran’s Supreme Court because the conviction was obtained through judicial knowledge based on customary evidence. A defendant only identified as R. K. had been sentenced to death for raping several young girls. The girls’ ages ranged from 12 to 17 years. He had taken nude pictures of the young girls, and, according to the court of the first instance’s opinion, the girls’ mothers had confirmed that the pictures were those of their daughters.¹⁶ Furthermore, the court of first instance stated that the report of the medical examiner’s office did not clear the defendant. Branch 31 of Iran’s Supreme Court, however, reversed the conviction. The Supreme Court stated that according to a fatwa by Supreme Leader Khamenei, the validity of judicial knowledge in cases involving *hadd* crimes is questionable and even impermissible.¹⁷ This ruling was issued on February 3, 2013. The current version of the IPC was passed on April 21, 2013 and came into effect on May 29, 2013. Therefore, under the current version of the IPC the evidentiary requirements for proving the crime of rape are less stringent compared to its predecessor.

1.3. Repentance

Another feature of Iranian law on rape is that a perpetrator can escape the death penalty through repenting. Note 2 to Article 114 of the 2013 IPC states,

“Note 2- In the cases of *zina* and *livat*, when the offense is committed by force or coercion or deception of the victim, if the offender repents and the [hadd] punishment is not given according to this article, s/he shall be sentenced to ta’zir imprisonment or flogging, or both, of the sixth degree.”

Sixth degree imprisonment means a prison term of six months to two years. Sixth degree flogging means between 31 to 99 lashes.¹⁸ This provision results in vastly different consequences for perpetrators. In November 2017, a taxi driver raped a female passenger in Tehran.¹⁹ Police investigators discovered that the same man had raped two other women as well. He was arrested and sentenced to death. While in prison, he repented and memorized the Quran.²⁰ The judiciary accepted his repentance and rescinded his death sentence. Nevertheless, he was sentenced to ten years’ imprisonment on the charge of kidnapping. He also received 15 months’ imprisonment and 74 lashes for making threats using a knife.²¹ The extremes of possible punishments for rape create a situation in which perpetrators could face vastly different outcomes for committing the

¹⁵ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1370 [1991], arts. 68-71, available at <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-one-book-two/#17>.

¹⁶ *Ilmi Ghāzī*, DADRAH.IR (Sept. 18, 2017), <http://dadrah.ir/danesh/%D8%B9%D9%84%D9%85-%D9%82%D8%A7%D8%B6%DB%8C-3/>.

¹⁷ *Id.*

¹⁸ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 19, available at <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#7>.

¹⁹ *Javāni Mutijāviz Dar Zindān Tubih Kard*, Khabar ONLINE (Aug. 25, 2019, 08:25 AM), <https://www.khabaronline.ir/news/1292785>.

²⁰ *Id.*

²¹ *Id.*

same crime. On one extreme a person could be executed; on the other he could receive six months' imprisonment.

1.4. Sexual Assault under Iranian Law

While rape is at least criminalized as a subcategory of adultery or fornication (*zina*), no provision of Iran's Islamic Penal Code specifically addresses sexual assault. This does not mean that sexual assault is legal. It means that sexual assault is punishable under the same statutory provisions that criminalize consensual sexual relations between unmarried persons. In other words, a lack of consent on the part of the victim does not make a difference in the perpetrator's punishment. Article 637 of the Fifth Book of the Islamic Penal Code states:

Article 637– When a man and a woman who are not married to each other, commit indecent acts other than *zina*, such as kissing or sleeping next to one another, they shall be sentenced to up to ninety-nine lashes; and if the act is committed by force only the one who has used force shall be punished as *ta'zir*.²²

As this provision makes clear, the mental state of the victim does not have an impact on the criminality of the perpetrator's behavior. A lack of consent on the part of the victim only means that he or she will not be punished. Under this provision, a man who sexually assaults a woman could suffer the same consequence if he engaged in consensual sex with her. Noting the definition of adultery or fornication (*zina*) discussed in Section 1.1. *supra*, a man who forces a woman to perform oral sex on him has not committed rape, and could, at the maximum, receive 99 lashes under this provision. A man who kisses a woman consensually is in the same position under the law and could also receive 99 lashes.

1.5. Same-sex Rape and Sexual Assault

As indicated in Section 1.1. *supra* rape is a crime exclusive to male perpetrators. Therefore, a woman cannot commit rape against a man or a woman under Iranian law. But being charged with same-sex rape is possible for men. Again, rape is not a separate crime. Rather, it is a subcategory of the crime of sodomy (*livat*). Article 233 of the IPC defines sodomy (*livat*):

Article 233– *Livat* is defined as penetration of a man's sex organ (penis), up to the point of circumcision, into another male person's anus.²³

Article 234 of the IPC declares that forcible sodomy is punishable by death.²⁴ Iranian law provides for another same-sex crime as well. This crime, called *tafkhiz* is defined in Article 235:

²² QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1370 [1991], art. 637, available at <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/#18>.

²³ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 233, available at <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#45>.

²⁴ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 234, available at <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#45>.

Article 235– *Tafkhiz* is defined as putting a man’s sex organ (penis) between the thighs or buttocks of another male person.

Note- A penetration [of a penis into another male person’s anus] that does not reach the point of circumcision shall be regarded as *tafkhiz*.²⁵

Article 236 of the IPC states that the punishment for *tafkhiz* is 100 lashes whether it is consensual or coercive.²⁶ In a case of coercive *tafkhiz* the victim would not be punished, but the perpetrator would receive the same 100 lashes as if it were a consensual act.

Consent of the victim does not make a difference in cases of female on female rape or sexual assault either. For the crime of *mosaheqeh*, which is defined as where a female person puts her sex organ on the sex organ of another person of the same sex²⁷, the punishment is 100 lashes whether or not coercion was involved.²⁸ For same-sex relations between males excluding sodomy (*livat*) and *tafkhiz*, the punishment is 31 to 74 lashes. Again, the consent of the victim does not make a difference in the perpetrator’s punishment.²⁹

1.6. Sexual Abuse of Children

Sexual abuse of children is not specifically criminalized under Iranian law. First, it should be noted that under Iranian law girls and boys reach majority at the ages of 9 and 15 lunar years, respectively. Article 91 of the IPC, however, limits the extent to which individuals under the age of 18 can be held criminally liable for *hadd* crimes.

Article 91– In the cases of offenses punishable by *hadd* or *qisas*, if mature people under eighteen years do not realize the nature of the crime committed or its prohibition, or of there is uncertainty about their full mental development, according to their age, they shall be sentenced to the punishments prescribed in this chapter.

Note- The court may ask the opinion of forensic medicine or resort to any other method that it sees appropriate in order to establish the full mental development.³⁰

Nevertheless, if a person under the age of 18 is found to be mentally mature by a court, he or she could be considered capable of giving consent. Accordingly, such a person could be held

²⁵ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 235, available at <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#45>

²⁶ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 236, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#45>

²⁷ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 238, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#45>

²⁸ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 239, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#45>

²⁹ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 237, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#45>

³⁰ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 91, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/#16>

criminally liable for sexual relations outside of marriage. Execution of minors for sexual crimes is not unprecedented. In 2004 Iranian authorities executed Atefeh Rajabi Sahaaleh, 16, on the charge of adultery (*zina*).³¹

In 2002 the Iranian parliament passed the Law to Support Children and Adolescents.³² This law, however, failed to address sexual exploitation of children. First, the law does not specifically mention sexual abuse. Second, it provides for lenient punishments for abuse of children. For instance, Article 3 of the law states that buying, selling, or using children under the age of 18 for illegal acts such as smuggling is punishable by six months to one year of imprisonment, and/or a fine.³³ Article 4 of the law states that “any kind” of physical or mental abuse and torture committed against children under the age of 18 is punishable by three to six months’ imprisonment and/or a fine.³⁴

In July 2018 the Iranian parliament passed a new bill called the Bill to Support Children and Adolescents.³⁵ This bill contains more stringent punishments for sexual abuse of children, but it has not yet been approved the Guardian Council, the 12-member body responsible for ensuring that laws conform to both Islam and the Iranian Constitution. This bill divides sexual relations to those that involve touching and those that do not. Under this bill, if the sexual abuse involves “touching”, the following applies: coercive sexual abuse of children under the age of 18, or sexual abuse of children under the age of 18 by a family member considered a *mahram*³⁶, is punishable by two to five years’ imprisonment.³⁷ When the sexual abuse involves touching, but it is not forcible, or it is not performed on a family member considered a *mahram*, it is punishable by six months to two years’ imprisonment.³⁸ If sexual abuse does not involve “touching,” it carries a sentence of three to six months’ imprisonment if it is forcible or performed on a family member considered a *mahram*. Alternatively, however, the offender could be sentenced to a fine, 11 to 30 lashes, or six months’ deprivation from social rights.³⁹ Other types of sexual abuse that

³¹ *Execution of a Teenage Girl*, BBC NEWS (July 27, 2006), <http://news.bbc.co.uk/2/hi/5217424.stm>

³² Law to Protect Children and Adolescents of 16 Dec. 2002, available at <https://rc.majlis.ir/fa/law/show/93849>.

³³ Law to Protect Children and Adolescents of 16 Dec. 2002, art. 3, available at <https://rc.majlis.ir/fa/law/show/93849>.

³⁴ Law to Protect Children and Adolescents of 16 Dec. 2002, art. 4, available at <https://rc.majlis.ir/fa/law/show/93849>.

³⁵ *Kullīyati Lāyihīyi Hīmāyat Az Huqūqi Kūdakan Va Nujavānan Dar Majlisi ʿIrān Taşvīb Shud*, BBC PERSIAN (July 24, 2018), <https://www.bbc.com/persian/iran-44938729>

³⁶ The term *mahram* refers to a degree of consanguinity at which marriage is forbidden.

³⁷ Bill to Support Children and Adolescents of 4 Feb. 2018, art. 10, available at https://www.rouydad24.ir/files/fa/news/1397/5/1/98793_450.pdf.

³⁸ *Id.*

³⁹ Article 26 of the IPC defines the terms social rights:

Article 26– Social rights referred to in this law are:

(a) Right to become a candidate in the elections for Presidency, Assembly of Experts of the Leadership, Islamic Consultative Assembly (Majlis), and City and Villages Councils

(b) Membership in the Guardian Council and Expediency Discernment Council or the Cabinet and being appointed as the Deputy of the President

do not involve touching are punishable by up to three months' imprisonment.⁴⁰ Alternatively, these offences could be punished by a fine or up to ten lashes.

This bill does not provide a definition for what it considers to be "touching." Nevertheless, it is a considerable improvement over the existing law. If enacted into law, this bill criminalizes sexual assault as a separate offence, albeit only when the victim is under the age of 18. This bill also

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- (c) To become the Head of Judiciary, Public Prosecutor of the State, President of the Supreme Court, President of the Court of Administrative Justice
 - (d) Membership in all societies, councils, parties, and associations either through public elections or by virtue of law
 - (e) Membership in juries and boards of trustees and Reconciliation Councils
 - (f) Holding an editorial or supervisory job in public media
 - (g) To be employed in all state bodies, including the three branches of power and their dependent companies and institutes, Islamic Republic of Iran Broadcasting, armed forces and other organs under the supervision of the Leader, municipalities, public services institutes, and departments that their names should be stipulated in order to be included in the law
 - (h) To become and function as an attorney at law and manager, and assistant, of a notary public and marriage and divorce registry offices
 - (i) To be elected as a guardian, trustee, administrator, overseer, or operator of public endowments
 - (j) To be elected as an arbitrator and expert in official bodies
 - (k) To use state medals and medallions and honorary titles
 - (l) To establish, manage, or membership, in the board of directors of governmental, cooperative, and private companies or to register a commercial name or an educational, research, cultural or scientific institute

Note 1- If servants of state departments have been deprived of social rights, whether as a main or complementary or consequential punishment, shall be suspended from the service for the period provided in the judgment or law, whichever is the case.

Note 2- Anyone who has been deprived of social rights as a consequential punishment, shall be rehabilitated after the lapse of the periods provided in article (25) of this law and the consequential effects shall be removed unless in the cases of paragraphs (a), (b), and (c) of this article in which cases the deprivation is permanent.

⁴⁰ Bill to Support Children and Adolescents of 4 Feb. 2018, art. 10, *available at* https://www.rouydad24.ir/files/fa/news/1397/5/1/98793_450.pdf.

criminalizes starting online relationships with children for the purpose of illegitimate sexual relations.⁴¹

There is, of course, a major conflict between the spirit of the Bill to Support Children and Adolescents and Iran's laws on child marriage. Age of marriage is currently set at 15 for boys and 13 for girls; however, girls as young as 9 can get married if a judge approves the marriage.

2. Access to Justice in Practice

As the accounts provided in this section demonstrate, Iran's police and judiciary do not investigate rape and sexual assaults adequately. One reason might be the complicated legal framework discussed in Section 1 *supra*. Another might be unwillingness on the part of the Iranian authorities to admit the extent to which sexual offences take place in Iran.⁴² For years, Iranian officials have stated that the Islamic veil safeguards the society against immoral behavior. On the other hand, they have argued that Western societies are plagued by rape and sexual assault because women are uncovered. The head of the Ministry of Justice in East Azerbaijan Province, for instance, stated that rape and sexual violence in Western societies are directly correlated with the way women cover themselves.⁴³ An article in Tasnim News, a conservative news website, cited rape data in several Western countries to argue that Islamic veil protects women.⁴⁴

Given the arguments made in support of Islamic values and the policies of the Iranian government, information that undermines the perceived effectiveness of these policies is often censored. Ashraf Boroujerdi, Women's Affairs Advisor in President Khatami's Ministry of Interior, stated that they had conducted an eight year study on incidences and causes of domestic violence in Iran and produced a 32-volume study and 4-volume analysis. In 2014, it was reported that hard copies of this study had been destroyed by President Ahmadinejad's administration. The study had found that 66% of Iranian women were victims of violence.⁴⁵

The accounts and cases discussed below provide insights into the reactions of various state institutions when receiving complaints about sexual violence.

⁴¹ *Id.*

⁴² Iranian officials do not regularly release nationwide statistics on rape. According to one official, there were 1313 rape cases reported in 2014. See *Bish Az Hizār Murid Tajavuz Bih 'Unf Dar Sali 93 Rukh Dād/Afzāyishi Muzahimathāyi Khābānī Barāyi Zanān*, KHABAR ONLINE (Nov. 7, 2015, 11:21 AM), <https://www.khabaronline.ir/news/475803>.

⁴³ *Khushūnat Va Tajāvuzi Jinsī Dar Javāmi 'i Gharbī Bā Nu 'i Pūshishi Zanān 'Irtibāt Dārad/ Hadaf Va Payāmi Hijāb Hifzi Jāygāh Va 'Arzishi Zan 'Ast*, MIZAN ONLINE (Aug. 4, 2016, 02:50 PM), <https://www.mizanonline.com/fa/news/205681>.

⁴⁴ *Ākharīn Āmāri Tajāvuz Bā Āzādīhāyi "Ghiyri Yavāshakī"*, TASNIM NEWS (May 20, 2014, 12:58 PM), <https://www.tasnimnews.com/fa/news/1393/02/30/375897>.

⁴⁵ *Tarhi Barrasī Khushūnati Khānigī 'Alayhi Zanān, Dar Zamāni Aḥmadīnīzhād 'Khamīr Shud*, BBC PERSIAN (Nov. 30, 2014), https://www.bbc.com/persian/iran/2014/11/141130_nm_research_women_violence.

2.1. Atusa⁴⁶

In an interview with IHRDC, Atusa, born in Tehran in 1988, described her experience when she reported a sexual assault against her to Iranian authorities. One night in December 2017 or January 2018, at about 10 PM, Atusa took a cab from Seyed Khandan Bridge to her home in the vicinity of Apadana⁴⁷ Avenue.⁴⁸ Atusa sat in the passenger seat. Two other women were also in the cab's backseat, but they got out before the cab reached Atusa's neighborhood. When the cab reached the point at which Atusa wanted to disembark, the driver suddenly accelerated, going towards Haghani Expressway.⁴⁹ Atusa was shocked. According to Atusa, usually there are few people out on Haghani Expressway at that hour.⁵⁰ Atusa started screaming and begging the driver to let her out. She told him that she came from an honorable family, but the driver responded that if she came from an honorable family she would not be out on the streets at that hour in the night.⁵¹ The driver, who drove a Pride, was of average height, and in his mid-thirties, according to Atusa.⁵² Atusa believes that he had not planned to kidnap her, and that he acted impulsively.⁵³ He placed his hand on Atusa's leg, and threatened her that he would insert his hand into her vagina if she screamed.⁵⁴ He repeatedly told Atusa that she was not a virgin, and, as a consequence, it should not matter to her what he does to her anyway.⁵⁵

The driver continued to speed through Tehran's expressways. He reached Kurdistan Expressway. He threatened Atusa, telling her that she would either sexually gratify him or he would throw her out of the car in the middle of the expressway.⁵⁶ Atusa told him that she would do anything he wanted, but she could not breathe and needed him to let her open the car windows, which he had locked. When he unlocked the window, Atusa was able to squeeze her upper body through the open window and bang on the car's roof. A number of drivers in the expressway saw this, honked, and surrounded the Pride in which Atusa was riding.⁵⁷ At that point the driver, who was driving on Kurdistan Expressway, slowed down. Atusa seized this chance and threw herself out of the car through the window. She hit the pavement on the right side of Kurdistan Expressway, about a half-meter from the side fencing of the expressway.⁵⁸ Her arm was hurt, and her head started to bleed.

The cab driver sped away after Atusa jumped off his car. The driver of one of the cars that had surrounded the cab approached Atusa to help her. He turned on his car's emergency lights and

⁴⁶ Pseudonym used to protect the witness's identity.

⁴⁷ Apadana Avenue, renamed Khorrām Shahr Avenue after the 1979 Revolution, is a street in Tehran's District 7.

⁴⁸ *Witness Statement of Atusa*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Feb. 14, 2020), <https://iranhrdc.org/witness-statement-of-atusa/>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

helped Atusa to cross the highway over a pedestrian bridge towards a store on the other side of the highway. There, using Atusa's cell phone, he called Atusa's boyfriend. Her boyfriend, in turn, called Atusa's family. Both her boyfriend and her family members came to the store.⁵⁹ The police were also called and arrived at the same time as Atusa's family members.

The police officer asked everyone who they were. Atusa's brother identified himself as Atusa's brother. Then, looking at the direction of Atusa's boyfriend, the police officer asked Atusa's brother who that man was. Atusa's brother responded that he was Atusa's boyfriend. At that point the behavior of the police officer changed.⁶⁰ According to Atusa, the fact that her brother knew that she had a boyfriend was seen by the police officer as evidence that Atusa was promiscuous and that her family were deviant.⁶¹

The police officer looked at Atusa and, in an accusatory tone, asked her, "Are you sure this happened?", implying that Atusa was lying about what had happened to her.⁶² He stated that police had cameras at Seyed Khandan Bridge and could find out if she was not telling the truth about what had transpired between her and the driver. The man who had helped Atusa told the officer that he had seen her jump from the car.⁶³

Implicitly alleging that Atusa was promiscuous, the police officer asked Atusa, "Are you sure that it wasn't your boyfriend? You're that type of a girl." The officer initially did not want to write an official report, but Atusa and the others persuaded him to do so.⁶⁴

Subsequently, Atusa, her boyfriend and her family members went to the Yousef Abad police station.⁶⁵ Upon entering the police station Atusa and the others were asked to turn in their cell phones. Then, Atusa was called in to speak with the detective. Not remembering all the details of the incident, Atusa's timeline of the events had some discrepancies. The detective became angry with Atusa and yelled at her. "Are you taking us for fools?! We have dedicated several agents to this case. Answer me correctly!", the detective shouted.⁶⁶ Atusa started to cry. Atusa's mother, who had heard her crying, approached the detective's cubicle and asked him why he was shouting at the victim. The detective responded, "Victim? She doesn't know what has happened! It's not even clear what the hell your daughter was doing there at 10 o'clock at night looking like this!"⁶⁷ He added, "I'm sure your daughter got into a dispute with that guy over the price," suggesting that Atusa was a sex worker.⁶⁸ He also told her mom that they could have her tested to prove that she was not a virgin.⁶⁹

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

He added that they have to deal with a lot of cases in which prostitutes get into disputes with their clients. The detective's comments enraged Atusa's boyfriend. He walked towards the detective and started to shout at him. As a result, Atusa's boyfriend was handcuffed.⁷⁰

Then the police officers started to look at the cell phones of Atusa, her boyfriend and her brother.⁷¹ Atusa's boyfriend is Jewish. Atusa, who was interested in learning Hebrew, used to practice by texting her boyfriend in Hebrew.⁷² Seeing Hebrew texts in her boyfriend's phones, they suspected him of being an Israeli and detained him until he could prove that he did not have Israeli citizenship.⁷³

The officers also found political content critical of the Iranian government while inspecting Atusa's phone, and they detained her as well.⁷⁴ Furthermore, they proceeded to file charges against her. According to Atusa, the charges were not specific. Rather, they were vague terms regarding immoral acts.⁷⁵ Atusa was handcuffed and held overnight in the police station at the section of the department in which female employees worked.⁷⁶

On the next morning Atusa and a number of women were taken to court in a police van. There were forty or fifty people in the courtroom, according to Atusa. Her face was still bloody from the previous night. The judge told her to wash her face. She washed her face and returned.⁷⁷ Atusa was photographed. Without asking her any questions, the judge dismissed her.⁷⁸

Fearing that pursuing the sexual assault against her any further could have adverse consequences for her, Atusa did not follow up the case. Her boyfriend was released after two days of detention without being charged.⁷⁹

2.2. Bitu⁸⁰

Bitu was born in 1988 in Tehran. In an interview with IHRDC, Bitu described what she had experienced as she sought protection from an abusive boyfriend. Their relationship began in January 2018. After two months, Bitu's boyfriend started abusing her both physically and verbally. When Bitu wanted to end the relationship, her boyfriend began threatening her.⁸¹ Bitu was forced to continue her relationship with him for another eight months because of his threats. According to Bitu, her boyfriend would bring aluminum phosphide⁸² tablets and tell her that she

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Pseudonym assigned to protect the identity of the witness

⁸¹ *Witness Statement of Bitu*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Feb. 14, 2020), <https://iranhrdc.org/witness-statement-of-bitu-2/>.

⁸² Aluminum phosphide, a highly toxic pesticide, is often used in Iran for committing suicide.

either had to ingest them or agree to marry him.⁸³ In response, and fearing for her safety, Bitā would tell him that she would marry him. He also forced her to write affectionate posts about him on social media.⁸⁴ Bitā's boyfriend also threatened her that he would kidnap and rape her.⁸⁵ Bitā initially felt powerless to file a complaint against him. She was afraid of him and felt that he was stalking her.

Bitā first called hotlines dedicated to helping women facing domestic violence in Iran. She found them unhelpful, however. According to Bitā, their only advice was to stop communicating with her boyfriend and to file a complaint with the police.⁸⁶ Finding the hotlines unhelpful, and with her mother's encouragement, Bitā decided to file a formal complaint.⁸⁷

In February 2019 Bitā went to the Tehran District Seven Public and Revolutionary Prosecutor's Office. The person in charge of the office tried to turn Bitā away. He told Bitā that her complaint did not have much merit. "So far no acid has been poured on your face. I tell a thousand people that I want to kill them every day. Are they going to file a complaint alleging that I want to kill them? You can go [home] and return whenever he poured acid [on you]. Your face is still healthy."⁸⁸ He kicked Bitā out of his room.⁸⁹

Bitā felt that she was out of options. On one hand she could not go back to her boyfriend and try to convince him not to hurt her. On the other hand, she had not received the authorities' support.⁹⁰ She sat down at the Prosecutor's Office building, thinking that her boyfriend would either throw acid at her face or kill her.⁹¹ According to Bitā, the secretary of the official who had thrown her out of his room felt sorry for her and helped her file a complaint after all.⁹²

Bitā also filed a complaint with the Cyber Police⁹³ because her boyfriend had published her private pictures online. He had created two Instagram pages under Bitā's name.⁹⁴ Separately, he had published a nude picture of a man and a woman, covering their faces with a heart image. That was not a picture of Bitā's, and identities of the people in that picture could not be determined. Under the Instagram post, however, Bitā's boyfriend claimed that it was Bitā's image.⁹⁵ He had also sent genuine images of Bitā to his contacts via private Instagram messages. Bitā was wearing shorts and tank tops in those pictures, and she felt violated.⁹⁶ According to Bitā, the Cyber Police

⁸³ *Witness Statement of Bitā*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Feb. 14, 2020), <https://iranhrdc.org/witness-statement-of-bitā-2/>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Iran's Cyber Police was established in January 2011. Protecting the "society's norms and mores" is one of the Cyber Police's responsibilities.

⁹⁴ *Witness Statement of Bitā*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Feb. 14, 2020), <https://iranhrdc.org/witness-statement-of-bitā-2/>.

⁹⁵ *Id.*

⁹⁶ *Id.*

office was very crowded, as many people victimized by phishing scams were there to file complaints.

Bitā also went to the Public Security and Intelligence Police at Tehran's Shariati Street. The Public Security and Intelligence Police is in charge of maintaining order in public places. Bitā went there despite thinking that her case fell outside their jurisdiction.⁹⁷ A colonel at the Public Security and Intelligence Police suggested that Bitā should pay someone to kill her boyfriend.⁹⁸

“I explained my situation. He simply told me to pay ten, twelve or fifteen million⁹⁹ [tousans] to a thug to kill him. He said [such persons] usually linger around courthouses and take care of these cases. He told me to leave it at the hand of one these people so that he can kill him and get it done with.”¹⁰⁰

The colonel told Bitā that this way she both helps herself and other women. He said that neither the law protected her, nor was she the daughter of an influential government official.¹⁰¹ As such, she was on her own and she would better help herself. Bitā told him that there was no way she could do this and left.¹⁰²

As of the date of her interview with IHRDC, Bitā's complaints at the Tehran District Seven Prosecutor's Office or the Cyber Police had not yet been addressed.¹⁰³

2.3. The Case of Saeed Tousi

Saeed Tousi, a Quran reciter close to Supreme Leader Ali Khamenei, was accused of molesting several children whom he tutored. Although he admitted in writing to having “unhealthy relationships” with them, the charges against him were eventually dropped after the intervention of high-level judiciary officials. The way in which the Iranian judiciary handled his case indicated that the office of Supreme Leader had likely intervened to protect him.

⁹⁷ *Id.*

⁹⁸ Although this statement is shocking, extra-judicial measures by Iranian authorities, even against common criminals, is not unprecedented. In 2013, Esmail Ahmadi Moqaddam, commander of Iran's police force, stated that during 1990s some within the Iranian security apparatus believed that the judicial process was ineffective in fighting crime. Therefore, acting in a “spontaneous” manner, they took the matter in their own hands and assassinated criminals. See *'Az Mīnguzārī Marzhā Tā Da 'vāyi Nājā Bā Dulati Dahum Dar Guftugūyi Tafshīlī Īsnā Bā Farmandihyi Nājā*, ISNA (Nov. 18, 2013), <https://www.isna.ir/news/92082716428>.

⁹⁹ This amount approximately equals between \$855 and \$1282 per the exchange rate in February 2019.

¹⁰⁰ *Witness Statement of Bitā*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Feb. 14, 2020), <https://iranhrdc.org/witness-statement-of-bitā-2/>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*



Figure 1

Saeed Tousi, right, is pictured with Iran's Supreme Leader, Ali Khamenei

The initial complaint against Tousi was filed on July 29, 2012.¹⁰⁴ According to Gholamhossein Mohseni Eje'i, the former deputy to the head of the Iranian judiciary, the complaint was filed by parents of four of Tousi's male students.¹⁰⁵ The complaint alleged that Tousi had "facilitated

¹⁰⁴ Documents of Saeed Tousi's case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 1, Receipt of the first complaint against Tousi at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor's Office.

¹⁰⁵ *Rivāyati Muḥsinī 'Izhih 'ī Az Parvandīhyi Sa'īdi Ṭūsī*, Khabar Online (Feb. 1, 2018), <https://www.khabaronline.ir/news/751322>

immorality and prostitution.”¹⁰⁶ This complaint was received at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor’s Office.¹⁰⁷

The investigating judge at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor’s Office issued a two-page statement, recommending that Tousi should be indicted on two charges. One charge was “encouraging immorality and prostitution through making deviant statements and sexual stimulation of adolescents.”¹⁰⁸ The other charge was “engaging in indecent and religiously prohibited acts with adolescents.”¹⁰⁹ The investigative judge had relied on the testimony of the victims, and text messages sent by Tousi to the boys, and Tousi’s confessions.¹¹⁰ Confronted by the children’s parents, Tousi had given written pledges, stating that he had engaged in “dirty acts” and “unhealthy relationships” with the boys.¹¹¹

¹⁰⁶ Documents of Saeed Tousi’s case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 1, Receipt of the first complaint against Tousi at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor’s Office. Article 639 of the Fifth Book of the Islamic Penal Code states, “The following individuals shall be sentenced to one year to ten years’ imprisonment and in respect to paragraph (A), in addition to the punishment provided, the relevant place shall be closed temporarily at the discretion of the court.

A – Anyone who establishes or directs a place of immorality or prostitution.

B – Anyone facilitates or encourages people to immorality or prostitution.

Note- If the abovementioned act is regarded as *qavadi* (procuring), in addition to the punishment provided above, [the offender] shall be sentenced to the *hadd* punishment for *qavadi* (procuring).

¹⁰⁷ Documents of Saeed Tousi’s case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 1, Receipt of the first complaint against Tousi at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor’s Office

¹⁰⁸ Documents of Saeed Tousi’s case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 2, Statement by the investigating judge at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor’s Office recommending the issuance of an indictment against Tousi.

¹⁰⁹ Documents of Saeed Tousi’s case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 2, Statement by the investigating judge at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor’s Office recommending the issuance of an indictment against Tousi. Article 637 of the Fifth Book of the Islamic Penal Code states, “When a man and a woman who are not married to each other, commit indecent acts other than *zina*, such as kissing or sleeping next to one another, they shall be sentenced to up to ninety-nine lashes; and if the act is committed by force only the one who has used force shall be punished as *ta’zir*.” Despite the wording of this provision, the investigating judge seems to have found this provision applicable to same-sex relations too.

¹¹⁰ Documents of Saeed Tousi’s case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 2, Statement by the investigating judge at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor’s Office recommending the issuance of an indictment against Tousi.

¹¹¹ Documents of Saeed Tousi’s case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 10, Saeed Tousi’s written confession.

On the charge of *tafkhez*¹¹², the investigating judge stated that his office lacked jurisdiction.¹¹³ Tousi was later acquitted of this charge.¹¹⁴

On October 13, 2012, the prosecutor at the Public and Revolutionary Prosecutor's Office agreed with the investigating judge and also recommended that an indictment on the two charges should be filed.¹¹⁵ Nevertheless, several months later, on April 29, 2013, Tehran Prosecutor Jafari Dolatabadi sent the case file to Ayatollah Sadeq Larijani, the head of the Iranian judiciary, ostensibly for receiving "guidance."¹¹⁶ The letter accompanying the case file, however, indicated that Larijani had personally asked about the case.

¹¹² Article 235 of the Islamic Penal Code of 2013 defines *tafkhez* as follows:

Tafkhez is defined as putting a man's sex organ (penis) between the thighs or buttocks of another male person.

Note- A penetration [of a penis into another male person's anus] that does not reach the point of circumcision shall be regarded as *tafkhez*.

¹¹³ According to Note 3 to Article 3 of the 2002 Law to Reform the Law to Create Public and Revolutionary Courts, in cases of adultery and sodomy complaints should be directly filed at courts, not prosecutor's offices.

¹¹⁴ Documents of Saeed Tousi's case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 9, Tehran Province Court of Appeals Branch 56 Opinion

¹¹⁵ Documents of Saeed Tousi's case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 3, Letter by Public and Revolutionary Prosecutor's Office supporting issuance of an indictment against Tousi.

¹¹⁶ *Şaf̄hiyi Ākhar: 'Asnādi Tāzih 'ī Az Parvandihiyi Hāj Sa 'īdi Tūsī, Qārū Qurāni Biyti Rahbar*, VOA PERSIAN (Oct. 26, 2015), <https://ir.voanews.com/a/last-page-for-web-10-28-2016/3570184.html>.

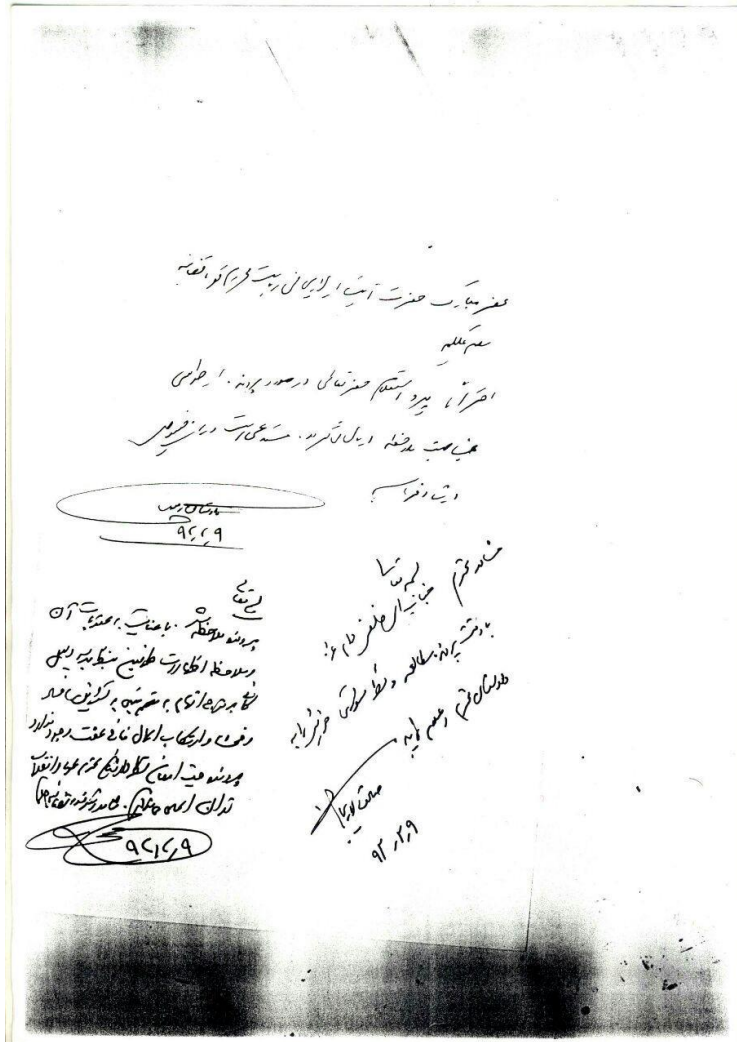


Figure 2

The letter from Tehran Prosecutor to Sadeq Larijani along with Larijani’s response and the opinion of Larijani’s adviser.

In the letter accompanying the case file, Jafari Dolatabadi wrote, “Subsequent to your excellency’s inquiry regarding Mr. Tousi’s case file, the case file is provided in its entirety. Your guidance is kindly requested.”¹¹⁷ The fact that Larijani, the head of the judiciary, had inquired about Tousi’s case indicates that there was a desire at the highest levels of the Iranian government to circumvent the judicial process in this case. The events that followed support this conclusion.

On the same day that Larijani received Tousi’s case file, he sent it to his adviser for review. His adviser wrote back in the same day, saying that he had reviewed the case file and found that there was not enough evidence to indicate that Tousi had committed a crime. Subsequently, the Tehran

¹¹⁷ Documents of Saeed Tousi’s case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 4, Letter by Tehran Prosecutor to Sadeq Larijani, the head of the Iranian judiciary.

Prosecutor's Office dropped the two charges recommended by the investigating judge and the prosecutor at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor's Office.¹¹⁸

The parents of the abused children appealed the decision to drop the charges against Tousi.¹¹⁹ Eventually, on May 11, 2015, Branch 1057 of Tehran Public Court issued a verdict in the Tousi case. The opinion stated that Tousi had encouraged the children to sleep naked under the sheets. The opinion also stated Tousi had invited the children to engage in immoral sexual acts, but refrained from explicitly mentioning them because it felt they were inappropriate to be written in a court opinion.¹²⁰ The court found Tousi guilty of facilitating immoral acts under Article 639 B of the Fifth Book of the Islamic Penal Code and sentenced him to four years' imprisonment.¹²¹

Both parties appealed, and the case was assigned to Branch 56 of the Tehran Province Court of Appeals. The case file, however, was again taken over by a higher authority. A letter by the chief judge at Branch 56 of the Tehran Province Court of Appeals indicates that on August 30, 2016, the head of the Ministry of Justice in Tehran Province had asked for and received the case file. In this letter, which was addressed to a deputy to the head of the Ministry of Justice in Tehran Province, the chief judge had noted that the case file had not yet been returned to Branch 56 by September 6, 2016.¹²²

More than a year later, the case file was not yet returned to Branch 56 of the Tehran Province Court of Appeals, according to a letter by the head of the Iranian parliament's Article 90 Commission¹²³ to Sadeq Larijani, the head of the Iranian judiciary.¹²⁴

On January 9, 2018, Branch 56 of the Tehran Province Court of Appeals issued its ruling. The two judges who wrote the court opinion, however, were brought over from other branches of the Tehran Province Court of Appeals.¹²⁵ The chief judge, who had noted that the case file had been taken from Branch 56, did not take part in this decision.¹²⁶ The opinion acquitted Tousi of all charges. The court stated that Tousi's written confessions were made under duress because the

¹¹⁸ Documents of Saeed Tousi's case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 5, letter by Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor's Office.

¹¹⁹ Statement of Mahmoud Sadeghi, member of the Iranian parliament, Appendix B.

¹²⁰ Documents of Saeed Tousi's case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 6, Branch 1057 of Tehran Public Court Opinion.

¹²¹ Documents of Saeed Tousi's case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 6, Branch 1057 of Tehran Public Court Opinion.

¹²² Documents of Saeed Tousi's case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 7, Letter by chief judge of Branch 56 of the Tehran Province Court of Appeals

¹²³ Article 90 of the Constitution of the Islamic Republic of Iran states the parliament has investigating powers over all three branches of the Iranian government. The investigating commission of the Iranian parliament is named after this article of the Iranian Constitution.

¹²⁴ Documents of Saeed Tousi's case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 8, October 9, 2017 letter by Davod Mohammadi, the head of the parliament's Article 90 Commission to Sadeq Larijani, the head of the Iranian judiciary.

¹²⁵ Statement of Mahmoud Sadeghi, member of the Iranian parliament, Appendix B.

¹²⁶ همان

families of his students had threatened that they would go public with allegations against him and would destroy his reputation.¹²⁷ In addition, the court wrote,

“The alleged acts, including profane and inappropriate jokes, immoral discussions, and even massaging and fondling, if proven, still could not satisfy the elements of the alleged crime.”¹²⁸

This ruling effectively meant that fondling of adolescents by a person of the same sex could not be punished under Iranian law. This contention, however, is not supported by the Islamic Penal Code. Article 237 of this code declares:

Article 237– Homosexual acts of a male person in cases other than *livat*¹²⁹ and *tafkhez*, such as kissing or touching as a result of lust, shall be punishable by thirty-one to seventy-four lashes of ta’zir punishment of the sixth grade.

Note 1- This article shall be equally applicable in the case of a female person.

Note 2- This article shall not be applicable in the cases punishable by a *hadd* punishment under Shari‘a rules.¹³⁰

Therefore, fondling, as alleged in the Tousi case, should have been punishable under this provision.

Intervention of high-level judiciary officials in the Tousi case was against provisions of Iranian law. Article 477 of Iran’s Code of Criminal Procedure states the head of the judiciary can intervene if a final decision in a case is found to be contrary to Islamic law. In Tousi’s case, however, the head of the judiciary intervened even before a court of first instance had issued a ruling. Article 3(1) of the Law to Establish Public and Revolutionary Courts states that when there is a disagreement between an investigating judge and a prosecutor, the conflict over whether to issue an indictment is resolved at the public or revolutionary court. There is no provision that allows a prosecutor to rescind an indictment that has been issued.

2.4. The Case of Zahra Navidpour

¹²⁷ Documents of Saeed Tousi’s case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 9, Tehran Province Court of Appeals Branch 56 Opinion

¹²⁸ Documents of Saeed Tousi’s case released by Mahmoud Sadeghi, member of the Iranian parliament, Appendix A, Item 9, Tehran Province Court of Appeals Branch 56 Opinion

¹²⁹ *Livat* is the Arabic term for sodomy.

¹³⁰ QANUNI MUJAZATI ISLAMI [Islamic Penal Code] Tehran 1392 [2013], art. 237, available at <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

Zahra Navidpour, a woman from Malekan, East Azarbaijan Province, accused Salman Khodadadi, Malekan's representative in the parliament, of raping her. Navidpour described her ordeal in a video published on YouTube in November 2018.

According to Navidpour's statements in this video, in early 2015 Navidpour had reached out to Khodadadi to find work.¹³¹ Navidpour stated that Khodadadi told her that she should bring her documents to his office in Tehran. When Navidpour met him at his office, he allegedly offered her employment in exchange for a romantic relationship. Navidpour refused and decided to leave, but the door was locked.¹³² Navidpour stated that Khodadadi forced himself onto her and raped her.¹³³ Subsequently, he told her to leave, and he warned her that if she were to speak of what had happened, he would have her and her family killed.¹³⁴ Navidpour took the train back to Malekan. She stated that she was so sick that she was vomiting for several days. Navidpour stated that Khodadadi and his associates kept calling her with both promises and threats. The threats continued for several years. In June 2018 Navidpour went to the parliament to file a complaint against Khodadadi.¹³⁵



Figure 3

¹³¹ *Zahrā Navīdpūr Juz 'īāti Ta'aruži Salmāni Khudādādī Rā Dar Tilivīzyune Dulatiye Āzarbāyjān*, 'Ifshā Kard, YOUTUBE (Nov. 22, 2018), <https://www.youtube.com/watch?v=EdSdP-yvnY>.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

Navidpour was instructed to go the parliament's *herasat*¹³⁶ office. After hearing what she had to say, the *herasat* office told her that she should not speak of this anywhere because nobody would believe her, and her reputation would be damaged.¹³⁷ They told her that she should only follow up with them. On her way back to Malekan, Khodadadi called her again and begged her to withdraw her complaint.

Navidpour stated that the parliament did not conduct an investigation despite the fact that she had evidence to support her allegations.¹³⁸ As a result, a month later Navidpour decided to publicize what had happened to her.

After she publicized her allegations, the Guardian Council, which is charged with vetting candidates for parliamentary elections, asked to speak with her.¹³⁹ The Guardian Council encouraged her to file a criminal complaint. When she filed a complaint in a Malekan court, she was interviewed by the prosecutors, the Ministry of Intelligence and the Islamic Revolutionary Guard Corps (IRGC) intelligence.¹⁴⁰ According to Navidpour, Khodadadi's associates kept harassing and threatening her.¹⁴¹

Navidpour stated that Khodadadi admitted in court that he had threatened her.¹⁴² According to Navidpour, a judge named Babaei set Khodadadi's bail at 200 million toumans,¹⁴³ but this was only a formality and never enforced.¹⁴⁴

In January 2019 Zahra Navidpour died under suspicious circumstances at her mother's home in Malekan.¹⁴⁵ Malekan's prosecutor announced that she had committed suicide.¹⁴⁶ In March 2019 Iranian media reported that Salman Khodadadi was acquitted of the rape charge, but that he had been found guilty of illicit sexual relations and sentenced to 99 lashes, exile, and a two-year ban from government employment.¹⁴⁷

¹³⁶ Governmental organizations and universities in Iran have an intelligence and security office known as *herasat*. This office is in charge of the university or organization's security and monitors it for any subversive act or any conduct in violation of the IRI's strict Islamic code.

¹³⁷ *Zahrā Navīdpūr Juz 'īāti Ta 'aruži Salmāni Khudādādī Rā Dar Tilivīzyune Dulatiye Āzarbāyjān 'Ifshā Kard*, YOUTUBE (Nov. 22, 2018), <https://www.youtube.com/watch?v=EdSdP-yvnY>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ This amount equals approximately \$15,576 per the exchange rate at the time.

¹⁴⁴ *Zahrā Navīdpūr Juz 'īāti Ta 'aruži Salmāni Khudādādī Rā Dar Tilivīzyune Dulatiye Āzarbāyjān 'Ifshā Kard*, YOUTUBE (Nov. 22, 2018), <https://www.youtube.com/watch?v=EdSdP-yvnY>.

¹⁴⁵ *Margi Zahrā Navīdpūr; Pāyi Yik Namāyandihyi Majlis Dar Miān 'Ast*, RADIO FARDA (Jan. 8, 2019), <https://www.radiofarda.com/a/alleged-victim-of-Iranian-mp-sexual-misconduct-reportedly-committed-suicide/29699307.html>

¹⁴⁶ *Id.*

¹⁴⁷ *Salmāni Khudādādī Va Zahrā Navīdpūr; Ra 'yi Dādgāh Dar Parvandihiyi Āzāri Jinsūi Namāyandihyi Majlise 'Irān Šādir Shud*, BBC PERSIAN (Mar. 15, 2019), <https://www.bbc.com/persian/iran-47586913>

3. Violations of International Law

This section examines how Iran fails to meet its obligation under the ICCPR to protect victims of sexual crimes. As discussed below, Iran's laws and the authorities' conduct are both responsible for violations of Iran's international human rights obligations.

3.1. Liberty and Security of Persons

Article 9.1. of the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a party, states, "Everyone has the right to liberty and security of person."¹⁴⁸ Interpreting Article 9 in General Comment No. 35, the Human Rights Committee declares, "The right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors."¹⁴⁹ As explained in Section 1 *supra*, Iranian law does not consider a wide variety of coercive sexual acts as violent crimes. Absent vaginal or anal penetration, coercive sexual acts are treated as consensual and punished only as religious offences. These provisions do not protect citizens from foreseeable threats to bodily integrity that could result from various types of sexual assault.

The Human Rights Committee also states that State Parties "must respond appropriately to patterns of violence against categories of victims such as... violence against women... [and] violence against children..."¹⁵⁰ Cases discussed in Section 2 of this report provided examples of how the Iranian government fails to meet this obligation. Accounts of women interviewed by IHRDC demonstrated the extent to which several law enforcement agencies were unwilling to investigate sexual assaults or threats of rape. Furthermore, the case of Saeed Tousi provided an example of how sexual violence against children could go unpunished. The Tehran Province Court of Appeals' finding that fondling of adolescents by an adult did not constitute a crime was indicative of the Iranian government's failure to protect children and other victims of sexual violence.

Iranian law does not protect victims of marital rape. The failure to criminalize marital rape breaches Iran's responsibility towards the liberty and security of its citizens. International studies have indicated that sexual violence from an intimate partner is one of the most widespread types

¹⁴⁸ International Covenant on Civil and Political Rights, art. 9.1, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹⁴⁹ United Nations, Human Rts. Comm., Gen. Comment No. 35 ¶ 9, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014), available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en.

¹⁵⁰ *Id.*

of violence against women.¹⁵¹ Under the legal framework of the IPC, consent becomes meaningless once one enters marriage, which effectively leaves all married women vulnerable to marital rape.

3.2. Equality before the Law

Article 26 of the ICCPR declares,

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁵²

Definition of rape under Iranian law violates the requirement that all persons should enjoy equal protection of laws. By defining rape as an act that can only be committed by a man, Iranian law fails to protect victims of rapes committed by women. Furthermore, the stringent elements of rape leave a large number of victims unprotected. By making penetration a central element of this crime, victims of all other sexual crimes have limited options for seeking justice. In fact, absent penetration, a victim's consent or lack thereof is of no legal significance. The fact that consent is not consequential in the eyes of Iranian law has enormous ramifications for the rights of girls and women. Sexual violence disproportionately affects women and girls.¹⁵³ The Committee on Elimination of Discrimination against Women states,

The Committee regards gender-based violence against women to be rooted in gender-related factors such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. These factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered as a private matter, and to the widespread impunity for it.¹⁵⁴

¹⁵¹ *Facts and figures: Ending Violence Against Women*, UNWOMEN.ORG, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures> (last visited Feb. 27, 2020).

¹⁵² International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹⁵³ According to the World Health Organization data, 35% of women worldwide have experienced physical or sexual intimate partner violence or non-partner sexual violence. See *Violence Against Women*, WORLD HEALTH ORGANIZATION (Nov. 29, 2017), <https://www.who.int/en/news-room/fact-sheets/detail/violence-against-women>.

¹⁵⁴ United Nations, Comm. on the Elimination of Discrimination against Women, General Recommendation No. 35 ¶ 19, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017), available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf.

The approach of Iranian law to sexual violence reinforces men's traditional privilege over women. IPC provisions undermine the importance of consent and thereby reduce the agency of victims. Treating sexual assault and consensual sex in the same way, Iranian law implicitly endorses the view that sexual violence, short of rape, is a private matter. As such, women who have been victimized by sexual violence are effectively hindered from seeking justice in Iran's legal system.

Conclusion

The IPC fails to adequately criminalize sexual offences. Its definition of rape is outdated and does not include a wide range of sexual crimes that should be categorized as such. Marital rape, for instance, is not considered a crime. A victim's lack of consent does not make a difference in the statutory punishments for coercive sexual crimes; it merely means that the victim would not be penalized. Cases discussed in this report demonstrate how Iranian authorities fail to investigate and punish sexual crimes. Both law enforcement and judiciary officials have been shown unwilling to seek justice for victims.

Methodology

IHRDC gathered and analyzed information for this report from the following sources:

Testimony of victims and witnesses. IHRDC interviewed two witnesses who have been victims of sexual violence. The individuals interviewed for this report have experienced human rights violations and have sought redress from Iranian authorities.

Government Documents. This report cites the Islamic Penal Code of 2013. In addition, the report cites court documents, including judicial opinions.

Media reporting. Various Iranian media sources, as well as non-Iranian media sources, have been used to provide details and context for this report.

Where the report cites or relies on information provided by government actors or others involved parties, it specifies the source of such information and evaluates the information in light of the relative reliability of each source. The IHRDC has meticulously cross-checked all the sources of information used to compile this report to ensure their credibility and accuracy.

Citations originally written in the Persian language have been transliterated using the system of the International Journal of Middle Eastern Studies (IJMES), available at <http://ijmes.chass.ncsu.edu/docs/TransChart.pdf> .

Appendix A



قوه قضائیه
رسید شکوائیه

بدیتوسیله اعلام می دارد که آقای [] با موضوع فراهم آوردن موجبات فساد و فحشاء در تاریخ ۱۳۹۱/۰۵/۰۸ ساعت ۱۳:۰۵ وصول گردید و با شماره پرونده ۹۱۰۹۹۸۲۱۳۳۵۰۰۰۳۵ و شماره رمز [] و شماره بایگانی ۹۱۰۰۳۸ به شعبه پانزدهم بازپرسی دادسرای عمومی و انقلاب ناحیه ۲۸ (کارکنان دولت) تهران ارجاع گردید.

تذکرات:

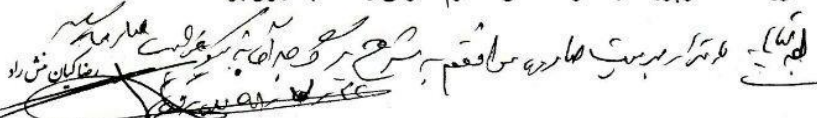
- در نگهداری این برگ رسید مراقبت لازم را بعمل آورید رسید مجدد صادر نمی گردد
 - پیگیری حضوری شکوائیه منوط به ارائه رسید یا اعلام شماره ثبت کل می باشد.
 - پاسخگویی صرفاً به اصحاب دعوی میسر خواهد بود.
 - در صورت تمایل به اطلاع رسانی از طریق سیستم پیامک شماره تلفن همراه خود را به واحد قضایی مربوطه اعلام نمایید.
 - جهت اطلاع از آخرین وضعیت پرونده به سایت www.adliran.ir مراجعه نمایید
- نشانی: تهران - خیابان پانزده خرداد - نیش بازار، دادسرای عمومی و انقلاب
تهران - طبقه سوم

Item 1: Receipt of the first complaint against Tousei at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor's Office.

که اظهارات و اطلاعات ایشان جهت حصول علم استماع گردیده است ۴- اقرار مکتوب متهم در پذیرش ارتباطات ناسالم با قاریان ممتاز نوجوان، هرچند که در مراحل بازپرسی، کتابت این موضوعات را تحت شرایط خاص و همچنین منظور خود را از روابط ناسالم را شوخی و پیامک قید نموده است که با توجه به محتویات پرونده، این دفاع غیر قابل پذیرش بلکه مؤید شکایت شکات و اظهارات نوجوانان قرآنی می باشد. ۵- دفاعیات بلاوجه، متناقض و عاری از صداقت متهم در مراحل بازپرسی ۶- متن پیامک های متهم که قطع نظر از حریم خصوصی و پرهیز این شعبه بازپرسی از ورود به محتویات آن، در حد شکایت شکات خصوصی کاملاً مؤید مطالبی چون: استخر رفتن، ماساژ دادن و پیامک های نامناسب (موضوع صحبت های نوجوانان قرآنی) می باشد ۷- سی دی مکالمات احدی از شکات با متهم که در بازپرسی، مصون از انکار و تردید نامبرده بوده است ۹- سایر شواهد و قرائن موجود در پرونده؛ بزه های انتظامی به متهم را محرز دانسته، به استناد بند ک ماده ۳ قانون تشکیل دادگاه های عمومی و انقلاب و اصلاحات بعدی ماده ۱۲۹ قانون مجازات اسلامی، اصل ۱۶۷ قانون اساسی، ماده ۲۱۴ قانون آیین دادرسی دادگاه های عمومی و انقلاب در امور کیفری و منابع معتبر فقهی از جمله تحریر الوسیله حضرت امام خمینی (ره) قرار مجرمیت نامبرده را صادر و اعلام می نماید.

پرونده در خصوص اتهام دیگر نامبرده دائر بر تفخیز، به استناد تبصره ۳ ماده ۳ قانون تشکیل دادگاه های عمومی و انقلاب و اصلاحات بعدی جهت رسیدگی مستقیم به محاکم عمومی جزایی تهران ارسال می گردد.

مقرر است دفتر پرونده به نظر دادستان محترم عمومی و انقلاب تهران برسد.

مهر و امضاء: 
بازرس شعبه پنجم دادسرای ناحیه ۲۸ تهران (کاکلکان دوست)

Item 2, Page 2: Statement by the investigating judge at Branch 15 of the Tehran District 28 Public and Revolutionary Prosecutor's Office recommending the issuance of an indictment against Tousei.

«بِسْمِ تَعَالَى»



شماره نامه :

تاریخ : ۹۱/۰۷/۲۲

ریاست محترم دادگاه های عمومی جزائی استان تهران

۱۸۱ ... ۳۲۱۳۲۱۴۱۱
۹۱/۰۷/۲۲
شعبه کیفری جرائم علیه اشخاص

سلام علیکم:

با احترام، در این پرونده آقای محمدگندم نژاد طوسی فرزند علی اصغر معروف به سعید طوسی ۴۲ ساله، متأهل، شغل کارشناس شورای عالی قرآن، اهل مشهد و مقیم تهران، فاقد پیشینه کیفری (بنابه اظهاراتش)، آزاد بنا شود به قرار وثیقه متهم است به:

* تشویق به فساد و فحشا از طریق بیان مطالب غیر اخلاقی و تحریک جنسی نوجوانان

* ارتکاب اعمال منافی عفت و افعال حرام با نوجوانان

با عنایت به محتویات پرونده و نظریه دلایل ذیل:

۱- شکایت آقایان فرزند و فرزند ولی

(همگی به ولایت از فرزند خود) به شرح اوراق پرونده ولی

۲- اظهارات آقایان و و و که همگی از نوجوانان

جامعه فرآین کشور از جمله حافظ قرآن یا قاری قرآن و مؤذن بوده و اظهارات آنان بعنوان مطایع احد نگردید،

گواهی آقایان و و و و

که جهت حصول علم بازپرس محترم استماع گردیده است.

۳- اقرار مکتوب متهم در پذیرش ارتباطات ناسالم با نامردگان و دفاعیات بلاوجه و عاری از صداقت و متناقض در

مراحل بازپرسی.

بسمه تعالی



شماره نامه :

تاریخ : ۹۱/۰۷/۲۲

۴- CD مکالمات احدی از شکات با متهم .

۵- متن پیامک های متهم قطع نظر از حریم خصوصی و سایر قرائن و امارات مطروحه نامبرده مرتکب بزه فوق
گردیده لذا به استناد ماده ۶۳۹ قانون مجازات اسلامی و اصل ۱۶۷ قانون اساسی و ماده ۲۱۴ از قانون آیین دادرسی
کیفری دادگاههای انقلاب و منابع معتبر فقهی من جمله تحریرالوسیله حضرت امام خمینی (ره) تقاضای تعیین
کیفر می نماید .

قلبی

داریاب دولتی محمی و انقلاب تهران

حضرت مبارک حضرت آیت الله العظمی سید مرتضیٰ موسوی خراسانی
سلام علیکم

احتراماً به استحضار می‌رسانم حضرتعالی در حدود پرونده ۱۰۰۰۰۰۰۰۰۰
مبنی بر دعوت به خدمت ارجاع شده است. مستحق است در این خصوص

دست اقدام

۹۲۱۶۹

برای
برنده ملاحظه. با عنایت به اهمیت
و ملاحظه اظهارات طرفین منطبق بر
تأیید و تصدیق است. مستحق است
رفع و ارجاع به احوال نامه دعوت به خدمت
برنده قید است. لذا در این خصوص
تذکره است. مستحق است.

۹۲۱۶۹

شماره قلم
جناب آقای سید مرتضی
با درود و احترامات عرض می‌گردد
مستحق است

۹۲۱۶۹

Item 4: Letter by Tehran Prosecutor to Sadeq Larijani, the head of the Iranian judiciary.



تاریخ:

شماره:

باسمه تعالی

مورخ ۹۲/۲/۱۷ پرونده کلاسه ۹۱۰۰۳۸ که مجدداً از دفتر دادستان محترم اعاده شده است، به تصدی اینجانب کیان منش بازپرس شعبه پانزدهم دادرسی کارکنان دولت تهران تحت نظر است، ملاحظه می شود که دادستان محترم عمومی و انقلاب تهران ضمن عدول از کیفرخواست صادره و به استدلال: عدم اقناع از ادله موجود و وضعیت خاص متهم و اینکه دلایل ابرازی، علم آور و مؤید وقوع جرم نمی باشد، با قرار مجرمیت سابق الصدور مخالفت و ابراز عقیده به منع تعقیب نموده اند، لذا این شعبه بازپرسی با پذیرش نظر ایشان و به استناد بند (ل) ماده ۳ قانون تشکیل دادگاههای عمومی و انقلاب و اصلاحات بعدی، قرار منع تعقیب متهم آقای محمد گندم نژاد طوسی فرزند علی اصغر را صادر و اعلام می نماید. قرار صادره ظرف مدت ۱۰ روز از تاریخ ابلاغ قابل اعتراض بوسیله شکات محترم در محاکم صالحه می باشد. پرونده در خصوص اتهام دیگر متهم دائر بر تفخیز قطع نظر از دلایل اثباتی، به استناد تبصره ۳ ماده ۳ قانون تشکیل دادگاههای عمومی و انقلاب و اصلاحات بعدی جهت رسیدگی مستقیم به محاکم محترم عمومی و جزایی تهران ارسال می گردد.

مقرر است دفتر: قرار منع تعقیب صادره وفق مقررات به شکات محترم ابلاغ، پس از قطعی قرار صادره نسبت به رفع اثر از قرار تأمین کیفری اقدام و پرونده به استناد تبصره ۳ ماده ۳ قانون تشکیل دادگاههای عمومی و انقلاب و اصلاحات بعدی به محاکم عمومی و جزایی تهران ارسال شود.

سپهسالار منش راو
 بازپرس شعبه پانزدهم دادرسی ناحیه ۲۸ تهران (کارکنان دولت)
 ۹۲/۲/۱۷



دادگستری جمهوری اسلامی ایران

«فلا تُشعروا الهوى أن تغدبوا»

شماره دادنامه: ۹۴۰۹۹۷۰۲۳۰۹۰۰۰۶۱
شماره پرونده: ۹۱۰۹۹۸۲۱۳۳۵۰۰۰۳۵
شماره بایگانی شعبه: ۹۳۰۳۵۰
تاریخ تنظیم: ۱۳۹۴/۲/۳۱
پیوست:

شعبه ۱۰۵۷ دادگاه عمومی جزایی مجتمع قضایی کارکنان دولت
تهران

دادنامه

تاریخ رسیدگی: ۹۴/۲/۲۱ شماره پرونده: ۹۱۰۹۹۸۲۱۳۳۵۰۰۰۳۵ شماره بایگانی: ۱۰۵۷/۹۳۰۳۵۰/۳ دادنامه: ۹۴۰۹۹۷۰۲۳۰۹۰۰۰۶۱

مرجع رسیدگی: شعبه ۱۰۵۷ دادگاه عمومی تهران ویژه رسیدگی به جرائم کارکنان دولت

اتهام: تشویق به فساد و فحشاء از طریق بیان مطالب غیر اخلاقی و تحریک جنسی نوجوانان

گردشگار: پس از ارجاع پرونده به این دادگاه و وصول به شعبه به کلاس فوق ثبت و پس از جری تشریفات قانونی دادگاه در وقت مقرر / فوق العاده بتیمی امضاء کننده ذیل تشکیل است با بررسی پرونده ختم رسیدگی را اعلام و با استناد از خداوند متعال بشرح ذیل مبادرت بصور رای مینماید.

رای دادگاه

درخصوص اتهام آقای محمد گندم نژاد طوسی فرزند علی اصغر، ۴۴ ساله اهل مشهد، ساکن تهران دایر بر تشویق به فساد و فحشاء از طریق بیان مطالب غیر اخلاقی و تحریک جنسی نوجوانان موضوع کیفرخواست شماره ۹۳۱۰۴۳۲۱۳۲۰۰۰۱۸۲ صادره از دادسرای کارکنان دولت، بدین توضیح که براساس شکایت آقای بیلایت از جانب بیان گردیدند حدود یک سال و نیم پیش قاری بین المللی زنگ زدند که را می خواهیم بعروستیم قرآن تلاوت کند گفتیم آقای من تا به حال بچه ام را به تنهایی جایی نفرستادم بگذارید من هم بروم گفتند الان دیگر میسر نیست بلیط تهیه کردیم گفتیم یا چه کسی می روند گفتند آقای طوسی قاری بین المللی گفتیم من ایشان را نمی شناسم قابل تایید می باشند گفتند من نمی بینم من با اعتماد به این سخن و اعتماد به اینکه آقای طوسی انسان موجه و قرآنی می باشد فرزندم را فرستادم یک شب در ماندند و برگشتند وقتی برگشتند چند تا اس ام اس آمد یکی این بوده که می دونم از من بدت میلاد ولی خدا می دونه به خاطر تدبیرت دوست دارم من شک کردم گفتیم چرا این نوشته طفلک خجالت می کشید بگه این مرد مشکل اخلاقی دارد...» که پس از تقدیم شکایت نامبرده موضوع به شعبه پانزدهم بازپرسی دادسرای کارکنان دولت ارجاع و بازپرس محترم پس از استماع اظهارات شاکی و متهم و همچنین گواهان تعرفه شده و انجام تحقیقات مقتضی النهایه در تاریخ ۹۱/۷/۱۶ به اتهام تشویق به فساد و فحشاء ارتکاب اعمال منافی عفت قرار مجرمیت صادر و متعاقب آن با موافقت تعاون دادستان کیفرخواست به شماره ۹۱۱۰۴۳۲۱۳۲۰۰۰۱۸۱ تحت عناوین فوق صادر گردیده ولیکن دادسرا با عدول از کیفرخواست، قرار منع تعقیب صادر که با اعتراض آقایان

پرونده جهت رسیدگی به شعبه ۱۰۵۹ ارجاع و شعبه مربوطه در خصوص اتهام تشویق به فساد و فحشاء قرار معترض عنه را نقض و پرونده را جهت اقدام مقتضی به دادسرا اعاده نمودند علی ایحال دادگاه با عنایت به مراتب فوق و با امدان نظر در جمیع اوراق و محتویات پرونده شکایت شکات خصوصی، اسناد و مدارک ابرازی از جمله متن پیامکهای ارسالی از جانب متهم مکالمات احدى از شکات با متهم که مورد انکار و تردید متهم نیز واقع نشده است، اقرار CD به برخی از نوجوان و نواوزان قرآنی، متهم مطابق دست نویس مورخ ۱۳۹۰/۱/۲۹ مضبوط در صفحه ۵ پرونده که دلالت بر ارتباطات ناسالم با قاریان نوجوان دارد و به خط و امضای متهم که مورد انکار مشارالیه واقع نشده ولیکن ابراز داشته نامه فوق را در اثر تهدید و فشار تنظیم نموده که این امر را برای دادگاه به اثبات نرسانده است و همچنین نامه منتسب به مشارالیه که مورد انکار واقع نشده است به تاریخ ۹۱/۵/۱۱ مضبوط در

تصویر برابر با اصل است.

نشانی: تهران - خیابان خیام - خیابان داور - جنب کاخ گلستان - ساختمان شماره ۲ قوه قضائیه - طبقه اول - مجتمع قضایی کارکنان دولت



دادگستری جمهوری اسلامی ایران

«فلا تظنوا الهوى ان تعدلوا»

شماره دادنامه: ۹۴۰۹۹۷۰۲۳۰۹۰۰۰۶

شماره پرونده: ۹۱۰۹۸۸۷۱۳۳۵۰۰۰۳۵

شماره بایگانی شعبه: ۹۳۰۳۵

تاریخ تنظیم: ۱۳۹۴/۲/۲۱

پیوست:

شعبه ۱۰۵۷ دادگاه عمومی جزایی مجتمع قضایی کارکنان دولت
تهران

دادنامه

صفحه ۴۶ پرونده بدین مضمون که نامبرده مرقوم داشتند من از امروز قول می دهم که اشتباهاتم (ارتباطات ناسالم با قاریان ممتاز نوجوان) را جبران کنم و دیگر مرتکب چنین اعمالی نشوم اظهارات و گواهی افراد متعدد که در خصوص دعوت متهم از آنان برای رفتن به استخر و سونا و همچنین اعمال و حرکات زشت و ناپسند و تشویق آنها به انجام اعمالی از قبیل ماساژ دادن، بزهنه زیر رخنخواب خوابیدن و غیره همگی به جهت عدم معابرت شهادت شهود با اوضاع و احوال مسلم و محقق پرونده، متن مکالمات انجام شده که مورد انکار متهم نیز واقع نشده، پیامکهای ارسالی، اقرارهای کتبی که مورد انکار مشارالیه نیز در زمان دادرسی واقع نشده و دفاع بلاوجه مشارالیه و عدم پذیرش گواهی افراد تعرفه شده از جانب مشارالیه چرا که هیچ یک از افراد تعرفه شده شاهد موضوع نبوده تنها با بیان اینکه نامبرده قاری ممتاز و فرد خوش نامی است در محکمه از او دفاع نمودند این در حالی است که مطابق قانون شاهد باید بر وقوع یا عدم وقوع جرم شهادت داده و خود شاهد عمل انتسابی بوده باشد که در مانحن فیه گواهان شناکی بر این موضوع شهادت دادند ولیکن گواهان متهم به جهت عدم علم و اطلاع از موضوع و زمان و مکان وقوع آن امکان شهادت بر عدم وقوع آن را از منظر دادگاه نداشتند و با در نظر گرفتن ادله اثباتی در امور کیفری مصرح در مواد ۱۶۰ الی ۲۱۳ و با جمع بودن ادله اقرار و شهادت شهود وقوع بزه از جانب متهم بر دادگاه محرز و مسلم است و با در نظر گرفتن موقعیت اجتماعی و مذهبی مشارالیه به عنوان قاری بر حسته و لطمه ای که عمل نامبرده به اعتماد مشتاقان و علاقه مندان به قرآن در راستای تلمذ و شاگردی از مشارالیه وارد گردیده و جلوگیری از تکرار چنین اعمالی و همچنین جبران حناقلی لطمات روحی و روانی وارده به بزه دیدگان جرم دادگاه نامبرده را مستحق تخفیف و رافند اسلامی ندانسته مستنداً به بند ب ماده ۶۳۹ قانون مجازات اسلامی از حیث اینکه نامبرده با ارسال پیامکهای متعدد و دعوی سنن بنای مبتذل و همچنین تماسهای تلفنی و با دعوت حضوری نوجوان و قاریان که در محضر مشارالیه تلاوت و یا شاگردی می کردند به انجام اعمال منافی عفت و قبیح که شرح آن و موضوعات آن به جهت قبیح بودن آن از ذکر در دادنامه خودداری میگردد نوجوانان را به فسق و فحشا تشویق و ترغیب می کردند حکم به محکومیت نامبرده به تحمل چهار سال حبس تعزیری با احتساب ایام بازداشت قبلی صادر اعلام می گردد. رای صادره حضوری و ظرف مدت بیست روز پس از ابلاغ قابل تجدیدنظر خواهی در محاکم تجدیدنظر استان تهران می باشد.

حیدری

رئیس شعبه ۱۰۵۷ دادگاه عمومی تهران

ویژه رسیدگی به جرائم کارکنان دولت

اعضای تنظیم کننده

تصویر برابر با اصل است.

نشانی: تهران - خیابان خیام - خیابان داور - جنب کاخ گلستان - ساختمان شماره ۲ قوه قضائیه - طبقه اول - مجتمع قضایی کارکنان دولت



دادگستری جمهوری اسلامی
ایران

شعبه ۵۶ دادگاه تجدیدنظر استان تهران
نامه صادره

شماره نامه: ۹۵۱۰۱۱۰۲۷۰۱۰۰۸۵۶
شماره پرونده: ۹۱۰۹۹۸۱۳۳۵۰۰۰۳۵
شماره پایگانی شعبه: ۹۴۰۶۲۰
تاریخ تنظیم: ۱۳۹۵/۰۶/۱۶
پیوست:

بسمه تعالی

معاون قضایی محترم رییس کل دادگستری استان تهران
با سلام

احتراما عطف به نامه شماره ۱۰/۲۴۲۲-۰۹/۰۶/۱۳۹۵ پرونده کلاسه
۹۴۰۶۲۰ مربوط به آقای محمد گندم نژاد طوسی توسط رییس کل
دادگستری استان تهران از شعبه گرفته شده و تاکنون عودت داده
نشده است.

رئیس شعبه ۵۶ دادگاه تجدیدنظر استان تهران- اهوراکی

نشانی: تهران - خیابان خیام شمالی - مجتمع امام خمینی - دادگاههای تجدیدنظر استان تهران

Item 7: Letter by chief judge of Branch 56 of the Tehran Province Court of Appeals

شماره: ۵۴۸۸۰۱
تاریخ: ۹۲/۷/۱۷
پیوست: -

پست

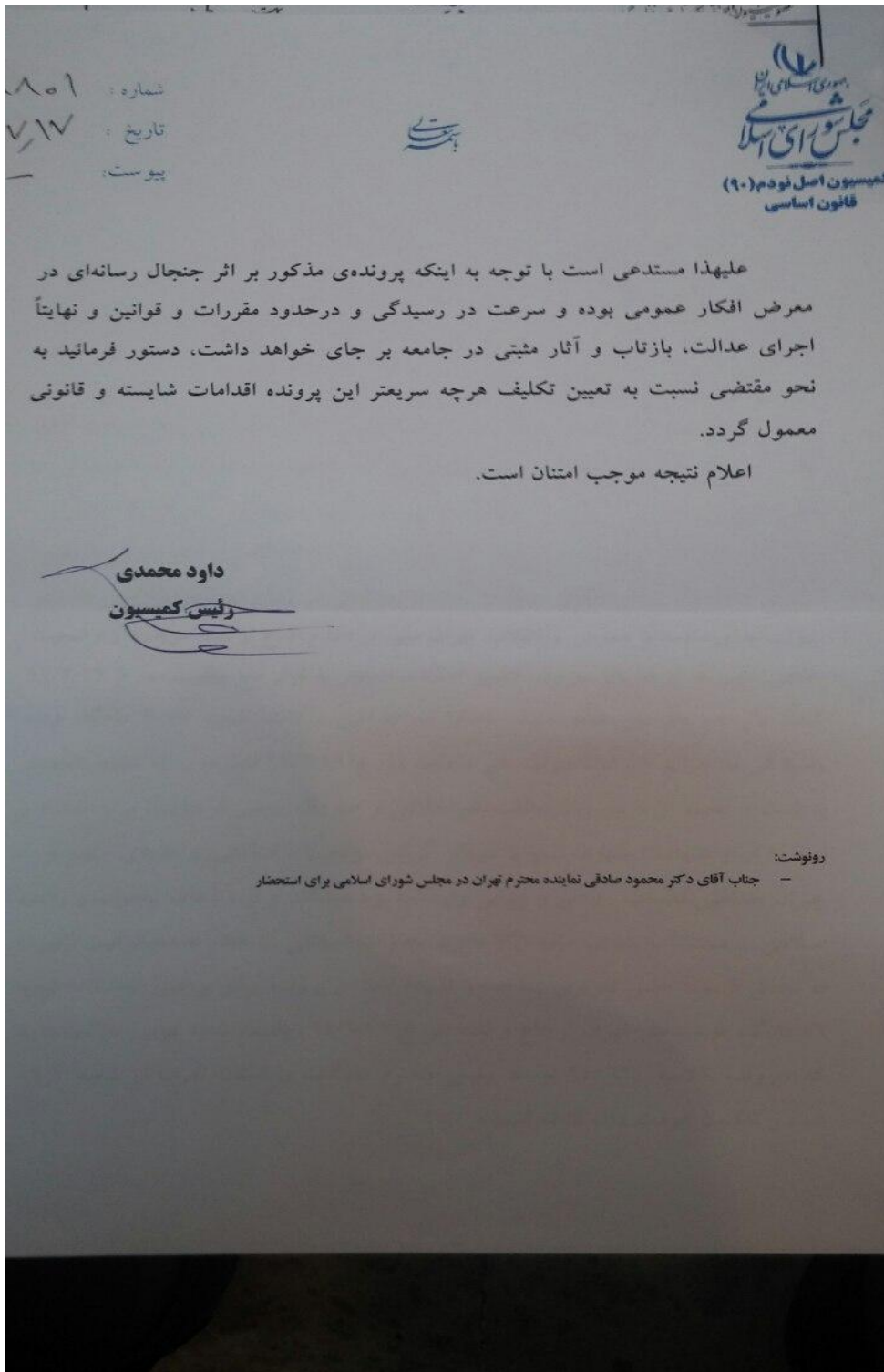
جمهوری اسلامی ایران
مجلس شورای اسلامی
سیون اصل نودم (۹۰)
قانون اساسی

حضرت آیت ا... آملی لاریجانی ریاست محترم قوه قضائیه

سلام علیکم

با احترام، به استحضار می رساند:

شکوائیه واصله به کمیسیون و مستندات مربوطه حاکیست که پرونده اتهامی آقای محمد گندم‌نژاد طوسی معروف به سعید طوسی که متأسفانه در شبکه های اجتماعی و افکار عمومی هیاهویی ایجاد کرد، بالاخره پس از سالها رسیدگی در شعبه ۱۵ بازپرسی دادسرای کارکنان دولت ابتدا با قرار مجرمیت مورخ ۹۱/۷/۱۶ مواجه و سپس با نظریه مورخ ۹۲/۲/۹ جناب آقای خلفی مشاور جنابعالی و نظریه جناب آقای جمفری دولت‌آبادی دادستان عمومی و انقلاب تهران مبنی بر «عدم اقناع از ادله موجود و وضعیت خاص متهم که از قاریان معروف کشور است...» منجر به قرار منع تعقیب مورخ ۹۲/۲/۱۶ شعبه پانزدهم بازرسی شده است. متعاقباً با اعتراض شکات، شعبه ۱۰۵۷ دادگاه ویژه رسیدگی به جرائم کارکنان دولت طی دادنامه مورخ ۹۲/۲/۲۱ نامبرده را به اتهام «تشویق به فساد و فحشا از طریق بیان مطالب غیراخلاقی و تحریک جنسی نوجوانان و به استناد و ادله اقرار و شهادت شهود... و با درنظر گرفتن موقعیت اجتماعی و مذهبی متهم و... جبران حداقلی لطمات روحی و روانی وارده به بزه دیدگان و... با لحاظ تخفیف و رأفت اسلامی... مستنداً به بند ب ماده ۶۳۹ قانون مجازات اسلامی... حکم به محکومیت نامبرده به تحمل ۴ سال حبس تعزیری...» صادر نموده است و پرونده برای بررسی مجدد به شعبه ۵۶ دادگاه تجدیدنظر تهران ارجاع و نامه مورخ ۹۵/۶/۱۶ ریاست شعبه مزبور دلالت دارد که «پرونده کلاسه ۹۴۰۶۲۰ توسط رئیس محترم دادگستری استان تهران از شعبه گرفته شده و تاکنون عودت داده نشده است».



Item 8, Page 2: October 9, 2017 letter by Davod Mohammadi, the head of the parliament's Article 90 Commission to Sadeq Larijani, the head of the Iranian judiciary.

«فلا تتبعوا الهوى أن تعدلوا»

شماره دادنامه: ۹۶۰۹۹۷۰۲۷۰۱۰۱۵۶۷
تاریخ تنظیم: ۱۳۹۶/۱۰/۱۹
شماره پرونده: ۹۱۰۹۹۸۲۱۳۳۵۰۰۰۳۵
شماره بایگانی شعبه: ۹۴۰۶۲۰

شعبه ۵۶ دادگاه تجدیدنظر استان تهران

دادنامه

دادگستری کل استان تهران

پرونده کلاسه ۹۱۰۹۹۸۲۱۳۳۵۰۰۰۳۵ شعبه ۵۶ دادگاه تجدیدنظر استان تهران تصمیم نهایی شماره ۹۶۰۹۹۷۰۲۷۰۱۰۱۵۶۷

گردشکار پرونده :

حسب محتویات پرونده که حکایت دارد از اینکه در تاریخ ۹۱/۵/۸ آقایان ۱- متولد ۱۳۷۷-۴ ۲- متولد ۱۳۷۶-۳ ۳- متولد ۱۳۷۶-۴ ۴- متولد ۱۳۷۷-۳

اصالتاً و ولایتاً از طرف فرزندان نوجوان خود به ترتیب آقایان متولد ۱۳۷۷-۴ متولد ۱۳۷۶-۳ متولد ۱۳۷۶-۴ و متولد ۱۳۷۷-۳ قاری بین المللی قرآن در دادرسی عمومی و انقلاب تهران به اتهام داشتن فساد اخلاقی اعلام شکایت می نمایند و در متن شکایت خود ادعا می کنند نامبرده دارای فساد اخلاقی بوده و در خواست رسیدگی و ممنوعیت از بخش تصویر به دلیل تشویش اذهان شاکیان قرآنی و همچنین تعطیلی هرگونه فعالیت قرآنی اعم از جزئی و کلی را نموده اند و شهادت نوجوانان ممتاز قرآنی و کبی یک فقره دست نوشته که از آن به عنوان توبه نامه یاد کرده اند و مکالمات تلفنی ضبط شده که توسط احد از شکات (آقای) و بدون اطلاع متهم ضبط و در چند برگ پیاده گردیده است بعنوان دلیل در راستای اثبات ادعای خود مورد استناد قرار داده اند با ارجاع پرونده به شعبه ۱۵ بازپرسی کارکنان دولت شکات با حضور در محضر بازپرسی شکایت خود را به نقل از فرزندان خود مطرح و اظهار نموده اند در سال های ۸۷ و ۸۸ در سفر های استانی و خارج از کشور که در جهت تلاوت قرآن با هماهنگی مسئولین ذریبط صورت می گرفت و بچه های قرآنی اینجانبان نیز وی را همراهی می کردند با اعمال و رفتار مغایر با موازین شرعی و اخلاقی از قبیل دعوت به استخر انجام ماساژ و بیان شوخی های رکیک که در شان یک قاری بین المللی نمی باشد مواجه شده اند که بازپرس محترم از بچه های شکات نیز بعنوان مطلع پیرامون موارد مطرح شده تحقیق که ضمن اشاره به بعضی از رفتارهای مثبت وی در مورد رفتار و اخلاق وی نیز مطالبی را بیان نموده اند که در طول مسافرت جهت تلاوت قرآن که با وی همسفر شده اند اقدام به شوخی های رکیک و لطیفه های دون شان خود ((قاری بین المللی)) می نموده و در هنگام اقامت در هتل از آنها درخواست نموده که همدیگر را مشت مال و ماساژ دهند که البته تحقیق از آقای بعنوان شاکی و فرزند وی در بازپرسی بعد از اعلام رضایت وی صورت گرفته است سپس بازپرس محترم اظهارات شکات را به متهم تفهیم و بعد از استماع دفاعیات وی که شدیداً موردانکار و تکذیب قرار گرفته است در ادامه رسیدگی شکات چند نفر از نوجوانان را بعنوان شاهد به بازپرسی هدایت که در برگ های جداگانه از آنها تحقیق و مطالبی را به نقل از شنیده های خود و شایعات مطرح شده بیان می دارند و اظهار نموده اند که خود شاهد رفتار و اعمال غیر اخلاقی آقای سعید طوسی نبوده اند نهایتاً بازپرس محترم اتهامات ۱- تشویق به فساد و فحشا از طریق بیان مطالب غیر اخلاقی و تحریک جنسی نوجوانان ۲- ارتکاب اعمال منافی عفت و افعال حرام به متهم تفهیم که نامبرده در مقام دفاع شدیداً منکر اتهامات انتسابی گردیده است و اضافه نموده شب و روز از ناحیه احد از شکات (آقای) و پسرانش) با ارسال پیامک و تماس تلفنی مورد تهدید قرار می گرفتم وجهت حفظ حیثیت و آبروی خود که یک قاری بین المللی هستم مجبور شدم بعلت تهدیدات آنها دست نوشته ای ولو غیرواقعی تنظیم ودر اختیار وی قرار دهم که جملگی عاری از حقیقت می باشد که با اخذ آخرین دفاع شعبه محترم بازپرسی ختم تحقیقات مقدماتی را اعلام و در مورد اتهامات ۱- تشویق به فساد و فحشا از طریق بیان مطالب غیر اخلاقی و تحریک جنسی نوجوانان ۲- ارتکاب اعمال منافی عفت و فعل حرام مبادرت به صدور قرار منع تعقیب می نماید و در مورد تفخیز نیز که اصلاً موضوع شکایت شکات نبوده ودر اظهارات خود نیز به این موضوع اشاره نکرده بودند به لحاظ اینکه رسیدگی مستقیم آن در صلاحیت محاکم کیفری بوده قرار عدم صلاحیت صادر می نماید وبا ابلاغ قرار به شکات آقایان ۱- ۲- ۳-

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شماره دادنامه: ۹۶۰۹۹۷۰۲۷۰۱۰۱۵۶۷
تاریخ تنظیم: ۱۳۹۶/۱۰/۱۹
شماره پرونده: ۹۱۰۹۹۸۲۱۳۳۵۰۰۰۳۵
شماره پایگانی شعبه: ۹۴۰۶۲۰

شعبه ۵۶ دادگاه تجدیدنظر استان تهران

دادنامه

دادگستری کل استان تهران

در تاریخ ۹۳/۲/۱ به آن اعتراض و پرونده جهت رسیدگی توأم با اتهام تفخیز به شعبه ۱۰۵۹ دادگاه کیفری ۲ تهران ارجاع می گردد و دادگاه محترم با تشکیل جلسات متعدد و انجام تحقیقات تفصیلی از معترضین و متهم در تاریخ ۹۳/۶/۱۲ با اعلام ختم رسیدگی ضمن صدور حکم برائت در خصوص اتهام تفخیز و در مورد اتهام انجام اعمال منافی عفت و افعال حرام با نوجوانان قرار منع تعقیب را تأیید و اما در مورد اتهام تشویق به فساد و فحشا با نقض قرار منع تعقیب مبادرت به صدور قرار جلب به دادرسی می نماید ، صدور حکم برائت در مورد اتهام تفخیز به لحاظ عدم تجدیدنظر خواهی از ناحیه شکات به مرحله قطعیت می رسد و در ادامه رسیدگی دادسرا به تبعیت از قرار جلب دادرسی صادره پس از اقدامات قانونی با صدور قرار مجرمیت و تنظیم کیفرخواست پرونده مجدداً به شعبه ۱۰۵۷ دادگاه کیفری ۲ ارجاع می گردد و دادگاه محترم پس از رسیدگی و استماع اظهارات و دفاعیات شکات و متهم ختم رسیدگی را اعلام و به شرح دادنامه شماره ۹۴۰۹۹۷۰۲۳۰۹۰۰۶۱ آقای محمد گندم نژاد طوسی ((سعید طوسی)) را به اتهام تشویق به فساد و فحشاء به تحمل ۴ سال حبس تعزیری محکوم می نماید که پس از ابلاغ رای صادره به اصحاب دعوی با اعتراض واصله از ناحیه محکوم علیه و شکات نسبت به رای صادره پرونده به محاکم تجدیدنظر استان تهران ارسال و به شعبه ۵۶ دادگاه تجدیدنظر ارجاع می گردد و این شعبه در اجرای قانون با تشکیل جلسه دادرسی و استماع دفاعیات طرفین نهایتاً به تاریخ ۹۶/۱۰/۱۷ در وقت فوق العاده اعضای دادگاه با تدقیق و مذاقه در فرآیند تحقیقات و دادرسی که طی مراحل مختلف انجام گرفته و نیز با قرائت گزارش جامع تهیه شده از محتوای پرونده پس از انجام مشاوره ختم رسیدگی را اعلام و با استعانت از خداوند متعال به شرح ذیل مبادرت به صدور رای می نماید .

((رای دادگاه))

الف : در خصوص تجدیدنظر خواهی آقای محمد گندم نژاد طوسی ((سعید طوسی)) با وکالت آقای سید حمید هروی نسبت به دادنامه شماره ۹۰۰۶۱ مورخ ۹۴/۲/۲۱ صادره از شعبه ۱۰۵۷ دادگاه کیفری ۲ تهران که بموجب آن نامبرده به اتهام تشویق به فساد و فحشاء از طریق بیان مطالب غیر اخلاقی و تحریک جنسی نوجوانان موضوع شکایت آقایان ۱- ۲- ۳- به تحمل چهار سال حبس تعزیری محکومیت یافته است دادگاه با بررسی محتویات پرونده و ملاحظه مستندات اقامه شده از جمله لوابیح تجدیدنظر خواهی اعتراض وی وارد و دادنامه معترض عنه در خور نقض دانسته زیرا اولاً : شکات در تبیین شکایت خود ادعا نموده اند که تجدیدنظر خواه دارای فساد اخلاقی بوده و باید از فعالیت قرآنی ممنوع گردد و ادعایی مبنی بر تشویق دیگران به فساد و فحشاء موضوع ماده ۶۳۹ قانون مجازات اسلامی مصوب ۱۳۷۵ که مورد استناد دادگاه محترم بدوی قرار گرفته است منصرف از موارد ادعایی شکات (تجدیدنظر خواندگان) می باشد و مشخص نیست بر چه اساسی در مرحله تحقیقات مقدماتی و همچنین در مرحله رسیدگی بدوی بر خلاف محتویات پرونده و مستندات اقامه شده عنوان معنونه را انتزاع و استخراج نموده اند . ثانیاً : افعال انتسابی از قبیل شوخی های رکبک و زنده و بیان مطالب غیر اخلاقی و حتی ماساژ دادن و ملاعبه بر فرض اثبات نمی توانند از ارکان متشکله بزه منتسبه محسوب گردد ثالثاً : شکات دلایل کافی جهت اثبات ادعای خود اقامه و ارائه ننموده اند و اظهارات آنها به شرح منعکس در مراحل مختلف رسیدگی ، هم از حیث محتوا و هم از حیث دلالت ناکافی بوده و از اعتبار لازم برخوردار نمی باشد و چندین نفر نوجوان نیز که بعنوان شاهد معرفی شده اند قطع نظر از ایرادات شکلی از جمله عدم صدور قرار استماع شهادت شهود هیچکدام رفتار های منتسبه به تجدیدنظر خواه را مورد گواهی و شهادت خود قرار نداده اند بلکه براساس برخی از شنیده های خود که ناشی از نقل و قول سایرین بوده مطالبی را بیان نموده اند و در واقع موندای گواهی آنها حکایت از آن دارد که همان مطالبی را که از شکات شنیده اند بیان نموده اند و باین فرض نمی تواند بعنوان دلیل مورد استناد قرار گیرد . رابعاً : محتوای پیامک ها و CD که تحت عنوان مستندات از سوی شکات ارائه شده بیانگر آن است که شکات به منظور کسب دلیل و اقرار از تجدیدنظر خواه در فضای مجازی و نیز مکالمات تلفنی که بصورت مخفیانه و بدون اطلاع نامبرده ضبط گردیده و تلاشی فراوان نموده اند تا بنحوی از انحا از مشارالیه اقرار اخذ نمایند و مضافاً به اینکه در راستای این اقدامات تماس های حضوری و تلفنی زیادی را داشته که بعضاً پیامک های تهدید آمیزی که متن آن توسط احد از شکات به همراه سایر پیامک های مورد ادعا در پرونده ارائه شده که مفاداً حاکی از تهدیدات وی بوده که حسب ادعای تجدیدنظر خواه در صورت عدم اقرار مبادرت به افشاگری علیه شما خواهیم نموده معذالک علیرغم اینگونه اقدامات غیر قانونی شکات در کسب دلیل و اخذ اقرار موفق نبوده و بر همین اساس مستندات ارائه شده چه در قالب مفهوم ظاهری یا باطنی به هیچ عنوان دلالت بر وقوع اتهام مذکور ندارد . خامساً : در مورد دو فقره سند عادی دست نوشته منتسب به تجدیدنظر خواه که از آن بعنوان توبه نامه در پرونده یاد نموده اند و توسط احد از شکات بنام آقای بعنوان دلیل ارائه شده ضمن اینکه براساس ادعای تجدیدنظر خواه اسناد موصوف در اثر تهدیدات وارد از ناحیه شکات بویژه از ناحیه آقای و شخص دیگری با جعل عنوان با انتساب خود به نهاد خاص جهت حفظ حیثیت و آبروی خود مجبور به تنظیم و ارائه آن به احد از شکات شدم ولیکن با توجه

تصویر برابر با اصل است.

«فَلَا تَتَّبِعُوا أَهْوَىَٰٰ أَنْ تَغْدُبُوا»

شماره دادنامه: ۹۶۰۹۹۷۰۲۷۰۱۰۱۵۶۷
تاریخ تنظیم: ۱۳۹۶/۱۰/۱۹
شماره پرونده: ۹۱۰۹۹۸۲۱۳۳۵۰۰۰۳۵
شماره بایگانی شعبه: ۹۴۰۶۲۰

شعبه ۵۶ دادگاه تجدیدنظر استان تهران

دادنامه

دادگستری کل استان تهران

به مفاد اسناد ارائه شده به هیچ وجه دلالت بر اقرار تجدیدنظر خواه به ارتکاب اتهام انتسابی مزبور و یا اتهامات دیگری که پس از رسیدگی منتهی به صدور قرار منع تعقیب یا حکم برائت شده ندارد، و نامبرده در خصوص جمله "اجتناب از ارتباط ناسالم با نوجوانان" صرفاً راجع به شوخی و ارسال بعضی از پیامکها تحت عنوان لطیفه و تقلید صدای دیگران دانسته که در شأن ایشان و محافل قرآنی نمی باشد، در نتیجه موارد موصوف نمی توانند مصداق بزه معنونه باشد. سادساً: تجدیدنظر خواه در کلیه مراحل رسیدگی اعتم از تحقیقات مقدماتی و رسیدگی دادگاه بدوی و تجدیدنظر شدیداً منکر اتهام انتسابی گردیده و دلیلی که اقرار وی در ارتکاب جرم را اثبات نمایند در قضیه وجود ندارد. بلکه استشهادیه تنظیمی از ناحیه جمعی از نوجوانان قرآنی مضبوط در پرونده حاکی از حسن اخلاق و رفتار وی بوده است. در نتیجه ادعاهای مطروحه علیه مشارالیه در راستای انتساب بزه معنونه بیانگر هیچیک از ادله اثبات جرم در امور کیفری موضوع ماده ۱۶۰ قانون مجازات اسلامی مصوب ۱۳۹۲ نمی باشد. سابقاً: باعنایت به صدور حکم برائت در مورد اتهام عمل تفخیز و نیز قرار منع تعقیب قطعیته یافته در خصوص اتهام ارتکاب اعمال منافی عفت و افعال حرام به معنای عدم احراز اعمال مادی فیزیکی مثبت ادعای شکات از قبیل رفتن به حمام یا استخر و ماساژ دادن بوده و در مورد سایر مطالب ادعایی از جمله انتساب رفتارهای غیر اخلاقی به تجدیدنظر خواه در راستای تشویق نوجوانان به فساد و فحشا هم دلیلی بر اینکه مطالب مذکور تحت عنوان تشویق به فساد و فحشا اطلاق نماید وجود ندارد. ثامناً: عناوین مطروحه در پرونده صرفاً ۲ عنوان اتهامی ۱- ارتکاب عمل منافی عفت و افعال حرام با نوجوانان ۲- ارتکاب عمل تفخیز که می توانسته در زمره جرائم دارای شاکی خصوصی تلقی گردند و در واقع شکایت شکات معطوف به این دو عنوان قابلیت رسیدگی و استماع را داشته با صدور قرار منع تعقیب در مورد اتهام ردیف اول در دادسرا و مردود دانستن اعتراض شکات به قرار اخیر الذکر توسط دادگاه و نیز صدور حکم برائت در خصوص اتهام ردیف دوم (ارتکاب عمل تفخیز) و عدم اعتراض شکات به رای صادره و قطعیت آن، سمت شکات در پرونده زایل گردیده و در مورد اتهام وارده تحت عنوان تشویق به فساد و فحشا که صرفاً دارای جنبه عمومی بوده و با صدور قرار منع تعقیب از ناحیه دادسرا این عنوان اتهامی از اعتراض شکات خروج موضوعی داشته و نامبردگان فاقد سمت و صلاحیت قانونی از باب اعتراض به قرار منع تعقیب صادره بوده و ورود دادگاه در رسیدگی به اعتراض در موضوع اتهام و نقض قرار منع تعقیب و صدور قرار جلب به دادرسی بر خلاف موازین قانونی بوده زیرا قرار صادره در این عنوان مجرمانه صرفاً دارای جنبه عمومی بوده و دادستان بعنوان مدعی العموم تعقیب مجدد متهم را مطابق قانون درخواست ننموده است تا موجبات ادامه رسیدگی فراهم گردد. علیهذا توجهاً به مراتب فوق دادگاه اعتراض تجدیدنظر خواه را وارد و ثابت تشخیص و به لحاظ عدم احراز وقوع بزه و با التفات به حاکمیت اصل برائت به استناد بند ب ماده ۴۵۵ قانون آیین دادرسی کیفری و اصل ۳۷ قانون اساسی جمهوری اسلامی ایران ضمن نقض دادنامه معترض عن حکم برائت تجدیدنظر خواه را صادر و اعلام می دارد. (ب) و اما در خصوص تجدیدنظر خواهی آقایان ۱- ۲- ۳- اصلتاً و ولایتاً از سوی فرزندان خود به ترتیب ۱- ۲- ۳- از دادنامه موصوف مبنی بر تشدید مجازات مقرر در دادنامه صادره از دادگاه محترم بدوی قطع نظر از اینکه مطابق مدلول ماده ۴۵۸ قانون مارالذکر دادگاه تجدیدنظر استان صرفاً در صورت تعیین مجازات کمتر از حداقل مقرر قانونی از ناحیه دادگاه محترم بدوی اعمال گردد و با وصول اعتراض از ناحیه ذی سمت می تواند نسبت به تشدید مجازات مطابق مقررات قانونی اقدام نماید که در ما نحن فیه بر خلاف مفاد ماده مذکور عمل نگردیده است و نظر به اینکه اولاً به شرحی که در بند الف رای صادره به آن اشاره گردیده بزه معنونه دارای جنبه عمومی بوده ثانیاً با نقض و صدور حکم برائت نسبت به تجدیدنظر خواه ((سعید طوسی)) "بنا بر قاعده سالبه منتفی به انتفاع موضوع" قرار رد تجدیدنظر خواهی صادر و اعلام میگردد.

مستشاران شعبه ۵۶ دادگاه تجدیدنظر استان تهران

یوسف فیروزی

رضا صابری

امضای صادر کننده

تصویر برابر با اصل است.

نشانی: تهران - خیابان خیام شمالی - مجتمع امام خمینی - دادگاههای تجدیدنظر استان تهران

Subject:

Year. Month. Date. ()

بسم تعالی

اینجانب سعید توسی در تاریخ ۱۱ / ۵ / ۹۱ در جلسه ای که با آقایان
و [] داشتیم بر کمال عشق و بدون دروغ اولاً اقرار
می کنم که آقایان مقدم، سرابی، امام جمعه و حشمتی حدود یک سال
پیش، از توبه نامه ی اول بنده و ارتباطات ناسالم من با قاریان
ممتاز نوجوان، مطلع بوده اند و همچنین حدود یکسال پیش، آقای
مقدم به من تذکراتی داده است و همچنین اقراری کنم که اعمال
با تأیید آقای مقدم برای تلاوت نزد مقام معظم رهبری رفته ام. ثانیاً
من از امروز قول می دهم که استباهاتم (ارتباطات ناسالم
با قاریان ممتاز نوجوان) را جبران کنم و دیگر مرتکب چنین
اعمالی نشوم و اگر دوباره مرتکب چنین اعمالی شوم به شما بیان حق
بیشتری برای شکایت و افضای اعمال زستم می دهم.


سعید توسی

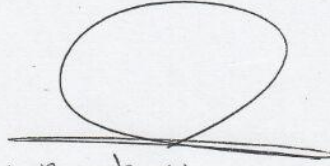
ZANJANI

IKALAS

Item 10: Confessions of Saeed Tousi

بسم تعالی

اینجانب سعید طوسی در تاریخ ۲۹ اردیبهشت ۹۰ در جلسه ای که
با آقای [] داشتیم قرار شد استباهاتی که
تاکنون مبنی بر ارتباطات نامشروع با قاریان نوحه جوان (ریگر
به هیچ وجه تکرار نشود و انشاء الله تعالی خداوند
متعال از سر تقصیر همه ما درگذرد.



سعید طوسی ۲۹ اردیبهشت ۹۰

Appendix B

معاون اول محترم قوه قضاییه در تاریخ 12 بهمن 1392 در جمع دانشجویان درباره پرونده مربی صوت و لحن توضیحاتی داده اند که بعضا خلاف واقع و منعکس کننده تمام واقعیت نیست؛

1. ایشان زمان شکایت را سال 92 اعلام کرده اند و گفته اند: ادعای اولیه که در دادستانی مطرح شد، حتی شکایت به معنای اصطلاحی کیفری نبوده است بلکه چهار نفر از اولیای بچه‌ها نامه‌ای را برای دادستان فرستادند و گفتند که این آقا مشکلاتی دارد؛ بدون اینکه این مشکلات را باز کنند و عنوان کردند که او مفسد اخلاقی داشته و باید ممنوع‌التصویر و ممنوع‌الصدأ شود و در مجالس حضور پیدا نکند. البته ایشان در تناقضی آشکار بعدا اذعان می کنند که شکایت متضمن سه عنوان بوده است؛ در حالیکه رسید شکوائیه شکات نشان می دهد تاریخ طرح شکایت 91/5/8 بوده و عنوان شکایت هم «فراهم آوردن موجبات فساد و فحشاء» است:
2. آقای محسنی اژه ای در بخش دیگری از سخنان خود اظهار داشته است: سه عنوان اتهامی در این دادرسی مطرح شده که دادرسی در خصوص یک مورد آن اعلام داشت، رسیدگی به آن در صلاحیت دادرسی نیست و طبق قانون، رسیدگی به آن باید در دادگاه صورت گیرد. در مورد اتهام دوم مبتنی بر عمل منافی عفت نیز قرار منع تعقیب صادر شد. در خصوص اتهام سوم که تشویق به فساد بود نیز همین قرار صادر شد. در حالیکه برخلاف ادعای ایشان شعبه پانزدهم دادرسی ناحیه 28 تهران با صدور قرار مجرمیت (مورخ 16/7/91) دو اتهام را وارد و یک اتهام را در صلاحیت دادگاه کیفری دانسته است.
3. قرار مجرمیت متهم در تاریخ 22/7/91 به تأیید دادیار دادرسی تهران رسیده است.
4. مدتی پس از صدور قرار مجرمیت و تأیید آن توسط دادیار دادرسی، دادستان تهران در تاریخ 9/2/92 پرونده را جهت ارشاد! به رئیس قوه قضاییه ارسال و رییس قوه به مشاور خود دستور اعلام نظر می دهد و آقای مشاور هم در همان تاریخ نظر می دهد که دلیل کافی بر توجه اتهامات به متهم وجود ندارد.
5. دادستان تهران پس از اعلام نظر مشاور رییس قوه قضاییه، عینا با همان استدلال از کیفرخواست صادره عدول و با «قرار مجرمیت سابق الصدور مخالفت» و ابراز عقیده به منع تعقیب می نماید. باز پرس هم به تبعیت از دادستان در دو مورد قرار منع تعقیب متهم و در یک مورد قرار عدم صلاحیت صادر می کند.
6. با اعتراض شکات به قرار منع تعقیب، شعبه 1057 دادگاه جزایی تهران با صدور دادنامه مورخ 21/2/94 به استناد ادله و مدارک متعدد و نیز اقرار متهم، وقوع بزه از جانب متهم را محرز و مسلم دانسته و او را به تحمل 4 سال حبس تعزیری محکوم می نماید.
7. با اعتراض طرفین پرونده به شعبه 56 دادگاه تجدیدنظر تهران ارجاع می شود.
8. در حالیکه بررسی های دادگاه تجدیدنظر خاتمه یافته و دادگاه آماده صدور رأی بوده، رییس کل دادگستری استان تهران پرونده را از دادگاه می گیرد. رییس شعبه 56 دادگاه تجدیدنظر استان تهران طی دو نامه درخواست برگشت پرونده را می نماید.
9. با شکایت اولیای شکات، رییس کمیسیون اصل 90 طی نامه مورخ 17/7/96 ضمن بیان شرح مواقع، از رئیس محترم قوه قضاییه تقاضای تسریع در رسیدگی و اجرای عدالت می نماید.
10. رییس کمیسیون حقوقی و قضایی نیز طی نامه ای به رئیس کل دادگستری استان تهران خواستار بازگشت پرونده به مسیر قانونی خود می شود.
11. 11- / سرانجام در تاریخ 17/10/96 شعبه 56 دادگاه تجدیدنظر کیفری استان تهران، ضمن اینکه تجدیدنظر خواهی شکات را سالیانه به انتفاع (انتفاء) موضوع دانسته، حکم دادگاه بدوی را نقض و محکوم علیه را از اتهامات وارده تبرئه می نماید.
12. رأی دادگاه را دو مستشار از شعب دیگر دادگاه امضا کرده اند.

مطالعه سیر پرونده مربی صوت و لحن نشان می دهد اگر مداخله های بیرونی و فشار مقامات عالی قضایی در فرآیند دادرسی نبود قضات شریف دادگستری ما به درستی وظیفه اجرای عدالت را انجام می دادند؛

- 1- باز پرس شریف شعبه پانزدهم دادرسی ناحیه 28 تهران ابتدا قرار مجرمیت متهم را صادر می کند. او سپس با مداخله مقامات عالی قضایی و دستور دادستان مجبور به عدول از نظر قضایی خود می شود.

2- رییس شعبه ۱۰۵۷ دادگاه جزایی تهران به رغم اطلاع از سیر قبلی پرونده و اطلاع از دستور دادستان به عدول بازپرس از قرار مجرمیت، متهم را به ۴ سال حبس محکوم می کند.

3- رییس شعبه 56 دادگاه تجدیدنظر کیفری استان تهران در برابر فشارها برای تبرئه متهم تسلیم نمی شود تا اینکه رییس کل دادگستری پرونده را از او می گیرد. او پس از آن طی دو مکاتبه خواستار بازگشت پرونده می شود.

4- نهایتاً رییس شعبه ۵۶ دادگاه تجدید نظر کیفری استان تهران از نظر مقامات تبعیت نمی کند و بامضای دو مستشار از دو شعبه دیگر دادنامه شعبه 1057 را نقض و متهم را تبرئه می کنند.

توضیحات یکی از وکلای محترم دادگستری درباره پرونده سعید طوسی:

رییس قوه به موجب ماده 477 ق.آدک مجاز به ورود به پرونده پیش از قطعیت نبوده و همین موجب شده تا سیر جریان طبیعی پرونده پس از صدور قرار مجرمیت به بیراهه رود. و البته درخواست بیمورد دادستان درباره ارشاد گرفتن از ریاست قوه قضاییه بی مورد و مزید بر علت این انحراف است.

ماده 477- در صورتی که رئیس قوه قضائیه رأی قطعی صادره از هر یک از مراجع قضائی را خلاف شرع بین تشخیص دهد، با تجویز اعاده دادرسی، پرونده را به دیوان عالی کشور ارسال تا در شعبی خاص که توسط رئیس قوه قضائیه برای این امر تخصیص می یابد رسیدگی و رأی قطعی صادر نماید. شعب خاص مذکور مبنیاً بر خلاف شرع بین اعلام شده، رأی قطعی قبلی را نقض و رسیدگی مجدد اعم از شکلی و ماهوی به عمل می آورند و رأی مقتضی صادر می نمایند.

تبصره ۱- آراء قطعی مراجع قضائی (اعم از حقوقی و کیفری) شامل احکام و قرارهای دیوان عالی کشور، سازمان قضائی نیروهای مسلح، دادگاههای تجدیدنظر و بدوی، دادرسیها و شوراها حل اختلاف می باشند.

ضمناً عدول بازپرس از صدور قرار مجرمیت خلاف قانون بوده است.

زیرا او و دادستان نمی توانند پس از اظهار رای و امضای کیفرخواست از آن عدول کنند و فارغ از دادرسی هستند.

در قرار مجدد صادره توسط بازپرس، دلیل عدول خود را بند ل از ماده ۳ قانون تشکیل دادگاههای عمومی و انقلاب دانسته در حالی که این ماده به اختلاف نظر این دو مقام پیش از صدور اشاره دارد.

ل - هرگاه دادستان با نظر بازپرس در مورد مجرمیت متهم موافق باشد کیفرخواست صادر، پرونده را از طریق بازپرسی به دادگاه صالحه ارسال می نماید و در صورت توافق بازپرس و دادستان با منع یا موقوفی تعقیب متهم، بازپرس دستور ابلاغ قرار صادره به شاکی خصوصی را می دهد و در مورد اخیر چنانچه متهم زندانی باشد فوراً آزاد می شود.

هرگاه بین بازپرس و دادستان توافق عقیده نباشد (یکی عقیده به مجرمیت یا موقوفی و یا منع تعقیب متهم و دیگری عقیده عکس آن را داشته باشد) رفع اختلاف حسب مورد در دادگاه عمومی و انقلاب محل به عمل می آید و موافق تصمیم دادگاه رفتار می شود.

در صورت تایید و صحت این سند، 3 ایراد به سیر جریان پرونده در مرحله دادرسی وارد میشود:

▼ نخست اینکه: تنها راه ورود رییس محترم قوه قضائیه و اظهار رای و دستور بررسی ایشان در این دست پرونده ها به موجب *ماده 477 قانون آیین دادرسی کیفری بوده و شیوه دیگری برای ورود به پرونده پیش از قطعیت نبوده و همین موجب شده تا سیر جریان طبیعی خارج شود.

▼ دوم اینکه: درخواست دادستان محترم تهران درباره ارشاد گرفتن از ریاست قوه قضائیه، ظاهراً موجبی نداشته و مزید بر علت انحراف سیر جریان رسیدگی پرونده شده است.

▼ سوم اینکه: بنظر میرسد بازپرس محترم وقت شعبه 15 بازپرسی دلیلی قانونی برای عدول از نظر و رای خویش پس از تایید کیفرخواست توسط دادستان محترم نداشته است زیرا وفق قاعد فراغ، عملاً اذن قانونی و شرعی در تغییر نظر خود و یا تبعیت از دادستان نداشته و پرونده با همان کیفیت قرار صادره ی کیفرخواست می بایست به دادگاه میرفت. استدلال بازپرس به *بند ل ماده 3 قانون تشکیل دادگاههای عمومی و انقلاب درست نیست زیرا این بند ناظر به شیوه عملکرد اختلاف میان بازپرس و دادستان بوده و هیچ اذنی برای عدول از نظر قضایی نداده است.

*ماده 477 قانون آیین دادرسی کیفری: - در صورتی که رئیس قوه قضائیه رأی قطعی صادره از هریک از مراجع قضائی را خلاف شرع بین تشخیص دهد، با تجویز اعاده دادرسی، پرونده را به دیوان عالی کشور ارسال تا در شعبی خاص که توسط رئیس قوه قضائیه برای این امر تخصیص می یابد رسیدگی و رأی قطعی صادر نماید. شعب خاص مذکور مبنیاً بر خلاف شرع بین اعلام شده، رأی قطعی قبلی را نقض و رسیدگی مجدد اعم از شکلی و ماهوی به عمل می آورند و رأی مقتضی صادر می نمایند. تبصره 1- آراء قطعی مراجع قضائی (اعم از حقوقی و کیفری) شامل احکام و قرارهای دیوان عالی کشور، سازمان قضائی نیروهای مسلح، دادگاههای تجدیدنظر و بدوی، دادرها و شوراها حل اختلاف می باشند.

*بند ل ماده 3 قانون تشکیل دادگاههای عمومی و انقلاب: - هرگاه دادستان با نظر بازپرس در مورد مجرمیت متهم موافق باشد کیفرخواست صادر، پرونده را از طریق بازپرسی به دادگاه صالحه ارسال می نماید و در صورت توافق بازپرس و دادستان با منع یا موقوفی تعقیب متهم، بازپرس دستور ابلاغ قرار صادره به شکاک و خصوصی را می دهد..... هرگاه بین بازپرس و دادستان توافق عقیده نباشد (یکی عقیده به مجرمیت یا موقوفی و یا منع تعقیب متهم و دیگری عقیده عکس آن را داشته باشد) رفع اختلاف حسب مورد در دادگاه عمومی و انقلاب محل به عمل می آید و موافق تصمیم دادگاه رفتار می شود.

#مصطفی ترک_همدانی_وکیل_دادگستری