

## The nature of judgments of quasi-judicial authorities and its relationship with the principle of res judicata of punishments

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### Abstract

One of the important principles discussed in the constitution is the principle of punishment. This means that the punishment sentence must be issued in a competent court. In this case, only judicial authorities and courts of justice are allowed to determine punishments. But on the other hand, it can be seen that in addition to the courts of justice, there are other authorities called quasi-judicial authorities that determine punishments in different areas. The question that exists in this regard is whether the determination of punishment by these authorities does not contradict the judicial principle of punishments? Based on a descriptive and analytical method, after explaining the different answers given to this question, this research has considered the nature of the action of quasi-judicial authorities as a disciplinary and non-judicial matter. In this case, the ruling issued by these authorities has an executive nature, in this case, the rulings issued by these authorities do not contradict the principle of res judicata of punishments. Because the validity of punishments is related to issues that have a judicial nature. If the nature of the action of the quasi-judicial authorities is disciplinary and executive, and it is specifically excluded from the principle of res judicata of punishments.

**Key words:** the principle of res judicata of punishments, quasi-judicial authorities, courts of justice, court of injustice, institution of accountability

## Introduction

The provisions of Article 36 of the Constitution can be explained in two parts. The first part was about the legality of crime and punishment. The second part is related to the validity of the punishments. The principle of legality of punishments, like the principle of legality of crimes and punishments, has been created to prevent the violation of the rights of the accused and members of the society. According to its creators, this principle is a restraint on the unbridled power of autocratic rulers. Because autocrats are always in fear of losing their power and in this direction, they try to remove their opponents from the way with unfair trials and out of the ordinary legal proceedings and courts. In order to deal with this behavior, jurists established the principle of judicial punishment so that the sentence of the accused is determined according to a fair trial and in a competent and impartial court. (Delmas Marti, 1381: 1, 43) This issue led to the fact that many basic laws establish the principle of punishments in order to protect the rights of citizens. The principle of *res judicata* of punishments means that any sentence that involves a punishment must be issued in the competent courts of justice. Therefore, any punishment sentence that is issued outside the courts of justice implies a violation of the principle of *res judicata* of punishments and as a result, it leads to the non-enforcement of the issued sentence. But the question that is raised about this principle is what is the relationship between this principle and the rulings of quasi-judicial authorities? Based on this principle, does the decision of quasi-judicial authorities have legal validity? As stated, according to the judicial principle of punishments, the determination of punishments and handling of claims should be done in competent courts. However, quasi-judicial authorities are considered to be in conflict with the judicial principle of punishments. (Nubahar, 2012: 70) Because these authorities, on the one hand, act to resolve the enmity and impose punishments on the violators; But on the other hand, they are not judicial authorities. This means that they do not take place in the structure of the judiciary, which is responsible for dealing with judicial affairs, and are placed under the executive branch. On the other hand, non-judicial people are often involved in making decisions and issuing judgments in these authorities. In other words, although there is usually a judge in these authorities, there are experts from the relevant organization beside him, who are all involved in making decisions and issuing judgments. So it seems that these authorities in many cases impose punishments that are judicial in nature, while these authorities are not a judicial institution. Therefore, the existence of these authorities seems to be in conflict with the judicial principle of punishments. What's more, these authorities do not have the components of judicial courts, but at the same time, they impose punishments. Therefore, if the nature of the rulings and decisions of the quasi-judicial authorities is considered to be a judicial practice, then the decisions of these institutions, considering that they were not proposed and issued by the competent judicial courts, violate the judicial principle of the punishments. As a result, the rulings of these authorities regarding punishments cannot be considered valid. But if the nature of the decisions of these authorities is non-judicial, planning and making decisions about them will not contradict the principle of judicial punishment. In this regard, in order to accurately understand the relationship between the rulings of quasi-judicial authorities and the principle of *res judicata*, it is necessary to explain the concept of quasi-judicial authorities and further examine its nature. This research tries to determine the nature of rulings issued by quasi-judicial authorities with an analytical and descriptive method, and in this way, it uses the heritage of the governing institutions formed in Islamic governments and determines the nature of rulings issued by quasi-judicial authorities. In this regard, in this research, the concept of jurisdiction and quasi-judicial authorities is first explained, and then the nature of judgments issued by quasi-judicial authorities is explained. In this regard, the opinions of legal scholars regarding the nature of judgments issued by quasi-judicial authorities are explained first, and the author's opinion on this matter is also expressed at the end.

The first speech: Conceptology At the beginning of the research, it is necessary to briefly explain the concept of jurisprudence and quasi-judicial authority in order to make more adjustments.

### 1- The concept of the principle of *res judicata* of punishments

The principle of judiciality of punishments means that only a competent judicial authority can proceed to issue a punishment sentence. Punishment is a general meaning that includes protective and educational measures. Therefore, it can be said that the judicial nature of the punishment means that any punishment must be determined by a court whose jurisdiction is confirmed by the law and formed in accordance with the legal conditions. (Nobahar, 1392: 70)

## 2-1- the concept of quasi-judicial authorities

There is no comprehensive definition of quasi-judicial authorities in the legal texts. Even these authorities have been mentioned in different legal texts with different titles. But paying attention to the special work of all of them evokes the meaning that the nature of all these authorities is one and they are placed under the title of quasi-judicial authorities. In the definition of quasi-judicial authorities, it can be said that quasi-judicial authorities are authorities established by law. These authorities are specifically or specifically outside the structure of the judiciary and are generally defined under the government agencies and the executive branch and have organizational affiliation with government institutions. The subject matter of these authorities is different and includes issues such as employment, financial, land, tax, construction, professional, etc. (Shams, 1385: 1, 46) These authorities are often responsible for dealing with people's violations and complaints regarding the functions and decisions of government institutions. Therefore, the investigation of these specialized investigation authorities is within the scope of that organization's specialties. Therefore, it can be said that quasi-judicial authorities are authorities that are outside the general jurisdiction of the judiciary and have the authority to pursue, process and issue judgments in special matters. (Shams, 1385: 1, 4)

## 2-2- the nature of decisions and rulings of quasi-judicial authorities As stated,

in examining the ratio of quasi-judicial authorities and the judicial nature, it is very important to recognize the nature of quasi-judicial authorities. In such a way that if the nature of the action of these authorities is determined to be judicial, it must be presented in competent courts according to Article 36 of the Constitution and the principle of judicial punishment. Otherwise, it seems that the handling of quasi-judicial authorities to some crimes and the determination of punishment by these authorities will be contrary to the judicial principle of punishments. But if the nature of the decisions of these authorities is non-judicial, their existence and creation in a form other than judicial courts does not affect the judicial principle of punishments. Because in this case, the nature of the special functions of those authorities is not judicial, and there is no need to present them in the judicial courts of justice. In this case, if these issues are raised in quasi-judicial authorities, because they do not have a judicial nature, it will not conflict with the judicial principle of punishments. In this case, there will be no contradiction with Article 36. In this regard, it is necessary to explain the nature of the actions of these authorities. In this regard, first the opinion of some jurists regarding the nature of the action of these authorities is explained, and then the author's opinion regarding it is presented and the ratio of the decisions of these authorities with the principle of responsibility of punishments is determined.

## 2- Examining the nature of judgments of quasi-judicial authorities from the perspective of jurists

Some jurists believe that the judicial nature of the judgments and decisions of the quasi-judicial authorities does not contradict the judicial principle of the punishments, and these authorities do not have an exception to Article 36 of the Constitution and the judicial principle of the punishments. They are of the opinion that whenever the law allows quasi-judicial authorities to issue judicial rulings, the issuance of judicial rulings by these institutions does not conflict with the judicial principle of punishments. Because it is this law that determines the competence of various institutions and their areas of authority. In this case, if the law allows judicial proceedings by quasi-judicial authorities, the verdict of these authorities cannot have a conflict with the judicial principle of punishments. Because in this case, the quasi-judicial authorities are also considered competent authorities. Of course, this is the basis for the decisions of quasi-judicial authorities as long as these proceedings are legal and have the principles, conditions and guarantees suitable for the accused and the convicted.

Therefore, the recognition of the judicial principle of punishments in itself does not conflict with the proceedings of quasi-judicial authorities. It is possible that the above-mentioned interpretation may have the following problem, although considering the jurisdiction of quasi-judicial authorities to be legal, the problem of the legality of punishments by quasi-judicial authorities will be solved to some extent. But this solution does not solve the problem of the necessity of judicial punishments. Because the judicial nature of the punishments

is primarily based on the fact that judicial decisions must be issued in the courts of justice that are defined under the judiciary.

Therefore, the determination of punishments by quasi-judicial authorities in any form and with any legal justification is in conflict with the judicial nature of punishments.

Because dealing with judicial matters in quasi-judicial authorities is in contradiction with the jurisdiction of the courts of justice.

Because the constitution considers only the courts of justice and the judiciary in general to be in charge of judicial affairs and the resolution of enmity. In this case, the determination of punishments by quasi-judicial authorities is in contradiction with the provisions of these principles of the constitution.

Some other experts refer to the opinions of the Guardian Council in confirming the competence of the quasi-judicial authorities and their competence in issuing judicial rulings and are of the opinion that the Guardian Council has accepted the jurisdiction of the quasi-judicial authorities. They believe that the acceptance of jurisdiction for quasi-judicial authorities is because the decisions of these authorities can be appealed to a judicial institution called the Administrative Court of Justice.

In this case, taking into account that the final decision-making authority regarding issues raised in quasi-judicial authorities is a judicial authority called the Court of Justice, the jurisdiction of quasi-judicial authorities can be accepted. Because in the end their decisions will lead to a judicial authority. In this case, if people have objections to the verdict of the quasi-judicial authority, they can refer to the judicial authority. In this case, the final authority regarding these issues will be the judicial authority.

Therefore, the competence of quasi-judicial authorities can be accepted because it leads to a judicial authority. (Aine Nagini, 2019: 31-35)

With this statement, the jurisdiction of the quasi-judicial authorities, which leads to the judicial authorities, is placed during the judicial authorities. In this case, their competence and decisions can be considered in line with the principles of the Constitution and the judicial principle of punishments. But regarding this interpretation, it can be said that the above statement cannot be a justification and justification for judging the punishments adopted by the quasi-judicial authorities as judicial, and this justification does not make the decisions of these authorities to be in line with the judicial nature of the punishments. First of all, in many cases, the decisions of these authorities are not sent to the judicial authorities, and the judgment remains at the same stage and is executed. Secondly, many decisions of quasi-judicial authorities cannot be challenged in judicial authorities such as the Court of Administrative Justice. Thirdly, the problem is based on the case that the decision of the quasi-judicial authorities contradicts the judicial principle of the punishments, and the possibility of protesting the judicial institutions does not create competence for the quasi-judicial authorities and its compliance with the judicial principle of the punishments. In this case, the location of the problem changes. The problem lies in the decisions taken by the quasi-judicial authorities and those decisions are not submitted to the judicial authorities of the protester. After explaining the opinion of some jurists regarding the nature of decisions of quasi-judicial authorities and examining it, it is necessary to explain the opinion of this article in this regard.

### **3- the nature of quasi-judicial authorities' rulings from the author's point of view**

What can be obtained from the nature of the special functions of the quasi-judicial authorities is that the duty of these institutions is not only judicial affairs and elimination of hostility; Rather, the nature of their proceedings is more disciplinary and disciplinary.

In this regard, in some cases, the decision of an administrative authority is contested. In the sense that the adoption of this decision was within the jurisdiction of the decision-making authority. But due to the fact that

the executive authority could take another decision according to its jurisdiction, the entitled person requests another decision from that organization. In other words, the issues that are issued in these authorities are not aimed at eliminating enmity; Rather, the claimant wants to change the decision regarding him and he wants that government institution to make a different decision for him. (Tabatabaei Motamani, 2011: 431) In other words, quasi-judicial authorities examine the issue of whether the opinion issued by the executive body regarding this person was within the jurisdiction of that administrative authority or not, and if that executive body has the jurisdiction of that decision has had, has the decision of that body been issued based on the law and authority of that executive body or not?

In this case, the scope of jurisdiction of the quasi-judicial authorities will be police affairs, and their special task will not be to resolve the enmity between the people and the executive branch. With this statement, the inherent difference between quasi-judicial authorities and judicial courts is clarified. In such a way that the courts of justice issue mandatory judicial rulings in order to resolve the enmity.

However, judicial authorities issue executive decisions in order to create order in administrative processes and decisions. In this case, the nature of the decisions of these judicial authorities is not so that compliance with the principle of jurisprudence regarding them is mandatory.

In addition to the reason that was mentioned in line with the difference between the nature of the actions of quasi-judicial authorities and judicial authorities, it is possible to obtain the nature of the decisions of these authorities by examining Islamic institutions in Islamic governance and its adaptation to quasi-judicial authorities. In this regard, the question can be raised whether there were institutions similar to quasi-judicial authorities in the Islamic governance system, and what were their natures? In the following, the question should be answered whether in Islamic teachings, there were institutions with a disciplinary nature in addition to the judicial institutions.

Is disciplinary nature accepted for these authorities from the point of view of jurisprudence? In order to answer these questions, it is necessary to recognize Islamic institutions whose functions are similar to quasi-judicial bodies.

Among these, we can mention two institutes of Hasba and Divan Mozalem. This means that if the similarity of the nature of the quasi-judicial bodies with the institution of Hasba and Diwan Muzalem is confirmed.

It is possible to extend the nature of the actions of these two institutions to the quasi-judicial authorities as well and it can be assumed that the nature of the actions of the Hesba institution and Diwan Muzalam is the same as the nature of the quasi-judicial authorities.

It seems that the duties of the Hesba Institution and the Court of Atrocities overlap and correspond to a large extent with the functions of the quasi-judicial authorities. Of course, considering the changes in the way of governance and the complexities that exist in contemporary and pre-modern governments, it should not be expected that the duties of these institutions will be completely the same. Because many of the issues that are discussed today in the matter of leadership were not discussed in the past, and many of the components of leadership and the needs of society that were discussed in the past have lost their color in today's societies.

However, many similarities can be observed between the functions of Nihad Hasba and Diwan Muzalem (Maverdi, 1406 AH: 209) and quasi-judicial authorities. This similarity gives rise to the understanding that quasi-judicial authorities have a significant heritage in the style of Muslim leadership. Therefore, the nature of these institutions can be extended to today's quasi-judicial authorities. (Yavari, 1355: 25) In this regard, it is necessary to examine the criteria and criteria that make the institution of Hasba and Diwan Muzalem similar to quasi-judicial authorities. Before explaining the criteria and criteria for the similarity of the functions of quasi-judicial authorities, the Hasba institution, and the Diwan Mozalem, it should be noted that considering that the Shia society has always been far from the government and only in a short period of history has power and

sovereignty. has been in his possession, this literature has not been discussed and reviewed by Shia jurisprudents in Shia jurisprudence books, and the topics related to Hasba and Diwan Muzalam are often placed under other jurisprudence topics. Shahid Aol was the first jurist who mentioned the name of al-Hasba book in his jurisprudence books. (Aamili, 1417 AH: 2, 47)

However, in the narrations and stories of the Prophet (peace be upon him) and the Commander of the Faithful (peace be upon him), we can He inferred the legitimacy of the institution of Hasba and Diwan Muzalam. In many cases, Amir al-Mominin (peace be upon him) himself, in his capacity as a public official, used to fight against the markets.

#### **4- He dealt with people's complaints against governors and government officials.**

Therefore, through these narrations, it is possible to infer the legitimacy of the Hasba and the specifics of Diwan Muzalem. According to the special tasks that have been listed for the institution of Hasba and the Court of Atrocities, the nature of their activity cannot be considered a judicial matter; Rather, the actions of those institutions have mostly been overseeing police affairs. (Mantzari, 1409 AH: 3, 321) On the other hand, the special functions of the institution of Hasba and Diwan Mozalam are the same and overlap with quasi-judicial institutions in some cases.

To prove this point, it is necessary to state the criteria and characteristics that existed in the institution of Hasba and Diwan Mozalam, which creates similarities with the functions of quasi-judicial authorities. In this way, by creating similarities between these institutions, the nature of these two institutions can be extended to quasi-judicial authorities as well. Because the same This reference was known. In this case, it is easier to explain the judgments of quasi-judicial authorities in the face of the judicial principle of punishments. In this part, it may be raised that due to the differences in the structures of modern governments and pre-modern governments, the nature of the practices of some of the structures of those governments cannot be extended to the structures of the modern government. For example, principles such as the separation of powers have been stated in modern governments, and this leads to the distinction between quasi-judicial authorities and judicial authorities, and creates forms of non-judgmental decisions of quasi-judicial authorities. But in response, it should be said that in the previous structures, there was no separation of powers in this way in the governance system, but in fact there was a separation between the judiciary and the executive.

In such a way that whenever the auditor is faced with a violation or violation of norms, he takes the violator to the judge so that the appropriate sentence can be passed on him. In addition, at the same time, there was a separation in terms of the description of duties between the Hasba institution and the Qadha institution. Therefore, the non-recognition of principles such as the separation of powers in pre-modern governments cannot be considered as a reason for the impossibility of extending the nature of the actions of previous institutions and institutions of the modern state.

The criteria for matching the nature of quasi-judicial authorities with the institution of Hasba and Diwan Muzalem The first criterion and common feature between the Hasba institution and the Diwan Mozalam with quasi-judicial authorities is the similarity in the functions of these institutions. With the statement that the structure of the court of atrocities was located during the judicial courts and its task was mostly to deal with the violations of the government officials. In such a way that if the citizens of the Islamic society were oppressed by government officials, people would refer to this court. On the other hand, the ombudsmen, in dealing with the influential offenders who were not able to deal with them themselves, referred to this court and complained to the court against the person who committed corruption. (Abu Ali Fara, 1406 AH: 73-79)

Therefore, on the one hand, this court was the place of reference for the people, and on the other hand, it was considered the authority for handling the reports of the umpire regarding the governors. In other words, it can be said that the Institution of Accountability and the Court of Oppressions worked side by side against the



corruption of government agents; In such a way that the ombudsman, as a supervisor, announced the violations of the influential people to this court, and the court of abuses also dealt with those violations.

Quasi-judicial institutions are also responsible for handling people's complaints regarding the decisions of executive and decision-making authorities. Therefore, the first criterion and common feature between the Court of Atrocities and quasi-judicial authorities can be considered the common functions and responsibilities that exist in the Court of Atrocities and quasi-judicial authorities. In such a way that both of these authorities were in a way the authority to deal with people's objections regarding the performance of rulers and executive and decision-making authorities. In this regard, the jurisdiction of the Court of Atrocities has been divided into several categories, all of which are assigned to quasi-judicial bodies today and in contemporary law. For example, experts have raised the jurisdiction of the Atrocious Court in several sections.

The first part deals with the aggression of the rulers and their harshness on the people. Another part of these powers is dedicated to dealing with the violations of the tax collectors so that if an additional amount was received from the people, it will be returned to them.

The same task that quasi-judicial tax authorities are responsible for today. Another part of the powers of the Court of Justice was dedicated to the investigation and litigation of government officials and salary earners; In such a way that if an amount was deducted from their salaries, or if their payment was delayed, or if they were fired from their jobs, this court had the jurisdiction to investigate and enforce their rights. (Abu Ali Fara, 1406 AH: 73-79) In contemporary law, quasi-judicial authorities are also responsible for these duties. The second criterion and feature that leads to the similarity of these two institutions is that both of these institutions are not dependent on judicial authorities.

What is the fact that the jurists of political jurisprudence have not considered the duties of these courts to be judicial proceedings and have raised it alongside the judicial system. (Muntzari, 1409 AH: 3, 321-335) These institutions are placed under the government and the executive branch and are in charge of policing affairs, and in other words, the nature of their activities is in line with policing affairs. (Ibn Akhwah, 1376: 156) in such a way that it can be said that the duties of this court were of a disciplinary nature and not of a judicial nature.

## 5- Explaining the relationship between the rulings of quasi-judicial

authorities and the principle of res judicata of punishments By stating these examples of the similarity and adaptation of the functions of the quasi-judicial authorities and the institution of Hasba and the Court of Atrocities, it can be said that the quasi-judicial authorities can replace the institution of the Hasba and the Court of Atrocities in the present era due to the similarity with the functions of the institution of the Hasba and the Court of Atrocities. Because the quasi-judicial authorities in Iran's legal system establish some of the functions of the Hasba institution and the Atrocious Court. Therefore, considering that jurists and experts have considered the institution of Hasba and Diwan Muzalem as a disciplinary institution, this nature can be extended to the quasi-judicial authorities that are responsible for performing the special tasks of those two institutions, and it can also be considered as a disciplinary authority. Now that the quasi-judicial authorities are considered to be law enforcement institutions, it can be concluded that the proceedings of these authorities do not interfere with the judicial nature of the punishments. Because the issues dealt with in these authorities are not judicial.

As a result, it is not necessary to deal with them in competent courts. Therefore, according to these differences, it can be said that the handling of disciplinary matters in these authorities is not considered as a violation and exception to the judicial principle of punishments and the second part of Article 36 of the Constitution, and quasi-judicial authorities are specifically outside the scope of Article 36. In the sense that the quasi-judicial authorities, considering their nature, do not come under Article 36 at all, so that their formation is an exception and allocation to the mentioned principle.

Because the allocation is for the time when we consider the nature and functions of quasi-judicial authorities to be a judicial matter and then it is said that considering that these authorities do judicial work, they are considered an exception to Article 36. But this article is based on the fact that the quasi-judicial authorities are not included under the title of Qaida, so that we consider it as an exception and an allocation to Article 36. Rather, quasi-judicial authorities are specifically excluded from this principle.

## Conclusion

The central point of this research was to examine the relationship between the principle of res judicata of punishments and the nature of quasi-judicial authorities' rulings. Considering that the quasi-judicial authorities were non-judicial and under the executive branch, they did not have the authority to determine the punishment according to the principle of res judicata. In this regard, it was stated that if the nature of the rulings of these authorities is considered to be judicial, it would be in contradiction with the principle of judiciousness of punishments. In this regard, some thinkers tried to explain the nature of the rulings of these authorities along the judicial rulings of the courts of justice.

However, this article, emphasizing the nature of actions of quasi-judicial authorities and considering the similarity that this authority had with institutions such as the Court of Atrocities, reached the conclusion that the nature of the decisions of quasi-judicial authorities, like institutions such as the Court of Atrocities, is of a disciplinary nature. Both of them deal with people's objections to the decisions and actions of agents, and on the other hand, both of these institutions are authorities next to the judiciary and are under the executive branch. As a result, it can be said that the rulings of these authorities have a disciplinary nature. As a result, if the nature of the decisions and rulings of quasi-judicial authorities is considered to be disciplinary, it no longer contradicts the principle of res judicata of punishments, and the rulings of these authorities are specifically excluded from the principle of res judicata of punishments.

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