

# Interpretation of Law by Islamic Valid Resources or Authoritative Fatwa in Article 3 of Iran Civil Procedure Code

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## ABSTRACT

**Objective:** Accurate perception of law and reasonable interpretation by judges are one of the requirements denial of justice. **Methodology:** The right of establishments is judges to interpret and correct implementation of laws in all legal systems and different methods can lead to sources that the most are among the legal systems but value system governing the rights of Iranian origin and interpretation techniques change the key sources of law in Iran. **Results:** The present paper attempts to clarify recent amendments to article 3 civil procedure code Iran, overview strength of theoretical and practical executive power is vested reform. **Conclusion:** A study by the necessity of having to remove sources of interpretation contained in the previous legislation, "the spirit and provisions of the laws and customs of habit apparent" lack of transparency and poor performance in sound usage of new valuable resources "authentic Islamic sources and fatwas valid" and especially creating confusion and discrimination in the implementation of the said Article. Research was analytical and documentary data is collected.

## 1. Introduction

In the political system of the Islamic Republic of Iran, the supreme leader, is the highest authority in the country, In an organized society everyone can not sit with others who denied himself the right to claim such a right because it would make chaos and disturbance of social order is bullying. That's why the judiciary is known dispute society and individuals to obtain their right to claim that this reference should not want to resort to the courts. It is essential that going to court accepted their claim and be examined and the judge can refrain from addressing. So the judge is obliged to investigate claims that a warrant MOH enforces standards in Him and His plan for jurisdiction to be and they do not have them on the pretext of silence or failure or refusal of the warrant MOH enforces standards outlined law or conflict the hearing of a lawsuit in which jurisdiction it is that he is obliged to handle it. If the judge to excuse or a brief silence or ambiguity or deficiency judgment is refused or conflict of laws known of justice and punishment if convicted. Punishable under Article 3 of the proceedings under Article 597 of the Penal Code for is predicted (Mohajeri, 2007).

In our country in Article 167 of the constitution and Article 3 of the Civil Procedure Code has been agreed that the judge should seek to judge the case on the law and on the basis of the verdict, to resolve the dispute.

In law, accepting socially desirable behavior for an anticipated and that sanctions for violation of certain regulations. So everyone can go to the correct and acceptable way to recognize and act on the relations between the matches. The law offers no clear criteria to order in social relations.

On the other hand, when the trial judge and comparative law from other sources claim it is easier (Ghiyasi, 2000).

But the major drawback is that the law cannot include all the various social relations and all the different forms of social behavior to predict. Because social relationships are very complex and diverse in-law is not possible to predict all of them. In addition to the complexities of human and social relations today and unprecedented speed changes in the political, economic and social causes of the phenomenon of new legal rules and special regulations for many of them not providing the possibility of recourse to law and dice it in the social order of the people and even the judges in the case ruled out.

In various legal systems to address the shortcomings of the law and determine what sentence the judge in cases where a claim cannot be found in legislation, references and a solution that has been proposed. In our country in Article 3 civil procedure code.

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### ***1.1 First Speech: Conditions of judgment in Jurisprudence and Iranian Law were added to judge condition***

Law is concerning Selection of Judges of 9.12.1982 conditions in the first row on the condition of manhood is endorsed with the words: judges from "men" are elected and qualify under the fifth paragraph emphasized the necessity of *ijtihad* judge considering the facts, the possibility of non-mujtahid judge if judicial authorization by the Supreme judicial Council, as long as "sufficient number mujtahid is the Supreme Council" has provided. Regardless of the consensus that both these conditions are not religious scholars in this field, there is much controversy the first condition, the possibility of executing the necessity of *ijtihad* not judge the one hand and on the other hand cause serious discrimination between graduates jobs Ironically in job tenure and also due to the specialization of the legal issues and the different branches of law, jurisprudence to its unique meaning of *ijtihad* in religious sciences in terms of logical and scientific feasibility of using the judicial system there will not be targeted for Iranian jurist and judge permitted (non-priest) applying Article 3 civil procedure code will be faced with more complex, because it is clear that understanding the sentence in a case of authentic Islamic sources and authentic fatwas by non-jurist judges was a very difficult continue discussions on this matter will be discussed in more detail (Shams, 2001).

### ***1.2 First topic: Judge Conditions***

The qualifications of a judge in Iran include:

1. Perfection 2. Justice 3. Competence and qualifications perfection 4. Being male 5. Being educated 6. Being visually literate unless the judge of arbitration.

Researcher solution in laws, qualities, and qualifications of a judge's term of maturity, perfection of wisdom, faith, justice, purity, birth, science, and man stated (Hashemi and Kushaa, 2001).

Hilli in the note points out that the judge should be responsible and faithful and just and legitimate scholar and a man and lost his memory, and not enough to the fatwas of the scholars are aware of them, according to the ruling, but must is intended to recognize and correct his sentence.

Imam Khomeini in Tahrir ul-Vassileh the judge attributes, maturity, wisdom, faith, justice and absolute discretion, male, birth and declared purity in known condition is known.

So, just outstanding personalities from science and virtue are consummated, will be able to significant tenure (Hashemi, 1996).

Constitution of the Islamic Republic of Iran, paying close attention to this important matter, one hundred and sixty-third essentially provides that: "the qualities and qualifications of a judge, according to religious criteria to be determined by law."

Implementation of the principle of the Law Concerning Selection of Judges of 4.4.1982 such conditions requires judges are selected from among the following eligible.

1. Faith and Justice and practical commitment to Islam and loyalty to the Islamic Republic of Iran
2. Purity of birth
3. Iranian citizenship and exemption from military service or having legality Legal
4. Bowel health and ability to work and lack of drug addiction
- 5 - Having or allow judicial discretion.

## **2. Materials and methods**

### ***2.1 Second topic: Judge Priest and the judge permitted***

Scholars of the religions say:

As well as not take place without the eligibility of independent fatwa and not enough fatwa of scholars.

The position of judge is the only person who can take over the world and give its own judgment to know and quotes other scholars fatwa to fill judgeship is not enough owner of the conditions in the judge said.

Diligence not implemented spend is industrious but was credited with the science and the consensus was reached for inter and because the influence of the ruling and its implications for the caress otherwise original and equally pious and industrious they are sentenced. Unlike a great deal of judgment and adherence to principle so sure that can affect judgment and the judgment is binding mujtahid. Of *ijtihad* to judge all books of jurisprudence on the topic of legal debate, but what is in this regard is whether the non-priest can judge or not?

Some non-priest judgment is valid at all as late Seyed Mohammad Kazem owner of the opinion. Allameh Seyed Javad factor on the key principles and Al Karamah are also of the opinion. Kalam after quoting scholars of the religions that the judgment of the priest but one cannot take the judiciary and, after a relatively detailed discussion concludes claim to some of the provisions of the universe is that someone or to imitate the other priest they cannot judge knows to be represented, but also because of the contrary is void of reason and the rise of texts and traditions installation requires a priest to officiate in the absence of the priest installation is not allowed. Ashtiyani late in the book *Alghaza* and then divided exactly in this regard have discussed the claims and objections and the topic of differences and to allow for non-priest happened in doubt topic says: The point is that as that of the duty in the divine wisdom and interest and styled guardian to guide the two people to the right and them with justice and right, lest needed impaired their system and close the door to their livelihood and guardian monument industrious of Cases for the bug well as he must by virtue of the mind from directed these causative that requires the imitator of judges between the people in the pictures not to the possibility of raising industrious or ten so that does not bear habit and that requires people to plead to him and abide by binding to I disruption of their system purpose of the texture of the ruling mind is the necessity cases for diligent in case possible and choose from where the system stops it governs is obligatory on the snob in case of having observing reason mentioned .

As in divine wisdom and interest accrued to the prophet and Allah is obligatory his successor for the guidance of the right to justice and sentence them to between deregulation of People and way of life happens to them is not closed but was absent when the successor of the prophet to be sure mujtahid judge to be appointed as the reason why the obligatory In the absence of a mujtahid or difficulty of access to his judgment between people and the people whom

they claim is obligatory and judgment to accept the difference in system and the purpose of creation to lose their lives happens then, that judgment is rational necessity and the priest judgments are possible because the system depends on it, so Because, the warrant will judge the necessity of a follower in distress.

Accurate view demands that are urgent when referring to mujtahid is impossible or very difficult, to say the judge's discretion is not required and it is permissible for the emulator Ironically, it is necessary to take but the reason is because the wisdom and necessity of introduction Including their obligation to cut the roots of conflict and leaving claims remain what otherwise It is a system disruption and loss of property rights and that it is God keep them Considers obligatory but lead to the loss of people's lives .

Ayatollah Golpayegani Alghaza in the book is two sides of the argument and said quote:

"And how was the famous fatwas diligence requirement from the judge's assertion prevent us from second face."

Despite the well-known fatwa on condition of Ijtihad cannot judge determined to Judgment emulator. Of course, they need to judge the necessity and non-priest and Lack of access to justice priest did not ask. And stated in his act Imam Khomeini Mirvaghefi during his eleven years of leadership excellence against the Islamic Republic and the reply dated 18.11.1985 he asked the chairman of the judicial commission of the Islamic consultative assembly expressions begins:

(At this time the vast majority of incumbents eligible judiciary by not judge religious and permission is given to them) also implies that the Comments holiness to judge other priest when necessary to limit the unavailability of priest allow enough.

It should be noted that in the current judicial system of Iran, a judgment based on the laws that have been passed by the Majlis and Guardian Council confirmed the diagnosis of a religious or non-religious priest and therefore not judge the laws and the right to oppose It is also no responsibility not judge jurist and law governing the matter, according to his own judgment, unlawful know the right sentence is not contrary to the law and in this case will be referred for consideration to another branch. Such a system, which, according to Article 270 of the Criminal Procedure Code, judicial precedents are created, accepted in today's world and to create the necessary legal security and avoid division of votes and the founder of Islam with such a reasonable doubt "according to the because one of the great objectives of Islam is to create legal security and harmony in judicial decisions and the Islamic Republic of Iran has accepted this legal system, but the system of ijthad, incidentally, is based on the discretion of the judge where the judge rather than according should provide legal evidence the Quran, Sunnah, ijma 'and see reason and sentences extracted from the arguments presented such a system is necessary to judge, jurist, expert in Islamic jurisprudence and general principles and fundamental principles of ijthad, and even some jurists referred to in the judgment of the priest knows the condition of ijthad.

However, this System (ijthad) is not accepted in accordance with Article 167 of the constitution and the legal system has been taken.

The second speech Resources interpretation of the law in Article 3 civil procedure code Dani Iran.

The content of Article 3 of the former Criminal Procedure Code, were:

"Courts of justice are obliged to investigate claims ruled in favor of laws or their season, and if the statute is not explicit or complete or are inconsistent or no law in the case raised doesn't have courts of justice shall approve the spirit and the provisions of the laws and customs of the habit clear cut case and forth "the body of this article in reforms after the revolution of 2000 is amended as follows:

"The judges are obliged to agree on rules to handle claims has the proper judgment or hostility season if the laws are not perfect either express or contending or even" there is no law in the case posed by referring to the prestigious Fatwas authoritative Islamic sources and legal principles that are contrary to the Sharia issue and cannot issue a warrant under the pretext of silence or defects or brevity or conflict of laws of high examining cases and sentencing refuse of the rights they will be sentenced well-known and punishment.

Note: If the judge jurist and law deems illegal file will be referred to another branch to address. "Changes made in this article to Article 3 civil procedure code. The former is treated as follows:

1. The term "trial judges" instead of the phrase "Court of Justice" is located.
2. The term "warrant" rather than "sentence" is located.
3. The term "hostilities season" rather than "season" is located.
4. The word "conflict" instead of the word "inconsistent" is located.
5. phrase "citing authoritative Islamic sources and authentic fatwa and legal principles that are inconsistent with sharia is not" rather than " agreement spirit and laws advantaged theme and knew and returned Muslim "is located.
6. The expression "issue a warrant issue" rather than "cut and forth affair" is located.
7. Section of the article, former law had been predicted in a separate article as follows: "If the magistrate court to excuse the fact that the statute is not perfect either explicit or inconsistent or no law at all absent from the proceedings of the case refuse the rights will be considered. "
8. Note that the previous law did not exist.

Changes in the legal matter can be investigated from both directions:

#### **A) Remove former legal interpretation resources**

As you can see the distinction uttered two discussed legislation unnecessary actions and non-scientific "spirit and letter of the law" and "common law has" removed from a number of sources. This interpretation of the law while relying on the spirit and rules of the common law has current running band also fully consistent with the logic of the legal dispute is the case in most legal systems of the world is also used to interpret the laws. There is no doubt that life is a social life rights "follower rights community", thus referring to the custom and practice of the people in a particular topic to demystify the law is impeded or fix it with no. If you remove these provisions from the article on the new Iranian lawmaker sensitivity on religious observance of Islam interpret the disappearance of these two sources of unnecessary interpretation, because the ruling religious rule "What is the ruling by the rule of reason by Shara"

Public is examples of the general public and the rules of logic, reason and consensus are correct and cannot be assumed that the common law has non-religious society and as a source of interpretation to it distrusted. Especially in terms of compliance with the provisions of Iranian law rights legislation be

carefully monitored and appeal to the spirit and the letter of the law will be any prohibition of the intellectual or legal. Nevertheless, it seems that the removal of these two sources of useful and reliable source of interpretation of the law is far does not seem logical.

#### **B) Adding references to sources of legal interpretation of the law**

Add to legal sources, "authentic Islamic sources, and authentic fatwas" to interpret the law in terms of legal logic, and given the nature of the divine law, containing no problem with, but in practice this regulation with two fundamental problems faced.

In the case of judges priest according to the *ijtihad* of Islamic law would force them to take advantage of these resources to be no doubt but due to differences in many of the issues severe scholars of Islam, the people and the impossibility of who has OCD Mojtabehdin imitation of together, the implementation of this Regulation and the granting of powers to judges priest deductive inference beyond existing law, causing confusion in the vote on a single issue and trust of people, judicial system to undermine equality and stability, as to the same subject people will be will have different orders and results will be unpredictable claim for individuals.

Legislation is correct inference would be contrary to the rights of the people and cause chaos. Many legal professionals have emphasized this important point:

"According to reliable sources of Islam and fatwas to that principle, judges are not aware of all the resources and also because of disagreement between scholars of jurisprudence, to this article may be dispersed vote".

According to authoritative Islamic sources and authentic fatwas difficult and perhaps impossible for many of the judges is high because of the need to be scientific and legal resources to explicit and not commented on many issues? The law obliged foreign judges in the silence of the law on general rules and principles (les principes généraux) and customs and fairness to see. "

Third speech: the legislator of the rulings of Islamic law in Iran's laws the will of God that legislators in Islamic legal system, and in Shiite jurisprudence reliable sources include: the Qur'an, the Sunnah of the Prophet (pbuh) and the infallible Imams consensus and wisdom among which it is possible to base on the will of God Almighty.

The source is considered reliable sources that the judge in the form of a scientific and systematic, credible either is this the judge's ruling is valid or not?

It seems that in this case such a person in authority and power comes hesitation in referring to reliable sources, in which case another judge in the appeal to the competence and the proving his *Ejtehad* sentence, the judge of the disqualification of violating the.

In issue 7 of the " The judge said in recipes »the book's Tahrir" The Ruler of the other may implement the judgment issued by the past, but may have to be, yeah H in diligence or fairness or other may not be »; If the judge or justice first in the discretion of the judge or his condition, he could not doubt his sentence except after obtaining the condition that such discretion and can identify reputable sources and precepts are of them.

B) Valid verdicts: at this point, the legislator should mean "authoritative fatwas" and the concept appears to be credible in the eyes of regulators. This fatwa is valid for several possibilities about which arise here.

### **3. Discussion and results**

#### **3.1 Fatwa Clergible Judge**

This theory is based on the argument that the judge should act in accordance with what is with him. In other words what is accepted as the warrant of God's action and through imitation of his body that is to be achieved?

But this theory will be faced with this dilemma and forms first appointed as a judge in the current situation in the legal gap has jurisdiction on the basis of a valid fatwa. Secondly, in the case of the law, if the law is the fatwa of a source of emulation clearly contradicts the fact the jurisdiction he is subject to compliance with these rules cannot ignore the law. In addition to the judgment of the supreme leader, the current rules have been validated and the judge or any other person in the conflict between the ruling, and the fatwa must give prior sentence.

#### **3.2 The well-known fatwa**

The legislation normally famous fatwa to be the case in the legal gap the famous fatwa is more appropriate. But the view that the legal gap of a problem with this, and in those cases there is no known point, in addition to the use of the word famous in legal terminology and a common legal and failure to work because it is not on purpose more importantly, it has emerged that the fatwa provided by the authorities in view of the present age not legal theories of the ancients.

#### **3.3 Emulation contemporary fatwas**

In the constitution and the term is used in the plural word fatwas issued by religious authorities the advent of the current, and coupled with a valid word reinforces this impression. So that it can be said that the total term "authoritative fatwas" means fatwas that in the present era of credit for their own again, and people to act.

This theory is more appropriate because the proceedings of the assembly of experts are also where the "references" that purpose references the current decree. In addition to creating confusion in judicial decisions drawback of this approach is that there is no criterion to determine the contemporary references can be said in response, but in practice, the Shiite community, users firsthand the reputation reference acceptable to the general public the and the number is limited and they are identified and determined.

#### **3.4 Fatwas accusing clergies**

Considering that every Muslim must undertake to fulfill religious obligations and also should wear your homework prior to his therefore in a position to determine violations should be noted that whether he or proving them guilty of violating it is obliged to abide by or not? This means you need to fatwas

visit him and, if he is not someone or reference imitator not known (or not known) fatwa came one that had been necessary for him to see her and the person most knowledgeable among the references. Of course the latter case refers to mimic some of the theory's owners believe they should be referred to the supreme leader's fatwa.

It may be said in reference to transfer of proceedings and rulings is meant to determine the sentence the defendant is charged, it stated that the accused must provide reference his fatwa, which the necessity of the ruling by incompatible because the judge only has the right to refer to the expert.

In response should be told not accept this theory requires that the defendant be free and anyone who wanted to introduce as his reference but must prove that at the time of surgery, a person been reference. In addition, the judge should accept the verdicts of accused and the assignment of reference to ensure it.

### 3.5 Verdicts of Islamic Jurists

Another possibility is the concept of "authoritative fatwas" fatwas is Islamic Jurists. The reason: credibility and legitimacy of judges appointed from the installation and for them to be issued by the Islamic Jurists and the sentencing judge is not a fatwa, or ruling of the dignity and authority of the Islamic Jurists. Therefore, according to the Islamic Jurists valid existing laws and compliance is required is the absence of any legal vacuum he should be followed.

In other words, your judgment is a provincial acts and judges have been the province of the Islamic Jurists and not on behalf of his sentence. Therefore you should consider that if he wanted to judge whether it was legal and thus should be based on the judgment and sentence him to other words, the Islamic Jurists because does not know cannot let them be sentenced.

The view of the Islamic Jurists believe that the fatwa issued by Islamic Jurists should act in a legal vacuum is not acceptable. But in the current rules prescribed by law are not valid verdicts act itself Islamic Jurists stated that existing laws should be enforced, including the practice of "authoritative fatwas". And the practice of law requires an understanding of the concept has been in the legislature. In order to have a "credible fatwas" to be determined by the legislator.

It may be said in this debate within legal issues; therefore, the meaning of the words in the sentence and the issue should be determined space to fit. Therefore, the order of the words, it is for the judge is authoritative fatwas and religious order he proves to be desired.

But the call can be said not to individual positions and assignments legislation with respect to the emergence of secular and kind words, it becomes clear that "authoritative fatwas" are fatwas that have been validated as fatwas has the community are raised and the fatwas, the rulings references as the first known references and in cases of disagreement among the authorities, well-known fatwa (religious decree against the majority of the rare references) is considered valid.

At the same time a point that should be noted is that in the current Islamic system, the judge's ruling is the executive and de facto cannot be ruled contrary to the Guardian. Thus, if the document is issued and the judge in question is different jurists' famous fatwa issued fatwas cases unless the supreme leader's fatwa is valid, but it is actually a fatwa against it.

The problem with this quote is that it is based on fatwas if the authorities did not dispute, however, was not contrary to the fatwas of Islamic Jurists promises to be action, while the owner of this point of view agreed not. If installed, but the judges ruled that they absolutely should agree to the rules, whether he is for or against the legal point of view, in this case where the verdicts of the current authorities are opposed to the view of jurisprudence, but it should also authorities acted otherwise fatwa fatwas and leadership shall prevail.

As mentioned above led to the fatwa is not for that "authentic fatwa", Fatwa Islamic Jurists but prior to sentencing, but he has the potential and need for vision and judges appointed in the range of permission and he must act installation.

As a result, the vacuum is first law judge rulings referred contemporary references first hand if it is not opposed to the fatwa, but would, on the basis of the decree and in case of its opposition to the fatwa issued Islamic Jurists, and the territory of should be based on permission and acts of judges (Naderi, 2009).

### 3.6 Fourth Speech: laws related to Article 3 civil procedure code

The provisions of this article also stated in the regulations that will be mentioned in following.

A) Article 167 of the constitution:

The judge is bound to endeavor to judge each case on the law in the matter and if it does not find an authoritative Islamic sources and authentic fatwa citing the case warrant issue and cannot be an excuse or a brief silence or failure or conflict of law in the matter of the proceedings cases and issue a refuse sentence.

B) Article 214 of the Code of Criminal Procedure:

As a generalization, the rule provides: The court must reasoned, documented on provisions and principles upon which issued is required to judge each case on codified law found and if the law is not the case, according to authoritative sources of Islamic jurisprudence and courts cannot issue a ruling case under the pretext of silence or conflict or ambiguity or defect or brief written laws and sentencing refrain from complaints and claims.

C) Article 8 of the Public and Revolutionary Courts Act provides:

Public and Revolutionary Court judges responsible for claims and declared in favor of one hundred and sixty seven laws and the constitution of the Islamic Republic of Iran proceedings and referred the case to issue a warrant.

Article 9 of the same law provides:

Events and court rulings should be well reasoned and documented by law or sharia principles upon which the order was issued and issue judgments without citing violation of this law will be severely condemned.

D) Article 34 of the constitution:

Justice is the right of every person and everyone can refer to competent courts to seek justice, all citizens are entitled to such a court has available no one can be prosecuted by law the right of recourse is prohibited.

Enforcement of legal obligation expressed in Article 167 of the constitution and Article 3 of the Code of Civil Procedure Article 597 of the Penal Code provides:

Each of the complaints and grievances judicial authorities in accordance with the legal requirements be applied to them and despite the fact that they handle their duties and any excuses, although the pretext of silence refused to accept the complaint and to handle its or contradiction briefly or refuse to issue decrees against the law to delay or act contrary to the law for the first time from six months to a year and in case of repeated sentenced to permanent dismissal from the legal profession and in any case will be sentenced to pay the damages .

E) Article 10 of the universal declaration of human rights of 1948 includes:

"Everyone is entitled in full equality to a hearing by an independent and impartial court, fair" Such court proceedings and his rights and obligations or of any criminal charge against him was that decision. "

F) Of Article 4 of the French civil law judge if the alleged ambiguity or lack of law, the verdict has refused, or delayed is a recognized right.

Changes made in this article to Article 3 civil procedure code. The former is accomplished as follows:

1. The term "trial judges" rather than "Court of Justice" is located.
2. The term "warrant" rather than "sentence" is located.
3. The term "hostilities season" rather than "season" is located.
4. The word "conflict" instead of the word "inconsistent" is located.
- 5-phrase "citing authoritative Islamic sources and authentic fatwa and legal principles that are inconsistent with Sharia is not" rather than "according to the spirit and provisions of the statute and the common law has" been.
6. The expression "issue a warrant issue" rather than "cut and forth affair" is located.
- 7-section of the article, former law had been predicted in a separate article as follows: "If the magistrate court to excuse the fact that the statute is not perfect either explicit or inconsistent or no law at all absent from the proceedings of the case refuse the rights will be considered. "
8. Note that the previous law did not exist.

One of the petition that the court is required to address and resolve the animosity and the effect of the present time and recording begins petition on the matter 3 civil procedure code. Stated.

### **3.7 Fifth speech: with reference to Islamic sources**

To be able to authoritative Islamic sources and authentic fatwa judge or legal principles, see one of the following conditions is required:

- A) The law is not perfect.
- B) The statute is not explicit.
- C) On the subject, there are two conflicting law.
- D) In the case mentioned at all, "there is no law.

So, even if one or more of these conditions will be the judge may refer to the resources and fatwas and legal principles, and if the judge to resolve the animosity on the issue contentious, full or explicit legal authority that was and discuss the conflict be raised will not be allowed to refer to Islamic sources, according to a non-celebrity, even though the law is drafted and approved.

Article 3 of the Civil Procedure Code the court shall consider, issue a warrant or sent disputing claims that may be hostile to other sentences, including compromise or arbitration through the season, the court may demand raised to condemn the extreme right to reject or arrangements such as fights, etc. So what the court will issue a verdict in favor of examining cases demanding concomitant with him.

### **3.8 Sixth Speech: Analysis of Article 3 civil procedure code**

If the priest is judge the law deems illegal file will be referred for consideration to another branch.

Note unlawful purpose of this provision of the law is ambiguous because the fourth constitution provides: "All the laws and regulations of civil, criminal, financial, economic, administrative, cultural, military, and political. This must be based on Islamic criteria. This principle applies absolutely and generally to all principles of the constitution and other laws and regulations governing the recognition that the jurists of the Guardian Council, "Under this principle, there is no law against religious and even the Guardian Council on interpretations of this principle has also commented on the previous law, while Article 3 of the Act does not recognize unlawful, although from a personal perspective is a priest is said to be a priest the right to imitate others does not have time's However, he should follow the legal legitimacy of the Guardian Council deems it legal (Jabbari, 2000).

This argument might jeopardize the judicial order and the personal affairs to allow scholars are told that unlike some rules, for example, head office is remarry or divorce if the marriage without a court order does not unlawful and contrary to the law.

The priest note judge in a decision which, according to his ijthad, according to the law be considered, if they are contrary to law, is prohibited. So substantive issuing the verdict the judge shall issue a warrant to find a codified law, even if the law is illegal and this is one of the most important differences with regard to the diffusion of ideas and opinions and jurists about the legal aspects of many issues, the careful attention has been constitution to provide for the judicial system is regulated and disciplined preparation. Constitution, the establishment of the Guardian Council, has tried to pass laws that prevent unlawful diagnosis ((Habibzadeh and Ghiyaasi, 2001).

Previously, "the priest said if the judge deems contrary to Sharia law and the case will be referred for consideration to another branch.

This provision of the law has prescribed a getaway, because it implies the 4 article of constitutional law legal recognition or legitimacy of law by the Guardian Council. Imam Khomeini accepted the law that has been approved by the Guardian Council would have said: "No law shall be bound to accept

even vote against you. For this is that the majority must accept and recognize that the Guardian Council is not against the constitution and against Islamic principles. And everyone must accept this amount. "

Given the emphasis that exists in the above statements with regard to Article 3 can be practically guardian Council said "the legislation has confirmed that they limit set by the legislation is that if the non-religious mujtahid is allowed to refrain from implementing it (Habibzadeh and Ghiyaasi, 2001).

Article 3 can be said in criticism of religious or non-religious, if the criteria of article of the guardian council, the Council approved the amendment of Article 3 of these reviews is because if the criterion for differentiating between other priest, because the judge required to the implementation of the terms of non-priest but the Guardian Council is not authorized to implement the terms of the priest?

Note also be said in justification of the Guardian Council for ijihad and mujtahid has the right to believe that what the Council in accordance with the law knows, by the priest refused because the priest recognition for his religious authority and at the same time as such permission It is because this permission has been granted in the framework of the law by the Guardian Council in the case of non-jurist judges or permitted, they must simply comply with the law approved by the Guardian Council, and not have the right to disagree with them on the basis of non-religious (Jafari Langedudi, 1995).

In accordance with the principles of logic and the essential principles of law and especially the purpose of the legislation is concerned, the right attitude additional note article 3 of the priest in a legal system based on judges of Islam, which wise precaution all and basing the rights to respect for law and regulations on religious foundations were satisfied in different ways, wrong action and, as explicitly or implicitly referred to it Iranian law and succession of corrupt it is far more than its benefits. In practice, no case has been reported of the implementation of this note and this show of obsolete and abandoned their opinions of this regulation. Even Islamic scholars and leaders of the necessity of the approval of the regulation of the legal system are rejects; Imam Khomeini (RA) accepted the law that has been approved by the guardian council would have said: "No law shall be bound to accept even vote against you. For this is that the majority must accept and recognize that the Guardian Council is not against the constitution and against Islamic principles. In this and all must accept. "

One of the most important features that guarantee law and order in the community cohesion and certainty and clarity it can prevent the chaos sweeping and generalized it to any individual in the community. There are strict regulations regarding an issue related cause people well able to detect it and estimate its legal status, and even to sanction the violation of the Regulation on the well-prayers. It is obvious that the provisions of article 3 civil procedure code. Judge priest refusal to deal with the issue raised in the administration of the non-religious to invoke it while running from the law to prescribe a source of confusion votes at the same thing in Iranian legal system the people of the law will cause violation prolongation procedure and differences of opinion with respect to the various parties will create the same thing (Hosseini, 2001).

So to avoid the development of administrative problems this provision should be made that only those who can use their discretion based on the approved field is not discretion if such approval criteria, the implementation of the law will be differing interpretations discrepancies.

### **3.9 Seventh Speech: Advisory opinions precedent**

Sixth branch of the Supreme Court verdict No. 255 -5.2.29: "If the court does not fight proposed cuts and the verdict was contrary to Article 3 of the civil procedure code and will be violated."

Judges of the Supreme Court in verdict No. 186- 16.10.1993 has earned no final decision and archive the file to the following calls for their statements not signed, contrary to the law and explicitly Article 3 of the civil procedure code.

Judges in the Supreme Court verdict No. 50. 06.20.1996: it shall not refuse to provide evidence to the court on the hearing and the rights demand is against the law.

A panel of supreme court precedent that article 34 of law No. 675- 03.05.2005 has set 2001 as part of government financial regulations adopted pursuant to Article 2 of the civil code will apply to the regulatory contracts between the sponsor and ministry of the law in question with respect to article 3 civil procedure code cannot prevent the governance provisions of the Note.

Many legal issues to the attention of the constitution to prepare the ground for the judicial system is regulated and disciplined. Constitution, the establishment of the guardian council, has tried to prevent the adoption of laws that recognize unlawful (Deylami, 2003).

Previously, "the priest said if the judge deems contrary to Sharia law and the case will be referred for consideration to another branch.

This provision of the law has prescribed a getaway, because it implies the 4 legal recognition or legitimacy of law by the Guardian Council. Imam Khomeini accepted the law that has been approved by the Guardian Council would have said: "No law shall be bound to accept even vote against you. For this is that the majority must accept and recognize that the Guardian Council is not against the constitution and against Islamic principles. And everyone must accept this amount. "

Given the emphasis that exists in the above statements with regard to article 3 can be practically Guardian Council said "the legislation has confirmed that they limit set by the legislation is that if the non-religious mujtahid is allowed to refrain from implementing it.

Article 3 can be said in criticism of religious or non-religious, if the criteria of article of the Guardian Council, the Council approved the amendment of Article 3 of these reviews is because if the criterion for differentiating between other priest, because the judge required to the implementation of the terms of non-priest but the Guardian Council is not authorized to implement the terms of the priest?

Note also be said in justification of the Guardian Council for ijihad and mujtahid has the right to believe that what the Council in accordance with the law knows, by the priest refused because the priest recognition for his religious authority and at the same time as such permission (Zeraat, 2007).

In accordance with the principles of logic and the essential principles of law and especially the purpose of the legislation is concerned, the right attitude Additional Note Article 3 of the priest in a legal system based on judges of Islam, which wise precaution all and basing the rights to respect for law and regulations on religious foundations were satisfied in different ways, wrong action and, as explicitly or implicitly referred to it Iranian law and succession of corrupt it is far more than its benefits.(RA) accepted the law that has been approved by the Guardian Council would have said: "No law shall be bound to accept even vote against you. For this is that the majority must accept and recognize that the Guardian Council is not against the constitution and against Islamic principles. In this and all must accept."

It is obvious that the provisions of Article 3 civil procedure code. Procedure and differences of opinion with respect to the various parties will create the same thing (Katuzian, 1998).

Speech VII: Advisory opinions precedent Sixth Branch of the Supreme Court's Verdict No. 255 -5.2.29: "If the court does not fight proposed cuts and the verdict was contrary to Article 3 of the Civil Procedure Code violations and will. "judges of the Supreme court in verdict no. 186-10.16.1993 has earned no final decision and archive the file to the following calls for their statements not signed, contrary to the clear provisions of article 3 of law and procedure Act civil.

Judges in the Supreme Court's verdict No. 50. 06.20.1996: it shall not refuse to provide evidence to the court on the hearing and the rights demand is against the law.

A panel of Supreme Court precedent No. 675-5.3.2005 given that Article 34 of drafting part of state financial Regulations adopted in 2001 under Article 2 of the civil code will apply to the regulatory contracts between the sponsor and ministry of the law in question with respect to Article 3 civil procedure code. Note the provisions of the rule cannot prevent. 6501 advisory opinion .7-11.19.2004: mere claim of a degree of discretion for the judge to resort to the provisions of Article 3 civil procedure code. Therefore, if the judge has already priest in 2000 is not enough "is not the Supreme Judicial Council confirmed that already recognize the degree of discretion to judges with the head of the judiciary can be the subject of their inquiry. Advisory theory 4791.7 – 10.9.2003: Baha'i sect claimed in respect of damage caused by a car accident with due regard to Article 3 civil procedure code. 2000 and Article XIV and the fatwa of Imam Khomeini's fatwa in response dated 12.25.1983 Supreme Judicial Council on non-Muslims (who live in the land of the people of the book or not they are) as follows: "the name of God the infidels in Islam and Islamic law like other Muslims about their shelter is now being rightly blood body and rub respected "by their claim for damages filed legal proceedings" Bella shapes (Ghaafi, 2010).

#### 4. Conclusion

Judges and the judiciary as the core of society, has the right to invest and justice. The magistrate responsible for judicial officers as judges are distinguished standing for important social task, their mission, and the experts should be conditions featured traits. The judge is obliged to issue verdict in case of codified law will be allowed to sources, fatwas and legal principles that or incomplete law, statute is not explicit on the issue of two conflicting laws exist, or in the case the proposed legislation does not exist.

In Article 3 civil procedure code. This allowed the priest to judge if the law deems illegal file handle to refer to another branch. The judge also issued a decree that the priest in his ijihad according to the law is considered approved if it is against the law prohibits credit resources have the right to refer to them.

Therefore, judges to resources that certainly has the credibility and authority as the definitive prophet and infallible holy Quran and Sunnah, the because they do not recognize the validity of these resources need to ijihad judges of the verses and hadiths can use the precepts of religious jurisprudence does not require them to clearly indicate that, so that all persons who do they elicit the same sentence. Recent adoption of article 167 apparently from the perspective of general and does not have the legal affairs and matters of criminal law also covers. Conjunction with Article 36 and article 167 of 169 in terms of the relationship between ruler and ruled there is no contradiction between the principles of science. But lawmakers in a special case as outlined in Article 167, conflict, silence and failure statute, valid verdicts credible sources put the number of legal sources and is committed to the development of manifestations of law. Article 167 of the enforcement of which is faced with many problems: ambiguous definition of credible sources, the uncertainty of the criterion validity of sources and rulings, judicial request for opinion turmoil in the huge volume of authoritative fatwas, rulings conflict with each other and the lack of resources and abut one needs to adopt prevention policies, as far as possible to reduce the negative consequences of this principle.

In this regard, the legislature should as far as possible to develop religious orders in the form of laws as codified law and the rulings he has to be announced to the public. Request for opinion properly organized judicial issue and a way for the issuance of conflicting rulings based on precedent in cases where conflicting rulings determined.

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