

# Certain Authorities of Religious Minorities in Iran's Act and the Effects of Their Decisions

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## Abstract

One of the innovations in the new act of family support is observed in article 4 for the authorities of religious minorities. Concerning the competence of these authorities and their relationships with the judicial courts, legislators deny the competence of the general courts in hearing the minority affairs based on their religious commonalities and certain rules and habits. Moreover, given that these authorities are competent to hear the personal status and non-litigious affairs of the religious minorities and are legally recognized to do so, they can be, to some extent, considered as an exceptional part of the judicial judgment institution. As a result, their decisions are valid in the courts and are ratified and enforced if they are compatible with the public order and morality.

**Keywords:** religious minorities, certain authorities, common and certain rules and habits, judicial system, judicial authority

## 1. Introduction

One of the innovations in the new act of the family support is that, unlike the Family Support Act, approved in 1974, it explicitly refers to religious minorities and considers the decisions of the ultimate authorities of these minorities valid, enforceable, and ratifiable in the courts. In addition, this act postulates judicial competence of these authorities compared to the act of Respect for the Rights of Non-Shia Personal Status in Iranian Territory in the courts, approved in 1933, and the Canon of Hearing the Matters on Personal Affairs and Religious Education of Iranian Zoroastrians, Jews and Christians, approved in 1993.

Before approving the new act of family support, legislators considered the "matters" that should be heard based on the religious common and certain rules and habits rather than considering the "authorities" who heard the minority affairs. With respect to this change and the lack of stipulation for these authorities, it is appropriate to investigate the nature of these authorities and their position in the judicial hierarchy of Iran. This is effective in determination of the rights and assignments of Iranian minorities that should benefit from the right of petition and freedom based on the Principle 12 of the Constitutional act of the Islamic Republic of Iran on the matters of religious teachings and personal status, provided that they are compatible with the public order and morality.

Therefore, this study aims to investigate the Amendment of Article 4 of the new Act of Family Support, approved in February 19, 2013 in order to explain the nature, position, competences and latitudes of the authorities of religious minorities as well as their relationships with the judicial courts. Many questions on this issue are gradually answered throughout the paper. For example, relying on hearing the religious minorities' disputes by these authorities, to what extent has decreased the courts' latitudes in this regard or can these authorities be considered as a part of the judicial system or not. Initially, it is supposed that legislator by recognizing these authorities, tries to grant them a concession on the religious minorities' affairs, and disputes; therefore, these authorities cannot be considered as a part of the judicial system of Iran.

Familiarity with authorities of the religious minorities was of great importance in this study. This was achieved using the interviews with the authorities of the religious minorities. Then, the full text of Article 4 of the new act on family support was compared with the previous texts. This comparison and some consultations of The Judiciary Administration of the Judicial System of Islamic Republic of Iran, the nature of the authorities of

religious minorities and the effects of their decisions were investigated. This paper is organized as follows: the first section covers the kinds of the authorities of the religious minorities and the difference between the new act on family support and the previous act; the second section, deals with the nature of these authorities, and the third section discusses the effects of the authorities' decisions.

## **2. Certain Authorities of the Religious Minorities in New Act on Family Support in Iran, Approved in February 19, 2013**

Authorities of religious minorities and their competence in hearing some issues have been considered in new act on family support. Before discussing the competence of these authorities, the kinds of authorities are summarized as follows.

### *2.1 Kinds of Authorities of Religious Minorities*

Currently, some claims or disputes of religious minorities are resolved by their primitive or ultimate authorities. These authorities are different in terms of religion, ethnicity of the minorities, structure, competence, quorum, members and so on.

For example, the Zoroastrian community that consists of Zoroastrian people elects the members for their Zoroastrians Association. This institution has branches in Tehran, Shiraz and Yazd. This society in Tehran is competent to hear the disputes on personal status and in case of objection the parties, the same authority is competent to review the case. The Zoroastrians Association, however, is not competent to hear the disputes. The members of Zoroastrian Association of Tehran, Yazd and Shiraz elect members of themselves for the Dispute Resolution Council that hear the personal status and in case of objection of the parties, the same authority is competent to review the case. The hearing process consists of two stages. There is another association in Tehran and not in Yazd and Shiraz that is called Association of Zoroastrian priests. The members of this association are directly elected by the Zoroastrian community of Iran and considered as the ultimate Zoroastrian authority (Interview, Khorshidian, 2015).

This association consists of five or seven members and the hearing process is subject to the presentation of the petition or the written request with no mandatory charge or hearing. In case of deflection, the hearer notifies on editing the defects or refrains from hearing. Notices are sent by the staff, post office or declared in physical presence. Hearing by these authorities, although based on the customs that has been formed over the years with its own internal regulations, it is not actually a ceremonial proceeding except in the cases such as the deadline for protest and appeal or in cases of dispute or regulations' rigidity and internal customs in which civil procedure is taken into account. There are no written procedure principles and there is no compulsory principle for a fair trial, however, it does not mean to oppose the proceedings with fairness (Ibid.).

There is no difference in the latitudes of the primitive authorities and appealing authorities. In other words, all issues that have been addressed by the primitive authorities can be reviewed by appealing authorities. Moreover, there is no difference between the latitudes of the primitive and appealing authorities and those of Zoroastrian priests as the ultimate authorities and the association of Zoroastrian priests can hear the issues that are considered difficult or complicated for hearing by the primitive authorities.

In addition, this association could hear the issues, which, for example, have undergone a long process by the primitive or appealing authorities. One of the other latitudes of the ultimate authority is to provide solutions, or respond to the inquiries to the primitive and appealing authorities. Accordingly, although it is necessary to observe the hierarchy, the ultimate authorities primarily hear the issues in cases they prefer or authorities or people request (ibid.).

There are differences between the primitive authorities, appealing authorities and ultimate authorities in the case of other minorities, religions, ethnicities such as Armenians, Assyrians, Catholics, Jews and so on that may be heard individually or in the form of the boards. Members are sometimes elected by religious authorities and then sometimes by the followers of that religion. Other authorities of religious minorities begin to hear like Zoroastrians essentially with the presentation of a written request and with no charge. Here, as Zoroastrians, the hearing process by these authorities does not follow a formal procedure except in special cases such as deadlines. There is no necessity or enforcement for observing the principles of proceedings.

It seems that the latitudes of the authorities are not so different and the conditions, procedures and certain separation between the competent authorities in procedure law there, not here (Interviews, Ohanian, 2015).

## 2.2 Competence of the Authorities of Religious Minorities

The second paragraph of the amendment to the Article 4 of the new states: “decisions of the supreme authorities of the religious minorities on the non-litigious matters and their personal status, including marriage and divorce...” Thus, these authorities are considered competent in this article in terms of two cases: non-litigious matters and personal status.

Article 1 of the non-litigious matters states that “the courts are fully responsible to make decisions and take actions on the non-litigious matters without them deal with differences and conflicts between individuals and stop the occurrence of a lawsuit filed on their behalf”. Some of the scholars also give a brief definition that non-litigious matters are “any non-adversarial matter that its consequence is the public interest”. They know they must depend on public interests against the private interest. That is why the court should not interfere in matters, in which the parties are individuals. For example, patrimony split, except when there is a baby inheritor, is not considered as non-litigious matters. On the other hand, any of non-litigious act title, which involves the dispute or party, is not a non-litigious matter, such as the issuance of probate in case of fights in the number of heirs (Jafari, 2011, Vol. 1; Khodabakhshi, 2013, p. 27).

For determining the law on personal status in different countries there are two factors: first residency, second citizenship. Iran is a country that knows the personal status dependent on the government and in Article 6 of the Civil Code has stipulated it (Bodaghi, 2012, p. 135). There is no consensus on the definition of personal status. Some scholars believe there is no clear definition for it, and in practice it is considered by examples. The examples include marriage, property disposition of couples, divorce, love, dowry, installation and so on (Jafari, 2011, Vol. 1, p. 700). Some know the attributes of the character, or personal status as the attributes of the individual, regardless of his career or status in the community, however, the attributes, in the eyes of the civil rights, have consequences such as marriage, divorce and parentage. In Article 12 and 13 of the Constitution the term personal status law is used, and inheritance and wills in addition to marriage and divorce are known as its examples, which according to the fiscal property of inheritance and will, the view seems to be objectionable (Safai, 2004, p. 25). However, Article 7 of the act of Respect for the Rights of Non-Shia Personal Status in Iranian Territory in the courts, approved in 1933, knows inheritance and will independent of personal status. In any case, regardless of the classification above, non-Shi’a Iranians must follow the personal status of their government (Safai & Ghasem, 2005, p. 11).

Some also have separate personal status within the meaning of general and particular. In this way, it means either (Article 6 of the Civil Code) contains the status and qualifications, and in the narrow sense (Article 7 of the Civil Code) only know of the status. The status is a set of attributes of human rights in the sense of that the law does legal effect on it, such as marriage and divorce, parentage, and so on. The qualification is also jurisdiction for the person personal right and its implementation and enforcement (Almasi, 2008, p. 153). Others know the personal status as set of titles, which resulted in the emergence or existence of features and modes in one person toward another, and have legal effects (Barikloo, 2005, p. 41).

Despite the disagreements that can be seen with the definition of personal status and addressing it will require another article. It seems that although in the provisions of Article 4 of the new act of family support, only “...personal status” is referred and there is no mention of wills and inheritance. According to the act of Respect for the Rights of Non-Shia Personal Status in Iranian Territory in the courts, approved in 1933, and the Canon of Hearing the Matters on Personal Affairs and Religious Education of Iranian Zoroastrians, Jews and Christians, approved in 1993, higher authorities of religious minorities should be competent to deal with “rights of inheritance and wills” for religious minorities.

## 2.3 Comparison of the New and Previous Law

As mentioned earlier, according to the new law of family support, higher authorities of religious minorities are competent in non-litigious jurisdiction and personal status of religious minorities. Article 4 has seen changes compared to the previous rules, which will be discussed here.

Prior to the enactment of the new law on the law of family support, courts had jurisdiction in matters relating to personal status of religious minorities, but their inquiry was based on common and certain rules and habits, during which inquiries were obtained from religious authorities or institutions of the minorities, particularly the authorities in Tehran. However, with the new law, procedures have changed; so that the courts generally refuse to handle cases related to personal status, and relying on the wording of Article 4 of the new law, only recognize authorities of religious minorities competent to inquiry. So, now the courts generally enforce judgments of authorities of religious minorities, and refrain from substantive proceedings.

It may be argued about the approach that: first, Article 4 does not claim the incompetent of jurisdiction of the public courts related to religious minorities; so the lack of reference to the competence of the public courts is not considered as their incompetence. Second, the common competence of the public courts is limited only if the legislator explicitly or implicitly excluded some affairs from the jurisdiction of them. Therefore, such a limitation or exclusion that detracts from the general jurisdiction cannot be seen in the new law of family support, and the general competence of public courts must not be neglected.

But in rejecting this view and by confirming the dominant norm between minorities, it should be given that the authorities are a part of the judicial system and authorities of Iran, it does not seem logical that the legislatures recognize two parallel references, i.e., the courts and authorities of religious minorities within the jurisdiction to decide on disputes of religious minorities. In fact, this is not observed in any other cases. So, to reiterate, to the competence of the authorities, in a sense, means the denying of the jurisdiction of the public courts. In addition, the commonality of law courts is valid when there is a silent or doubt by the legislator, not in cases where an exceptional court is affirmed.

That's why the advisory opinion of the Legal Department of the Judiciary Inquiry No. 7.94.393 dated 5 May 2015 that the author had been issued states. "... 1- If the religious minorities listed in the claims subject to personal status, without reference to their religious references, refer directly to the court, it can begin to address the procedure, but such proceedings in this case, according to Article 4 of the Family Support Act in 2012, is inquiries from authorities on the mentioned subject...". It does not seem plausible.

Another thing that can be raised about the new law is the legislator's explicit reference to the authorities of religious minorities; the thing that cannot be seen in both the act of Respect for the Rights of Non-Shia Personal Status in Iranian Territory in the courts, approved in 1933, and the Canon of Hearing the Matters on Personal Affairs and Religious Education of Iranian Zoroastrians, Jews and Christians, approved in 1993. In both acts, only "common and certain rules and habits in the religion" is used, and there was no reference to any decision-making authority or entity. However, there is an objection to this article: the amendment of Article 4 mentions the "higher authorities of religious minorities". However, it became clear during the review above that minorities generally have primitive or appeal authorities as well. Thus, if the mere appearance of this article will suffice, the result is that only the decisions of higher authorities of religious minorities are enforceable and ratifiable, not primitive or appeal ones, while that may the number of decisions issued by the primitive authorities to be much more than the decisions of the higher authorities.

Based on what was said to be the use of the word "Higher" on the authorities of religious minorities resulted from the negligence of the legislator, and it is against institutions such as the Zoroastrians of Yazd and Shiraz that are not authorities but a community of religious minorities. In support of this view, the advisory opinion of the Advisory Commission on Family Law and Non-Litigious Affairs of the Higher Legal Department, No. 7.94.1010 dated 12 July 2015 can be cited: "... the meaning of the higher authorities of religious minorities ... is a reference to the authorities of religious minorities that are competent to decide on divorce on the related religious minorities".

Other Notes on Article 4 of the new law of family support is that, unlike the act of Respect for the Rights of Non-Shia Personal Status in Iranian Territory in the courts, approved in 1933, and the Canon of Hearing the Matters on Personal Affairs and Religious Education of Iranian Zoroastrians, Jews and Christians, approved in 1993, in addition to the personal status (of course, with a bit of negligence and according to the constitution includes the right to inheritance and wills as well), non-litigious affairs are also referenced. The result is that it seems the legislator's stipulation on the "non-litigious affairs" under the new law, which is unprecedented in the earlier legislation, is contrary to the advisory opinion of the Legal Department of the Iranian judiciary's No. 7.94.393 dated 5 May 2015. The new law ignores the prosecutor's role in relation to non-litigious affairs of religious minorities and deposits the affair to them. However, the particular situation of the minorities demands that role of the prosecutor should not be ignored, and that the term "non-litigious affairs" cannot be interpreted to mean the complete elimination of the role of prosecutor. The practical procedure also confirms the same interpretation.

### **3. The Nature of the Certain Authorities of Religious Minorities**

There are two views on the nature of certain authorities of the religious minorities. First, the authorities are not the members of the judicial system and cannot find a place for them in the judicial hierarchy. Second, these authorities should be considered as a part of the judicial system and must find a place of their status in the judicial hierarchy.

### 3.1 Certain Authorities of Religious Minorities; only Pebble on the Beach of Judicial System

First, the authorities mentioned in the second paragraph of Article 4 must be discussed; those who understand the new law of family support as the only pebble on the beach of judicial system of Iran. Then, by looking comparatively at the similar institutions in other countries, their viewpoint must be explained.

#### 3.1.1 Explaining the Nature

The judicial authorities refer to all the authorities set up by law, and investigate disputes and crimes and issue votes. Therefore, the judgment authorities include from judicial and administrative authorities (Shams, 2005, Vol. 1, p. 31). Accordingly, it can be said that an institution can be considered as a judgment entity if it requires having at least two characteristics. The first is that the institution should be created by the laws of the country, and second, it must have jurisdiction.

Authorities dealing with religious minorities in Article 4 of the Family Support Act under the title “higher authorities of religious minorities” although have jurisdiction, are not created by the laws, and as noted earlier in the act of Respect for the Rights of Non-Shia Personal Status in Iranian Territory in the courts, approved in 1933, and the Canon of Hearing the Matters on Personal Affairs and Religious Education of Iranian Zoroastrians, Jews and Christians, approved in 1993, there is no reference to the authorities, or even to their creation or establishment. It can be said that the authorities have not been part of the judicial system of Iran and have not been considered as a judicial authority or even an administrative one. Although the Family Support Act also recognized the authorities, but by no means has mentioned their existence or establishment as a legal, juridical or national entity.

#### 3.1.2 Explaining the Nature by a Comparative Look

Based on the above statements, two views can be cited on justifying the nature of certain authorities of religious minorities. The first view is to accept the similar nature of the authorities of religious minorities and the spontaneous authorities over centuries in the Far East, such as China and Japan. In these countries, there are still traces of Confucius. Based on the ideas of Confucius and his later followers, cosmic order is an important place, and one must evade from litigation, which causes disturbance of the peace in the community and reveals individual errors, and must seek a fair and peaceful way. In addition, the tremendous pressure on the judicial system of some countries such as Japan leads to the lengthening the process and limiting the number of judges and lawyers, and this also adds to the desirability of non-trial ways. Therefore, relying on the ideas of Confucius on the one hand and strengthening the non-trial settlement of disputes due to weakness of the judicial system on the other hand have caused many disputes to be resolved without referring to the courts (Zuiagret & Coutts, 2014, p. 422, p. 438).

However, it does not seem that the nature of the higher authorities of Iranian religious minorities is equal to non-legal dispute resolution in the Far East, because, firstly, it is limited to the personal status and non-litigious affairs, and secondly, it is limited to the parties, who are originated from religious minorities. In addition, one of the reasons for considering the mentioned ways in countries such as Japan, is the Confucian ideas, which have no place in the status of religious minorities in Iran and even not recognized by the Iranian constitution. Moreover, the weakness and the long pressure on the judicial system of some countries in the Far East such as Japan have not existed in the Iranian judicial system, and that has not caused the non-legal ways in Iran.

Another approach is discussed in this regard. Perhaps it can be said that the legislator, by stipulating the competence of certain authorities of religious minorities in the new law of family support, has been following the development of non-trial dispute resolution institutions or *Alternative (Appropriate) Dispute Resolution (A.D.R)* in Iran. *Alternative (Appropriate) Dispute Resolution* ways, which can be traced back to five decades in some countries such as the United States of America, were created with goals such as reducing the caseloads of courts of justice, and specialization to resolve disputes, and over time the number and types of them were added. Nowadays specialized authorities are created to resolve non-trial disputes, to which sometimes the parties are obliged to refer. In addition, the settlement of disputes is now considered as an independent field of law study in the number of universities of the country. In some other countries such as Russia, the indicated ways are not welcomed according due to some reasons. Before 2011, no special effort had been made by the legislature to create and expand it (Abbaslu & Nowee, 2013, p. 60, p. 69).

However, although justifying the nature of certain authorities of religious minorities by means of non-trial settlement of disputes seems somewhat plausible, this point should not be ignored that means non-trial settlement of disputes in the United States of America shaped with the additional governmental intervention and regulations. They were not created, at least initially, as non-governmental or non-public organizations, while

authorities of religious minorities in the formation and proceeding of jurisdiction are not under the supervision of the government or a particular law.

### *3.2 Certain Authorities of Religious Minorities; a Member of the Judicial System*

To view authorities mentioned in the second paragraph of Article 4, which know the new law of family support as a member of the judicial system of Iran, the base of it should first be raised, and then by looking comparatively at the similar institutions in other countries, its defensiveness be approved.

#### 3.2.1 Explaining the Nature

Contrary to the view that considers certain authorities of religious minorities as the only pebble on the beach of judicial system of Iran, and not a part of it, there is another view, according to which certain authorities of religious minorities in Iran are a member of the judicial system. Based on the foregoing reasoning that the authorities have not been created or established by law, it can be dismissed in this way that the legality of a judicial authority is not simply that the general or specific legal framework must be raised by forming or establishing a judicial authority, but once in a law, an institution or authority be recognized to resolve the dispute or to have jurisdiction into a subject, it will suffice. That is why the mere fact that the new law of family support talks about such authorities of religious minorities suffices for recognizing the institutions as a member of judicial system according to their tasks in addressing non-litigious affairs relating to personal status of religious minorities.

Moreover, it is not necessary that an authority, dealing with the enactment of a law, come into existence to be recognized and gain judicial life; but the mere mention of the law enforcement authorities to address the competence of certain authorities of the religious minorities is sufficient to recognize them as a part of the judicial system, provided that their proceedings must not be against the public order; regardless of whether it is created before or after the legislation.

Furthermore, although the authorities of religious minorities are not in full compliance with appointment and dismissal of members, basic trial process, and with internal and judicial administrative authorities, due to their importance, their credibility and respect among religious minorities and their long history in dealing with some of the religious minorities, it is appropriate that the authorities be considered as part of the judicial system of Iran. Now, given that the certain authorities of religious minorities can be considered as a member of the judicial system, it is necessary to examine its place in the judicial system.

#### 3.2.2 Place in the Judicial System

In reviewing the place of certain authorities of religious minorities in Iran, judicial or administrative, public or exceptional, and judiciary or non-judiciary authorities will be studied, respectively.

##### 1) Certain authorities of religious minorities; judicial or administrative authority

For separation of the judicial from the administrative authorities or judicial and administrative actions must be determined. Some scholars have spoken in explaining the administrative jurisdiction “to address some of the administrative agencies say ... in administrative addressing do not enforce legal arguments, but adapt the laws on the considered issues”. They consider judicial process as “acts of evidence and arrangements in order to achieve a judicial goal, whether that goal is to solve the judicial unknown, as can be seen in the courts of declaring the vote, or not to solve it like partitioning sentence...” (Jafari, 2011, Vol. 3, No. 7619). Elsewhere, although the judicial action is against the administrative action, the results were not known as a definition (Jafari, 2012, Vol. 4, p. 585).

Some other scholars also, after the review of formal, substantial and complex criteria, which is in this relationship, know the “differences, legal compliance and recognizing the right” as the main conditions of recognition of judicial practice (Katoozian, 2010, pp. 102-104). So, as a result of this definition, the authority or entity that is engaged in judicial practice is the judicial authority, and in the absence of any of the three above mentioned conditions, the institution is not a judicial body.

According to some jurists, “judicial authority is a third-party institution, which makes a specific decision for a legal dispute by the application and enforcement of the substantive and formal laws” (Mohseni, 2012, p. 117). Since this definition is more precise, it seems preferable to the former, because in addition to referring to the lawsuit, legal compliance, and recognizing the right, it refers to other cases. First, considering this definition, any dispute is not a judicial review, but the legality of dispute must be essential. Secondly, the third-party or entity, within the meaning of independence and impartiality, is necessary for the judicial institutions. That is why the delegations, boards, commissions, and administrative courts cannot be regarded judicial. Although they resolve

the legal disputes, somehow or another, are beneficiary of dispute resolution. For example, Commission 100 of municipality, despite its independence, is not considered as an impartial institution (Ibid., pp. 118-119). In the foregoing definition, in addition to what was said, ceremonial procedure should ensure the substantive law; i.e., the prescribed and predetermined ritual, which is not set or designed by a beneficiary party, and a third party proceeds the jurisdiction (Ibid., pp. 114-119).

If the concept of separation of judicial and administrative authority is clear, it is necessary that the judicial or administrative authorities of certain religious minorities be examined. According to what was told, it appears that authorities must be judicial, not administrative, because all of the required conditions for the recognition of a judicial body or investigating authority are available for certain authorities of religious minorities:

First, certain authorities of religious minorities are competent to deal with disputes of the recognized minorities, and even if in some cases they deal with topics that include no dispute, there is no fault with their judicial institution. For only with limited jurisdiction to resolve the dispute in some cases, it is enough to be considered as a judicial authority.

Second, the authorities as a third party who does not benefit from the dispute perform its jurisdiction, because the religion of the authority is the same as the parties, and the mentioned authorities have no jurisdiction in case one of the parties does not believe in the religion of the authority. For example, if a Zoroastrian marries a Muslim, authorities refuse the audition. So, if the authorities proceed the disputes over personal status of their religious followers with the followers of other religions, the possibility of this impartiality may be minimum, but with the status quo, such a possibility does not exist.

Third, although the procedure of the authorities is not based on civil or specific procedures that are not listed in Iranian law, this does not mean that any pre-determined procedures and processes does not exist. Over the years, dealing with procedures by the authorities on the basis of certain rules and habits and conventions of the related religions has been formed, which largely indicates the procedure.

Fourth, the decisions of the authorities, at least in some issues and disputes, are based on common and certain rules and habits of religious minorities. They must have compliance with the act of Respect for the Rights of Non-Shia Personal Status in Iranian Territory in the courts, approved in 1933, and the Canon of Hearing the Matters on Personal Affairs and Religious Education of Iranian Zoroastrians, Jews and Christians, approved in 1993.

It should be noted that, in certain authorities of religious minorities, appointment and dismissal of members dealing with disputes is neither by the head of the Judiciary, nor by other officials or administrative authorities who are responsible for appointment and dismissal of judges. Although some higher members of religious minorities are informed to the Interior Ministry, the ministry has no role in their selection, and only their competence in terms of political health, lack of addiction and so on. For this reason, certain authorities of religious minorities can be seen as a judicial system; however, the differences with the judicial authorities should not be ignored.

## 2) Specific references to religious minorities; public or exceptional authority

Now that the class of authorities of religious minorities was determined as judicial, not administrative, it is necessary to determine the judicial authorities as public or exceptional. Public bodies or courts have jurisdiction in all matters and disputes except what law stipulates to be out of their jurisdiction. In contrast, exceptional or specific authorities are the ones that have no jurisdiction over civil disputes and affairs except as provided by law within the scope of their authority. First, in case of doubt, the competence of public authorities must be taken into account, and secondly, unlike the public authorities that in case of any protest only refer to the text that indicates its competence, specific or exceptional authority must refer to the text that indicates its competence in all votes, even if there is no objection (Shams, 2005, p. 80).

According to what was said, specific or exceptional authorities of religious minorities are limited both in terms of the affairs, i.e., personal status and non-litigious affairs, and for the parties, who are limited to religious minorities. Therefore, they are not public authorities, but rather specific or exceptional authorities.

## 3) Certain authorities of religious minorities; judiciary or non-judiciary authority

So far, it was clear that the certain authorities of religious minorities are judicial and exceptional. Now it should be considered that the authorities are either judiciary or non-judiciary. As noted earlier, the appointment and dismissal of members of religious minorities are not specifically addressed within the competence of the judiciary, and they do not belong to the Government. However, it can be concluded that the election of some members of them are carried out with limited supervision of Interior Ministry. These authorities may be similar

to exceptional non-judiciary authorities than judiciary authorities, and the fact that ratification and implementation of the decisions of the authorities are implemented by the Judiciary does not mean their dependence to the Judiciary.

#### **4. The Judicial Results of Creating Certain Authorities of Religious Minorities and Their Decisions**

After familiarizing with the authorities of religious minorities and reviewing their status and nature in Iran, it is necessary to discuss the judicial results of creating such judicial authorities and their decisions. In this regard, according to the credit of the authorities and their decisions, the decline of referring to the courts by minorities and ratification and implementation of their decisions in the courts and law enforcement bodies will be examined in two separate topics.

##### *4.1 Decline of Referring to the Courts by Minorities*

Creating authorities for minorities in Iran and the recognition of their rights as a legal authority in the Family Support Act of 19 February 2013 has important results including: (1) the decline of referring to the courts as the first reference to settle the dispute; (2) the decline of appeal to the courts after the issuance of this decision by the authorities of minorities and discontent of one or both; and (3) the decline of the right to appeal the decisions of the authorities of minorities in court. Thus, the results of creating authorities for minorities will be studied under three headings.

##### *4.1.1 The Decline of Referring to the Courts as the First Reference*

If one of the parties refers to a Public Court without referring to the authorities of religious minorities, in this case, with regard to the nature of authorities of minorities, although the authorities are similar to the exceptional non-judiciary authorities, there are differences with the authorities that give them a unique nature. That is why courts, in a case of filed lawsuit on behalf of religious minorities, must by virtue of Article 2 of the Civil Procedure Code, issue an order not to hear the case, and guide the parties to the lawsuit in their own institutions. The reason for this is that based on the law and what is outlined above, resolving disputes of minorities in family law is exclusively within the competence of certain authorities of them, and this means a decline of referring to the courts to resolve disputes concerning non-litigious affairs and personal status.

##### *4.1.2 The Decline of Appeal to the Courts*

Authorities may make a decision that is not acceptable to one or both parties, and without protesting to the court, may present a lawsuit in public court. In this case, regardless of whether the court refers to the case of one of the parties or not, the best way is not to hear the lawsuit. As a result, in this case, whether to call the lawsuit in the public court as an implicit protest to the vote of the authority or to consider it a primitive dispute, in any case, the rejection of hearing the case before the court will be the only option, because, as mentioned above, the exclusive competence of minority authorities means the decline of referring to the court to resolve disputes.

##### *4.1.3 The Decline of the Right to Appeal in Court*

Authorities of religious minorities may sometimes vote, but, for example, one of the parties does not accept it for any reason and without ignoring the competence of primitive authority, they may refer to the public court as a superior authority to protest. In this case, according to what was said above, the public court has no competence to deal with complaints and must issue an order not to hear the case. The reason is that neither in family law nor in any other law, no institution (like court) has been set for appealing the decisions of the authorities to address religious minorities. This legislative silence in not hearing a protest cannot be compared to the registration institutions, labor law, or alternative dispute resolution councils. The public court is not competent to handle the protests against the decisions of the authorities of religious minorities.

In support of this view two reasons can be raised: a) the competence of exceptional authorities, as their name suggests, are not common and it is special. Therefore, the results and the rules that govern them are not applicable to other authorities, even exceptional authorities. b) By assuming that the results and the rules that govern them are applicable to other exceptional authorities, it is observed that, in authorities, registration, and so on, there is not a single procedure; as if the dealing institution with the protests is the public court, and sometimes a superior exceptional authority. So even the procedure, which the legislator has taken in case of exceptional authorities, and it cannot be applied to the authorities of religious minorities (and based on it, the public court has no jurisdiction to decide on protests against the vote of minority authorities).

So, even if, for example, one of the parties claims that the authority decision is in conflict with the minorities' resources, the court will not have jurisdiction over the issue, because, even in the past, when religious minorities were not a member of the Iranian judicial authorities, the public court used to ask the authorities of religious



minorities. Today, with a recognized authority to their claims, there is no room for the competence of the public court, because the legislator puts the specific issues related to minorities away from the jurisdiction of public courts in any case.

But, if one of the parties complains against the decision by virtue of being contrary to public order and morality, does the court have jurisdiction over the matter or not? In this case, two views are considered. One view is that the public court does not have jurisdiction over issues related to minorities, but still has jurisdiction over a matter relating to public order and morality of the country, and there is no reason for not accepting the jurisdiction of the court in addressing this issue. The reason is that public order and morality are public and are not exclusive to minorities, which is in the hand of the public court. However, although the jurisdiction of the public court in public order and morality of religious minorities seems logical, this view cannot be accepted for the following reasons:

First, if we accept this view, the nature of public court becomes foggy: how does the court, which does not have the primitive jurisdiction to address the issue, has jurisdiction to address objection? This means that, while it accepts the primitive authority of religious minorities (if it does not accept it, there was no reason to investigate the voting), without legal basis, knows itself as a competent entity to decide on objections. Second, we assume that the public court has jurisdiction in this case, how can we convince the authorities of religious minorities to commit to what is contrary to their religious sources. Preventing the decisions contrary to morality and public order or not to implement such votes by the Judiciary are plausible, but the obligation of authorities of religious minorities to change their votes and to vote against their own religious resources do not seem acceptable.

Accordingly, in cases where the judgment is contrary to public order and moralities are authorities, the only solution is to ignore the enforcement of the decisions that in any way are in conflict with public order and moralities, even if they are in full compliance with religious sources or religious minorities.

According to the above, the court cannot be competent authority to handle complaints against the decisions of the authorities of religious minorities. There is no way but to know the competent authorities of objection equal to the higher institutions of the mentioned minorities, with an emphasis on practical procedures governing the religious minorities; and it is the same in practice generally.

#### *4.2 Ratification and Implementation of the Decisions of the Minority Authorities*

According to Article 4 of the Family Support Act, which provides that "... decisions of the higher authorities of religious minorities in the non-litigious affairs and personal status, including marriage and divorce are valid, and are enforced and executed by judicial authorities without due process" leaves no doubt about the ability to enforce and implement the decisions of the authorities of religious minorities; except in the case against the decisions of public order and moralities, in which case the ratification and implementation of the provisions are ruled out. Of course, as noted earlier, the lack of enforcement or non-enforcement of decisions contrary to public order does not obligate the authorities of religious minorities to change their votes and decisions contrary to their religious resources. The decision, without ratification and implementation of the law will have no executive commitment, and the decision of the authority of religious minority, in Iran's rights, is like a natural commitment. However the obligation of defendant to commit to the vote of higher authorities is required and there is no possibility of complaining about the decisions, obligations or guarantees of authorities of religious minorities in Iran's courts.

In support of this view, some scholars state that: "for the non-Shi'a Iranians to follow their personal status and religious rules, two conditions are necessary: first, their religion be recognized... The second condition is that the common habit and rule of religious minorities must not be contrary to public order. So, when religious rules and habits, for example, marrying niece is permitted, since the habit is contrary to public order, it will not be considered valid. But, if the religious principle, for example, requires sisters to inherit equally like brothers, the rule is not contrary to public order, and the court must act in accordance with it" (Almasi & Pishin, n.d., p. 156). However, some know the above comments based on personal interpretation, and by pointing out that Islam recognized the judicial independence and the right of religious minorities, state that even if marrying the niece is not right in Iran's laws, its results like inheritance and alimony should be recognized based on respect for personal status comply with the law (Rajaeepour, 2006, p. 58).

So, the decision of authorities of religious minorities after enforcement like must be implemented like the rulings of the courts. All the principles governing the implementation of the civil laws such as the principle of the immediacy of execution, the principle of continuity of operations, and not to delay the execution, and the ban on parties and public authorities to stop the execution, in Articles 34, 24, 30 of law enforcement, the eight provisions of the Civil Code procedure (Rostami & Sepehri, 2010, p. 162) come into force on the decisions of

the authorities of religious minorities. In addition, the law of personal status of non-Shi'a Iranians on the personal status, who are the recognized members of one of the religions listed in the constitution, also must be implemented (Arfania, 2004, p. 56; Almasi & Pishin, n.d., p. 157).

It should be noted, as stated earlier, the use of the word "Higher" on the authorities of religious minorities resulted from the negligence of the legislator, and ratification and implementation of the decisions of the authorities of religious minorities must generalized not only to higher authorities but also to the primitive authorities.

## 5. Discussion

Based on the subjects mentioned, it was concluded that the competence of certain authorities of religious minorities in Iran negates the Iranian courts to handle the mentioned disputes of the minorities. In addition, an examination of the nature related to the certain authorities of religious minorities made clear that the authorities while because of their differences cannot be considered as judicial system, due to their similarities, can also be considered as a member of it, and therefore, an exceptional non-judiciary authority. However the position of authorities of religious minorities is mostly based on expediency, and though there is a little relationship with the Government in the appointment of the members, and with respect to the credit of the legislator known for their decisions, and even to not permit the Judiciary judge the right to alter and manipulate their decisions, the authorities must have finally been recognized as a member of the judicial system of Iran. Of course, due to its own characteristics and assign it to a small group of Iranians. Judicial judgments and not have all the characteristics of a authority. Works of religious minorities as well as the decisions of the authorities is not dissimilar to the work of court rulings. After ratification, the court will have the same effect. The difference is that in the event of opposition to public order and good morals do not come into force.

In this regard, it is appropriate that the legislator with the cooperation of the Judiciary and higher authorities of minorities in the country to shape dealing authorities with religious minorities under a certain system that is based on common and certain rules and habits governing the proceedings of their religion. Then, they should consider a law under the title of Procedure Code for the Authorities of Minorities to guarantee the legal sanctions for the principles and procedures of the trials.

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