

# Ethics' position in the trials by administrative court of justice regarding the hospitals' maltreatment of their patients and staff members

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## ABSTRACT

Law and ethics both pursue a common goal and that is nothing except perfection and felicity of the mankind. As an internal and intrinsic force, ethics can play a significant role in the evolution of the fair management and legislation process. Therefore, the present study aims at investigation of the position of ethics in administrative justice law in respect to the decisions of ministry of health and hospitals' managers regarding the patients and employees' complaints. It is worth mentioning that paying attention to the rights of the hospitals' employees has a significant effect on their performance. The main question of the study is that what are the ethical shortfalls in the law of the administrative court of justice regarding the administrative complaints by the patients and hospitals' staff members? To answer this question, descriptive-analytical method has been used and it was concluded that there are numerous important ethical principles neglected in the law of administrative court of justice and this can be accompanied by inequality and injustice and lead to the dissatisfaction of the patients and hospitals' employees. In the end, suggestions have been made for overcoming the shortcomings.

**Keywords:** ethics, administrative court of justice, equality, fairness

## Introduction

The administrative court of justice' jurisdiction is trial of the decisions and measures taken in the ministries and governmental administrations, including state hospitals and the organizations affiliated to the ministry of health, that influence the rights of the patients, physicians, nurses and the other personnel in the state hospitals.

Observance of the rights of the physicians, nurses and the other personnel of the hospitals, as well, influences the quality of

their performance.

Law and ethics are relatively similar and pursue a common goal. Both of them seek the felicity and perfection of the mankind but their quantities and qualities in actualization of their goals differ and their performance style also is varying and this is the ethics that determines the direction and policy of the law.

Although jurists do not enumerate ethics as an independent source alongside the other resources, they follow the ethical rules and implicitly take it as the legislation criterion.

Thus, the primary question of the study can be proposed in the following way: which of the ethical principles and basics have been neglected in the administrative justice court's laws regarding the rights of the hospitals' patients and employees?

It is assumed that there are many ethical principles and foundations ignored in the law of administrative court of justice in regard of the patients and staff members' rights, including distributive justice, principle of equality, beneficence and so forth the non-observance of the principles of the aforesaid law would not appear pleasant to the general public and will be followed by dissatisfaction.

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## 1. Ethics Definition:

The Arabic term "Akhlaq" [ethics] is derived of "Kholq" meaning disposition and temperament as it is stated in Mesbah Al-Monir that "*Al-Kholq Bi Zammatain Al-Sajjiyyeh*" <sup>[1]</sup> meaning "Kholoq is a virtuous temperament". The definition presented commonly by the scholars of ethics for temperament and ethics is close to that offered by the lexicologists. Abu Ali Moskeviyeh states in this regard that "disposition is an internal human mood that provokes the human beings to perform certain things without thinking and contemplation" <sup>[2]</sup>.

Putting the lexical discussions aside, ethics has been considered to be a science. The late Naraqī states in a definition of "the science of ethics" that "ethics is the knowledge of the evil and virtuous characteristics, the quality of being characterized physically and temperamentally by the life-bestowing properties and getting relieved of the perishing attributes" <sup>[3]</sup>.

As for the relationship between ethics and law, it can be stated that all the topics related to rights and duties are also connected with the ethics as well as the jurisprudential verdicts and regulations hence the Islamic laws that are predominantly drawn on the Islamic jurisprudence. Thus, from the perspective of Islam, ethics and laws are indeed two factors limiting and inhibiting the human behavior <sup>[4]</sup>.

## 2. Position of Ethics in the Laws of Administrative Court of Justice:

### 2.1. Distributive Justice:

Justice is a "known concept to the mankind from the very beginning of his civilization for the establishment of which he has made a lot of efforts. The observation of the nature and history and events and thoughts in the creation made the mankind realize since long ago that the world has not been created purposelessly and pursues a goal and there is an order governing it (Paul Esman, 1951 cited in Katouziyan, 2009, p.35) <sup>[5, 6]</sup>. Human beings, as well, are residing in this organized and purposeful collection and adapted and synchronized thereto. Therefore, everything that is aligned with this natural order is correct and fair. The law is also no exception to this axiom that is laid on the foundation of observation of the various creatures and societies. Therefore, it is through the observation of the "existing things" that the "things that should be" can be discerned <sup>[7]</sup>.

Aristotle divides justice into distributive and commutative with the latter being the equilibrium between the two exchangeable items in a transaction in such a way that one of the two parties cannot become rich at the cost of the other person's poverty or, better said, both of them take equal advantages. Such a concept of justice can be spontaneously attained in the contract but its legal mandate is the compensation of the losses that help the person suffering losses restore to the balanced status and safeguards equality. Conversely, the distributive justice pertains to the appropriation of the wealth and social positions and incorporates the public life and role of government (cited in Katouziyan, 2016, nos.23&27) <sup>[8]</sup>.

Therefore, distributive justice is an ethical principle implying the criterion that the government and the governmental

managers should follow in their dividing of the facilities and privileges as well as the political and economic gains between the citizens <sup>[9]</sup>.

In the trial arena, as well, every individual has the right by the force of distributive justice to have access to justice because accessing justice is equal to the access to the law. This right has been crystalized in the title "the litigation right" which is an independent substantive right.

The principle of fair access to trial is amongst the set of the legal and organizational factors of civil justice in line with the offering of accessible and effective judicial services <sup>[10]</sup>.

According to article 2 of the law on the administrative justice court's trial procedures and formations, passed in 2013, "the court is established in Tehran and comprised of the trial and appeal divisions as well as general and specialized assemblies. The judicial and administrative formations and the number of the court's divisions are determined through approval by the chief justice".

As it was mentioned before, distributive justice means equality of the society's classes and occupations in their enjoyment of the governmental facilities. A distinct example of violation of the distributive justice is manifested when the formations of the administrative court of justice are established in Tehran and the counties lack such an institution since filing of a lawsuit in these formations by the residents of the counties entails costs let alone the distance that has to be taken and the time that should be spent as well as an array of the other difficulties.

To overcome this problem, the law on the administrative justice court's formations and trial procedures has stipulated in article 6 that "to facilitate the people's access to the services of the court, the administrative offices of the court should be established in the justice department or the country's general inspection offices in each of the provincial centers".

But, such a measure cannot resolve the aforesaid problem because the administrative offices are not envisioned as qualified courts for the fair resolution of the lawsuits and have weaker legal mandate in contrast to the administrative court of justice and do not most often cause the plaintiffs' satisfaction and peace of mind hence the lawsuits are more predominantly incumbently sent to the administrative court of justice; the hesitation is also somehow a cause of the plaintiffs' wastage of rights.

### 2.2. Equality and Elimination of Discrimination:

Justice and discrimination are amongst the important ethical topics that have been taken into account by the ethics' scholars and "Equality" is realized as the quintessence of the justice in the today's world. The fair enforcement of the law means that it has to be equally enforced for every rich and poor person as well as for any honorable and ignoble person <sup>[8]</sup>.

Bertrand Russel writes in a definition of justice that "justice includes everything that is known by the majority of the people to be fair" or, in other words, "justice includes a system that minimizes the thing that is generally believed to set the ground for the people's dissatisfaction" <sup>[11]</sup>.

The ethics' scholar have the following definition for discrimination: "it is the difference made between things under

equal conditions and with identical qualifications but the difference has to be normally made under unequal conditions and with non-identical qualifications"<sup>[12]</sup>.

Therefore, as an important ethical principle, justice and equality entail the people's access to the administrative justice system and these authorities should not act discriminatively. Equality before law necessitates the equal access of all the real individuals to the court or tribunal disregarding the claim's ownership and the non-discriminated treatment of them in the entire course of trial. The organizations or the courts should make similar decisions in cases with identical legal and real conditions (and different decisions for the subjects with different legal and real conditions) disregarding the gender, age, race, skin color, language, religious beliefs, political and other perspectives, social origin, nationality as well as educational, social and financial statuses, employment and other situations related to the participation in administrative trials<sup>[13]</sup>. This has been indirectly and insufficiently pointed out in the constitution; however, the legislator has not only taken measures in the administrative court of justice in line with the enactment of the clear-cut and transparent regulations but he has also felt no need for expressing and explicating the subject. Such a negligence of the principle of equality is also evident in the procedures of the court. For example, the sentence no.514 issued at 10/15/2012 by the general assembly of the administrative court of justice can be pointed out.

In the aforementioned sentence, the court has adopted a silent position regarding unjustified discrimination and such a silence has stemmed from the legislator's lack of paying attention in administrative justice court's law to the principle of equality.

### 2.3. Benefaction:

In the Islamic ethical lessons, an emphasis is always made on assisting the weak and needy persons. This important ethical principle is rooted in the divine religions and taking care of the weak has also been the focus of attentions before Islam in the canonical verdicts of the divine religion. Emphasis on benefaction to the poor has been so evident in the religious commands that it has been manifested as a compulsory and obligatory action. As it was mentioned, beneficent treatment of the indigent people is not solely an action originating from the gracefulness and sympathy of the beneficent person rather it is a duty that every person has to carry out. Giving alms, a person would not only perform beneficent actions but also carries out a fair deed. All of the human beings' properties are loans endowed to them by the Creator of the universe that possesses the world and whatever the things therein and a person giving alms and performing charitable actions gives a share of the God's endowments in a fair way to the offspring of Adam<sup>[14]</sup>.

The right to access justice when a patient does not have the necessary facilities entails the right to receive help and legal support. The trial-related expenditures (such as the court and agency costs) should not prevent or weaken the right to file a lawsuit. The legal assistance and support can include provisioning of the gratuitous legal counseling or free of charge agency by the legal communities in the court or tribunal as well as complete or partial coverage of the trial fees<sup>[15]</sup>. Having a

free-of-charge lawyer is similar to the right to have a lawyer but this right is provided to the poor people so as to guarantee that they have the right to be legally presented and advised in the courts<sup>[13]</sup>. Denial of the legal assistance might be viewed as the denial of justice. The distinct feature of a great many of the governments is the supply of lawyers at the cost of government or a legal assistance system by means of which the individuals who cannot afford the costs of legal agency can be helped by the government<sup>[16]</sup>.

Although the possibility of provisioning the facilities of a lawyer appointment for the individuals lacking the financial ability has been stipulated based on act 35 of the constitution, one of the essential gaps in the area of Iran's administrative trial is the non-prediction of an assistant lawyer and legal counselor free of charge. Since the pseudo-judicial authorities and administrative institutions occasionally make decisions featuring important effects and outcomes in the individuals' life and the individuals' lawsuits are sometimes rejected due to their unfamiliarity with the principles and regulations and criteria of the administrative trial as well as their sufficient financial power for hiring a private lawyer after long periods of waiting for the arrival of the trial time, the prediction of the assistant lawyers and supervision on their tasks and performances in this area is amongst the essential tools of fair trial. In line with this, the divisions of the court, as well, can announce the files that need gratuitous legal services so that the lawyers can be required to the participation in the group providing gratuitous legal assistance services as the conditions of their membership in the bar association (the office for fighting narcotics and crimes of the UN, 2014, p.137). Also, the legislator can rule the previous prediction's incorporation of some of the important files featuring important effects and strong consequences on the life of the patients and hospitals' staff members who cannot financially afford the hiring of lawyer through introducing them to the assistant lawyers from amongst the commissioned lawyers.

### 2.4. Providing Assistance to the Weak:

It serves providing of assistance and help to the weak party for creating balance between him or her and the strong violating party in such a way that the weak party can safeguard the actualization of his right and it is considered as the real manifestation of justice as Imam Ali (PBUH) introduces it in NAHJ AL-BALAQHA as the best type of justice (Ahsan Al-Adl E'annah Al-Mazlum meaning the best sort of justice is assisting the wronged party)<sup>[17]</sup>.

It is believed by Russel that "ethics can be moral where the human beings are worried about the others' malicious reactions against their own interests. Based on this theory, a weak person would not perform anti-ethical actions if s/he is wise because s/he sees that the others can trample his or her rights several times more. A person finding the others' force equal to his own would not also perform un-ethical actions because s/he sees that others can take away from him or her the same things s/he has taken away from the others. So, it can be told to Russel that ethics is the thing that can first of all control the strong persons. Based on this theory, the oppression by the strong persons is

not anti-ethical and the thing that was done by Nixon in Vietnam or Middle East is not anti-ethical because he has calculated everything and knows that he has a lot of power and can take away and steal whatever the things he wants; there is no force that can trample his interests. When ethics became conscious seeking of interest, it will be equal for the weak and for the individuals whose power is equal to that of the others but it is different for a strong person. If a strong person ensures that the weak cannot perform any reaction against him or her, his or her oppressions are all ethical and not un-ethical because his or her profiteering is conscious and calculated. From the perspective of Russel, such a person has not performed an unethical action<sup>[18]</sup>.

Resultantly, giving the ministry or hospital managers domination over the patients and staff members is not consistent with the basics of Islamic ethics and the oppression cannot be justifiably criticized no matter who does it and nothing would be decreased of its oppressive nature whether such a suppressive action is imposed by a strong person on a weak person or by a creditor on a debtor; it would not make any difference.

In this regard, there is a principle in the law that implies the necessity of balance between the parties to a claim and it is known as the principle of equality of the arms.

The principle "equality of the arms" is amongst the important components of fair trial. This principle was for the first time applied by the European Human Right Commission in 1959 in an implicit manner and by the European Human Right Court in 1968 in an explicit manner in *Nomoyster Case*<sup>[19]</sup>. One of the elements of the defense right is the principle of equality of arms in lawsuits that indicates the necessity of the equality of instruments and facilities available to the parties to a lawsuit in the course of defending themselves or their claim. Such a situation would be more increasingly unjust in the general and governmental lawsuits that one of the parties is amongst the general law's individuals; in cases that the ministries, organizations and the governmental institutions happen to become one party of the citizens' claims, the aforementioned inequality between the governmental party and the citizen can be vividly observed, especially when the citizen's documents and evidence of claim are under the control of the other claim party and the access to them is difficult for the citizen<sup>[20]</sup>. The criterion "equality of the arms" entails fair balance between the parties to a claim and this becomes possible when the two of them are given a logical chance for oral offering of the file's content under the conditions that they are not left in inauspicious situations in respect to one another<sup>[21]</sup>.

From the perspective of the international laws, the fairness of hearing is conditioned to the actualization of the equality of the arms that is an essential condition. This principle is of a great importance in administrative trials because the parties of the claim are private persons and administrative authorities. This principle guarantees a real person's ability for taking active part in trial parallel to the safeguarding of its fairness. The principle of the equality of arms means that all of the parties should be provided with identical procedural rights (private persons and

administrative institutions) and no right is abused in practice unless distinctions are made based on the law and the objective and justifiable and sensible reasons. The equality of arms entails the lawsuit parties' access to the facilities under identical conditions as well as the presence of the parties during the hearing. The court specialists should be always impartial and the regulations governing the costs should not be in favor of a party. The court should always take measures in line with removal of the inequality. It has to be particularly supervising the administrative jurisdictions and be able to acquire the necessary information for the fair fulfillment of the duties. The court or tribunal should also provide equal access to all of the documents and the necessary information of the lawsuit. The principle of the parties' equality also necessitates the providing of a party with a chance for challenging the entire proofs and documents offered by the other<sup>[15]</sup>. The existential philosophy of assigning the administrative courts to the administrative legal claims is, on the one hand, authentication of the administrative system and the qualifications and duties of the administrative institutions and the general authorities and supplying of the law's governance in the performing of the general affairs and safeguarding of the public and administrative interests and expediencies and, on the other hand, support of the citizens' rights in the relationships between the people and the administrative institutions. One of the flaws in Iran's administrative justice system is the legal non-authentication of the possibility of the governmental authorities' filing of lawsuits against the individuals in the administrative courts and the general courts of the justice department is the qualified authority for trying the claims by the legal individuals against the private or real persons and this same issue firstly causes the issuance of different sentences in similar areas and jurisdictions; secondly, the general courts cannot like administrative courts guard the public interests due to the non-authentication of the administration and the expediencies of the general issues and general management as well as the inability in better supplying of the law's governance for the lack of exact familiarity in them with the duties and authorities of the general officials and institutions. In addition, due to the non-prediction of assistant lawyer and gratuitous legal assistance in the administrative trial system (at least in the important lawsuits and with serious effects and outcomes) for the patients, there is no possibility of effective entreaty for objecting to the decisions and interventions by the administrative institutions and authorities of the ministry and hospitals so equality of arms is faced with practical and legal flaws and problems in regard of both of the parties in Iran's administrative justice system and this necessitates the correction of law in this area<sup>[22]</sup>.

### 2.5. Overtake in Charitable Affairs:

It is evident that overtake in charitable affairs and competition in charitable affairs both point to a truth and they are indeed concomitantly necessary because overtake cannot be done without speedy performance of an action and a person would undoubtedly arrive at the destination earlier in case s/he more rapidly moves towards it.

The instructors of ethics and wayfaring know overtake as the most important necessity that has to be taken into consideration by a wayfarer. It means that when a person determined his or her responsibilities and duties after careful and precise investigations and with no hastiness in recognizing them and made his or her mind to perform them, s/he should take a rapid measure for finishing them before the Satan finds a chance for instigating temptations.

One of the charitable and virtuous affairs amongst the Muslims is establishing peace between the Muslims and eliminating hostility and enmity as it is believed by the ethical scholars that "trial and intermediation between people serves the settlement of the disputes and it is necessary to safeguard the people's security through them so that they can be stopped on the limits thereby to prevent the controversies from spreading" <sup>[23]</sup>.

Jurists, as well, are of the belief that there is no doubt that the primary goal of trial is discovery of the truth and resolving of the hostilities <sup>[24]</sup>.

Judgment, arbitration and intermediation amongst the people are considered as one example of establishing peace amongst the people and it is also envisioned as one of the important principles in a government. As ordered in the holy Quran, establishment of peace and reconciliation between the people is amongst the duties of the divine prophets.

Trial on the sensible time and observance of a reasonable respite in the trial have not been so much important for the legal systems whereas they play distinct roles in the actualization of justice and fulfilment of the rights <sup>[20]</sup>. On-time trial essentially guarantees the support of the parties to a lawsuit in regard of the prolongation of the trial that may harm both the effectiveness and credibility of the courts so the sufficient budgetary resources should be allocated to the enforcement of justice.

Prolongation of trial can contradict the right for fair trial. The entire temporal span of the trial should be taken into account when determining if the elapsed time has been sensible or not. This temporal span can be also generalized to the processes related to the enforcement of the decisions.

The trial process in the tribunal is in a form that it necessitates no presence. On the other hand, the plaintiff has to wait for a while for his or her trial turn to come after which s/he has to see what the other party has to say; then, a judgement can be made and this trial procedure occasionally lasts more than two years.

On the other hand, the large volume of the files and shortage of human workforce as well as the complexity of the administrative claims cause the prolongation of the trial hence contradictory to the ethical principles because prolongation of the trial process means postponement of the establishment of peace and reconciliation between the Muslims that has also been underlined by the scholars of ethics.

## 2.6. Avoidance of Accusation:

The judge should perform his judicial duties without preference, bias or discrimination. If the judge appears biased,

the general public loses its trust in the judicature. Thus, the judge has to avoid anything making his decision appear as having been influenced by the external factors, including the judge's personal relationship with a party or his personal interest in the claim's result. Issuance of a sentence and enforcement of it are preparatory actions for preventing the judge's exit of impartiality, including in the trial process.

In this framework, it has to be especially ensured that the conditions that cause the consecutive performance of various duties in a trial process or in various trial processes and can objectively cast doubt on the impartiality of the judge and prosecutor are prevented from emergence. The enforcement of the justice should be observed. Thus, all of the judicial process has to be held in the form of a public proceeding so that the judges can be prevented from the exertion of their personal intentions and wastage of the rights. One of the proofs to this axiom is a psychological theory that claims the thing expressed clearly and well can take a good position in the human mind <sup>[13]</sup>. Since the process of trying the claims in the administrative court of justice entails no presence, it is subsequently held in camera and this sets the ground for the accusation and suspicion of the judges of the tribunal while the public hearing can cross a line of invalidation on all of these suspicions and the road can be paved to a fair and documented trial which is also endorsed by the ethical principles.

## Conclusion:

Based on the ethical principles, the law of the administrative court of justice was investigated and it was observed that there are numerous ethical principles neglected in this law, including:

- Observance of the rights of the hospitals' staff members and their job satisfaction has a significant effect on the enhancement of their performance hence improving their power of service-providing to the patients.
- As one of the ethical principles, distributive justice means parity of all the social classes and occupations in their enjoyment of the governmental facilities; the establishment of the administrative court of justice in Tehran with counties having no such an institution is a distinct example of breaching the distributive justice because adjudication of petitions in these formations by the patients and the employees of the hospitals in the counties would need spending of a lot of costs and time and travelling long distances and so on.
- Non-prediction of assistant lawyer and gratuitous legal counseling in this area can set the ground for the wastage of the poor patients and staff members who have referred to the court. Thus, according to the ethical principle "beneficent treatment of the weak", it is necessary to provide the indigent parties with assistant lawyers and legal councils free of charge.
- The trial process of the tribunal entails no presence and the large volume of the files and shortage of the human workforce and the complexity of the administrative claims

cause the prolongation of the trial so it can be stated in this regard that such a principle as acceleration of the charitable and virtuous actions has been ignored by the legislator.

- In the Islamic ethical lessons, emphasis has been frequently made on this important principle that a believer should not do something so that the others can become suspicious of him or her but this principle has been also neglected in the tribunal because the lawsuits' trial process needs no presence of the parties in the administrative court of justice hence they will be held in camera. So, this same matter sets the ground for the accusation and suspicion of the judges in the court.
- Based on the ethical principles, uninformed judgement is denounced and it somehow implies the necessity for hearing the lawsuit parties' claims and justifications. Considering the method of acquiring explanations from the claim's parties or the third persons in the court, exertion of the ways of complaining to the sentences issued by the court's divisions and the method of their investigations, issuance of temporary writs as well as the method of trying the claim subjects of the rule on procedure establishment, there are ambiguities and shortcomings in the context of the law that can lead to the contradiction of the correspondence principle and the hearing right.

As it was mentioned before, the law is a set of ethics accepted and welcomed by all because it is consistent with the nature and beliefs of the society members. Hence, the aforementioned ethical shortfalls in the tribunal cause dissatisfaction of the society members that entails devising of strategies for filling these gaps.

### Suggestions:

It is better to explicitly recognize ethics as one of the independent sources of law and offering of an independent field of study in the law faculty under the title "legal ethics or ethical laws" should be studied and explored so that the ethical regulations and principles can be recognized thereby to obtain the criterion and career for enacting ethical regulations looking pleasant to the general public.

Since ethics feature stability and general foundations, they can be independent sources for the enactment of the administrative regulations and set the ground for the reduction of the discrepancies.

The legislator's paying of attention to the ethical principles and foundations enables the approval of the regulations that can be simply accepted and welcomed by the society.

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