



Introduction, Critique and Review of Ain al-Doulah's "Judicial Law"

Mehran Maghami¹ | Reza Kianinia^{2*} | Ghafar Pournabakhtiar³

1 Ph.D Candidate in Islamic History, Islamic Azad University, Shushtar branch, Iran

2 Assistant Professor at Islamic Azad University, Shushtar branch, Iran

3 Assistant Professor of Islamic Azad University, Shushtar Branch, Iran

* Corresponding Author Email: rkianinia52@gmail.com

Abstract

Iran's judicial system in the Qajar era, the continuation of a long-standing historical tradition, was based on the two pillars of the Qur'an and the Sunnah (Shari'a court) and the common customs of the society (customary court), and the judicial institution with the separation of Sharia and customary jurisdictions was a continuation of the institutions of the Safaviyeh era. Between the establishment of the Qajar government by Agha Mohammad Khan e Qajar (1210 AH) and the issuance of the constitutional decree (1324 AH), several judicial laws were prepared and put into effect, which can be considered as a kind of historical context for the development of the judicial laws of contemporary Iran. One of these laws is the "Ain al-Doulah's "Judicial Law" which was prepared and compiled by the order of Muzaffar al-Din Shah Qajar based on the Ottoman laws and was published in the official government newspaper on 19 Jumadi al-Awl 1324 on the eve of the victory of the constitutional revolution.

This law was published for the first time in "Iran Newspaper" and later Nazem-ol-Islam e Kermani mentioned it in his book "Tarikhe bidariyeh Iranian". Except this, there is no mention of this law in any of the historical sources and reports, and perhaps the most important reason for this is the non-acceptance of it by the constitutional leaders and the people. Therefore, the Ain al-Dawlah's law, despite its content, has not received the attention of writers and researchers of the Iran contemporary history. Meanwhile, in the process of evolution of judicial laws of this period, this law and its role and place should be considered.

In the present work, by using the authentic sources of Qajar history, by introducing judicial laws in the Nasri period in brief, the contexts of the formation of the Ain al-Dawlah judiciary law is expressed and briefly the text of this law is reviewed and its various sections, clause by clause, with an overview at the subsequent judicial laws and The Ottoman government judicial laws has been criticized. The importance of this research is that the law of Ain al-Dawlah is the first detailed example of Iran's judicial laws, which was prepared, edited and published in a government publication at least 5



years earlier than the law "Principles of Judicial Organizations" of Mirza Hasan Khan Moshir al-Dawlah.

The question is, what was the law of the Ain al-Dawlah judiciary and why was it not liked and accepted by the intellectuals and freedom seekers and was immediately opposed by them? The main hypothesis is that the revolutionary people and their leaders, without thinking and carefully considering this law, and simply because of the authoritarian background of Ain al-Dawlah and her government agents, have quickly opposed her judicial law. Using the primary sources of the history of Iran's constitutional revolution, the author of these lines has criticized the Ain al-Dawlah Law of Justice and its principles and materials, and presented the causes and factors of its non-acceptance.

The results of this research show that this law had nothing to say about the types of courts (general, private, commercial and military), and the amount of their powers, the types of petitions, the conditions for selecting judges and promoting their rank and position, and controlling their performance and other members of the judicial system, and limiting the power of commanders and princes and local influential powers such as super landowners and clergymen. Also, he did not mention the verification of the validity of people's complaints, and finally, he did not offer any solution. Since the Ain al-Dawlah Law of Justice was prepared and published in great haste and to gain the satisfaction of the people and scholars, therefore, numerous deficiencies were observed in its form and content. The limitation of time, the lack of evolution of the judicial system, structure and laws, and modeling and copying from others, regardless of the cultural and social contexts of Iranian society, can be the most important causes and factors of its deficiency.

Although many of the elites and intellectuals of the Iranian society of that day were aware of the issues, problems and challenges of Iran's judicial system, but it seems that in that limited period of time, from the publication of the Judicial Law to the sharp reaction of the revolutionaries, they did not have a clear and correct analyzing and understanding about the content of this law. While the majority of the common people of Iran, on the one hand, witnessed the injustice and violent behavior of the government and statemen like Ain al-Doulah and his agents every day, and on the other hand, they also experienced the ineffectiveness of the previous set of judicial laws. They were sure about the imminent victory of the revolution and had bigger demands in mind. On the other hand, perhaps the society's intellectuals also realized its form and content defects at the same time! Therefore, the reaction of the revolutionaries (leaders and people) with the law of the Ain al-Dawlah judiciary, in the completely inflammatory conditions of those days, was more due to the revolutionary passion, the desire not to compromise with the government and in order to continue the movement and keeping union, preventing stagnation and not based on a careful study, review and accurate knowledge of that law, so the law of Ain al-Dawlah was not noticed by the majority of revolutionaries.

Key words: Justice Law, Constitutional Revolution, Ain al-Doulah, Ministry of Justice, Courts of Justice.

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