

Position of Electronic Notification in Iranian Law

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Abstract: Looking at Islamic jurisprudence, we can see that the effect of notification is more addressed than notification itself and from past Jurisprudences, which had addressed sentencing in absentia more that is the effect of notification itself, it can be concluded that they have passed through the same way of predecessors and have not provided any view regarding the notification itself.

Nowadays, with the proliferation of lawsuits in court and costs notification can have, including time waste and prolongation of procedure, it can be said that common tools such as using paper and messenger do not have the necessary efficiency and modern tools of technology should be used in order to facilitate this effort which one of this tools is using electronic notification. But the question which remains unanswered in this regard so far is that, electronic notification fits in which category of notifications: Actually or lawfully notification. Current procedure code is silent in this regard, and legal doctrine also has gone through both ways as some knows electronic notification as kind of legal notification and others as a kind of actual one. But considering the progress of modern society towards the use of electronic modern tools, it seems the latter view is preferred.

Key words: Notification of judicial documents, Electronic notification, Prolongation of procedure, Leveraging and abuse

Introduction

Definitions provided for notification, at a time when modern means of electronic communication had not yet emerged in the area of law, was considered exact and without objection definitions but now, considering the use of electronic tools in notification of Judicial documents and actually electronic notification, these definitions are not comprehensive any more as in electronic notification paper is not used anymore then as you know, many legal documents which are notified in this way are not considered formal. Incomprehensiveness of offered definitions by lawyers is certainly due to that Electronic method of notification judicial documents has emerged newly. This kind of notification, which is used more commonly today and has many supporters among different legal systems, has various benefits and has solved a lot of problems governing in notification area.

Notification literally means to convey, delivery and passing a letter or a message to someone (Abid, Hassan, Abid Persian dictionary, vol. 1, p. 73)

The idiomatic meaning of notification does not far away of its literally meaning. Law professors in different definitions from notification, has provided a term which some of them are mentioned as fallaw: " notifying of every legal message to its audience through papers which are called judicial papers"(Karimi, Abbas, Code of Civil Procedure, P.103) or some other jurists has defined notify as " Informing the audience of provisions of judicial paper according to legal formalities" (Shams, doctor Abdullah, Civil Procedure Code, Vol. II, p. 85). "notify means conveying a formal document, whether of the litigation papers, papers of law enforcement or execution of documents in force and so on to specific person or persons with respect to special legal formalities"(Jafari Langroodi, vol. 6, p. 89). Notification is also said to a paper by which a matter is notified. In this definition the emphasis is on the need for judicial papers and paper is known as the tool for communicating judicial documents.

It seems that, the definition of notify as informing and conveying judicial documents to audience or specified persons in the law in a secure and provable manner, is a definition which includes electronic notification too. The law of justice organizations' principles, acted in 1329 AH, is the Iran's first law on civil procedure. From the article 200 to 2016 is discussed about summons and declarations. In this law, declaration has not been defined but as the definition of summons or declaration is mentioned that: asking for a paper or letter by which a person is called to interrogation or court (Abid, P.90). In the A.D.M law, the word "declaration" is replaced by "notification".

In considering this change in terminology in the legislation, it can be said that the lexical meaning of the declaration just includes calling the audience to the court and does not include informing the audience of the declaration from content of a document. It is clear that the concept of declaration is included in the concept of notification as some times papers are notified to an audience of which the purpose is not the attendance of the audience at the court but is only informing the audience of the notification paper's provisions. Therefore, this change in terminology is imposed correctly on A.D.M law.

Notification or notified paper is a specific printed paper by which some issues are notified for protecting the rights of one of the litigants by the officer to another. This paper is categorized in three types based on the aim it has:

A- If notification is to summon one of the litigants or the third person to legal or criminal authorities, it is called summon or declaration letter. In this paper the specifications of the audience, the time and place and the reason of attendance are mentioned such as summon or declaration letter of legal or criminal court or declaration paper of inspection and prosecutors and so on.

B- Notification can be for claiming the right or stating some things regarding the transactions and commitments which are notified formally to a person such as summon or declaration letter or a protest letter.

C- If the notification obliged the audience to do something that is called notice or notice paper (Sadr zadeh Afshar, P.200).

In jurisprudence, rather than being paid to notification, the effect of notification which is a sentencing in absentia has been studied. In some narratives, sentencing in absentia which is as the result of unawareness of the reader or his refusal to attend in the court are known permissible and in some other narratives, it is emphasized on the necessity to listening defenses of the claimant.

Problem statement

It is so many years that we benefit from computers and other electronic communication tools in our daily life and various sciences. Ease of transfer of data and documents via the virtual space safely and in the shortest possible time is the unique feature of the electronic communication tools that its role cannot be ignored in the development of science and administrative relations. The law science is also not excluded and is used of this tool widely and has overcome many difficulties of justice system by relying on it. Advancement of this exploitation in law science together with the development of electronic devices can help significantly to justice system and bring ease in interacting litigants with each other and court and also more comfort and time and cost saving.

Realizing full advantage of electronic means of communication in the science of law is sweet dreaming that every lawyer fostering in his mind. Electronic procedure allows to Litigants and their lawyers to register their suit without the need to go to the courts and be informed of case status at any time of the day. Judicial papers are communicated to them through this system and they will send their regulations for the court. Electronic notification is a part of electronic justice or electronic judiciary and it is the simplest issues that can be addressed in electronic judiciary.

The benefits of using electronic means in law have encouraged developed countries towards taking steps in this regard for many years. In our country, Iran, the necessity of using these tools is widely known And numerous laws in recent years, have recognized electronic notification. The categorize of notification in A.D.M law to actual and lawful notification and the effect these two notifications have, forced us to study this kind of notification among one of these two types by a comprehensive look at the process and function of electronic notification.

In this section a definition of electronic notification is offered first and its necessity is emphasized. In second section, electronic notification and its position in A.D.M law and other regulations are analyzed legally and in third section, electronic notification is studied in the legal system of other countries.

In theoretical analysis of electronic notification fist we study the definition of the electronic notification and then address the necessity and importance of this way of notification. Considering the definitions offered

regarding the notification and also electronic judiciary system and the manners of electronic notification, electronic notification can be defined as:

Electronic notification means notifying judicial documents using the new technologies of electronic communication (Information & communication technology)(ICT) . Electronic tools include internet, fax, SMS and telephone. The definition offered for electronic notification is not different from traditional notification in nature but the difference is in the way is used to notify judicial documents and it is clear that in electronic notification, security guarantees and aspects of proof of notification are important.

Electronic notification allows for procedure to be managed through easier and faster ways. Increasing of the number of claims in the judiciary in one hand and costs of notification on the other hand, justifies the need to use new technologies (ICT). Using electronic notification of the documents during the procedure has important benefits. Experience has shown that Most waste of time and prolongation of the procedure is due to notification of the judicial papers. Therefore, electronic notification of the suit and judicial papers to the reader definitely will cause save of time. The fallowing causes explain and justify the necessity of electronic notification.

1- Preventing the prolongation of procedure

Due to preventing the prolongation of procedure, comprehensive plane of avoiding prolongation of procedure approved by Head of the Judiciary in October 22, 2005. Instruction No.2 of comprehensive plan of avoiding prolongation of procedure is devoted to organizing referral system and branch offices of courts and using standard formats. This Instruction shows clearly that in practice there are concerns about the notification, which sometimes devoted most of the proceedings time to itself, then in this instruction, the tasks of officers who are responsible for notification and how legal papers should be notified have been described. The instruction No.3 of this plan has been enacted in criminal affairs. In article 13 of this instruction, establishment of special units of notification and equipping them has been forecasted. In practice, applying these procedures has been only partially effective in removing the prolongation of procedure. In order to save time and eliminating the prolongation of the proceedings comprehensively by electronic notification there should be more reliable and accurate strategy.

In some cases, especially when the parties are numerous and each reside in different cities or countries, the majority of court time includes the time is spent for notification affair. By applying electronic notification, the task the officer is forced to do within two days for notification, which of course is considerably more due to congestion, long distances and urban traffic, decreases to just several seconds.

1. Avoid incurring the cost to the judicial system : With regard to financial resources, creating and maintaining secure computer systems to take over of electronic notification of the documents, from the first up to the end, is economically justified. The conventional manner of notification is required recruitment and training for notification and legal papers, transportation cost of officers and administrative costs, such as papers and printing of special notification forms. If the of electronic notification of documents replace the old work that was done by court employees, has this important advantage that they can be applied in other occupations of justice who have the responsibility of accountability to their clients and focus their effort on the activities that lead to ease and speed up court's job. Meanwhile, in addition to that electronic notification exempts the judicial system of paying courier cost, can cover a part of arrangements which are done under the name of combating bureaucracy.

(2) Prevention of leveraging and abusing of litigants

Some time, we see that one of the parties claims that Due to the leveraging of a litigant, legal papers are not notified to him. This violation is a subject that is preventable in electronic notification.

Legal analysis of electronic notification

Then this question should be answered that given to the definition of actual and legal notification, electronic notification is actual or legal. As A.D.M law has not been amended yet and has not addressed the electronic notification then we are forced to take a look at legal doctrine to examine this subject. Some jurists, knows electronic notification the legal one and in justifying their opinion are using the definition of actual notification and stated that in electronic notification, the judiciary system which is considered as notifier, is not sure and aware of viewing and informing the respondent of e-mail, SMS or fax as not any receipt is taken from the audience and notification does not actually occur and therefore if the audience does not present at hearings, the notification is done is considered legal due to preservation the rights of the defendant. In this way, the reader has the opportunity of protestation and if not viewing email, does not miss his right for defense himself, which is one of the principles of a fair trial.

In contrast to this view, some of the jurists believed that as internet has not been yet public and even some lawyer cannot use computer and internet then electronic notification is optional and litigants can choose this manner in the time of lawsuit. Therefore employing this system is subject to the consent of litigants and the audience of the notification, then the person who has given his address mail for notification to the jurisdictions, implicitly has committed himself check his mail regularly and notified from the mails are sent to him. In this way, the judiciary has the right to consider the notification as actual notification. Having considered the above views appears that considering the electronic notification as actual one is more correct. The rule of action also confirms the view as when the litigants give their address mails to court it is reasonable to assume that, he has access to electronic devices and can use it as well and so really sees all legal notices and court's papers and if one of the litigants claims that such a notification is legal, he himself should prove the matter (Poor ostad, P.50) and he is obliged to bring justifiable reasons to prove the unavailability or not delivery of the notification.

Conclusion

As mentioned, Iran, like many other countries, has realized the necessity of using electronic devices. In fact, due to extensive claims and urban communities the judiciary and the legislature are forced to use electronic communication tools. In recent years, numerous laws and regulations passed through the Perelman. This is not limited to rules but now we are observing the successful establishment of judiciary's terminal which serves for online dissemination of information.

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