



# The Parliamentary Immunity of the Members of Parliament (MPS) of Iran after Revolution (1978)

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**Abstract:** *This research aims to assess the parliamentary immunity of the representatives of parliament of Iran after revolution (1978). We investigate the causes and factors of this immunity, whether such an immunity weakens the representatives or strengthens them. In fact, the immunity of representatives is the main reason why the members of parliament are not prosecuted due to their beliefs and acts during their delegate tasks. This encourages the representatives to perform their duties because of the fear of the judicial authorities; so the delegate can carry out his tasks correctly such as vote, discussion, reports, researches and defend public rights. It is obvious that the delegate is responsible for whatever he does out of the scope of parliamentary tasks.*

*After the Islamic revolution victory, at first the parliamentary immunity was stated in the form of principle 71. Through the formulation of this principle, it has been stated that the members of parliament are completely free in their opinions and votes and they cannot be prosecuted because of the comments they state in the parliament or votes they make to play their delegate roles. Of course, if a delegate commits an offense, he/ she will be prosecuted but the parliament should be informed of his/her arrest immediately and the investigation or prosecution should be performed in the presence of the selected representative. If a delegate is charged with a non- evident offense, his detention before conviction at the court is subjected to the deprivation of immunity on behalf of the parliament but his trial is held such that it does not interfere in doing his tasks and there is no need to foreclose the court's final judgment execution.*

*To solve the above problem, the author stated this following question:*

*How to specify the immunity of the parliament delegates? In order to answer this, the library and documentary studies related to the parliament were applied as the research method; we found that immunity is an inseparable issue for the members of the parliament.*

**Keywords:** *Immunity, Islamic Consultative Assembly, Policy Making, Members of Parliament, Constitution*

## INTRODUCTION

The author tries to explore the parliament's documents and resources especially the structure of the parliament to specify factors which give the political immunity to the members of parliament. In this regard, these questions are presented: "Which factors govern the immunity of the members of parliament? And whether the representative immunity weakens or strengthens the delegates and parliament? The author attempts to present cases which contain the generalities of this topic.

The parliamentary immunity basically consists of a set of lawful arrangements which covers the parliament delegate and protects him/her against the prosecution or police practices.

In other words, the objective of the immunity is to support parliament delegates against mis-judicial prosecution and to ensure their freedom in thoughts and acts. Indeed, the immunity principle includes delegate's support in the case of committing crimes and also legal violations out of the scope of parliamentary tasks. This principle indicates that the delegate's prosecution in such cases requires the parliament permission. In other words, these offenses should be dealt with in a way that not only the members are protected against prosecutions which disturb the parliaments function, but also they shouldn't be exempted from their offense's punishments. Thus, some particular methods and rituals are considered to deal with such offenses. In the parliament of Iran, at first the parliamentary immunity arouses in the form of principle 71; by this principle the members of parliament vote and comment freely; and the members cannot be prosecuted due to their votes or comments but if a member commits a crime, he/ she should be prosecuted.

Also their arrests and convictions at the court are subjected to the deprivation of immunity on behalf of parliament.

**- A review on theoretical literature:**

Immunity means being secure. The word immune is the past participle of the word "immune" single triad root and it means to keep safe. In legal terms, immunity means exemption of some lawful and legal obligations against some laws. Perhaps this immunity involves all crimes or just includes special ones (Desport, 1994).

In the French dictionary, Robert defines parliamentary immunity as the privileges granted to the members of parliament in order to protect representative independence and duties against any insult to them. In the legal terms dictionary by Dalvez the parliamentary immunity is defined as follows: a privilege which support the members of parliament against any prosecution such that they can do their duties freely (Islamic consultative assemblies' research center, 2001).

**- Research method and framework:**

In order to solve this problem, the author has used the library studies research method and documents related to the parliament; by analysis we found that to overcome the problem of parliamentary immunity which disturbs the parliament and country functioning, we need a more specialized parliament.

- Principles of parliamentary immunity:

- The concept of parliamentary immunity:

The parliamentary immunity is composed of two words immunity and parliamentary.

Parliamentary refers to a set of lawful arrangements which covers the Member of Parliament and protects him against prosecution or police practices. In other words, immunity is implemented in order to support members of parliament against mis-judicial prosecutions or to ensure their freedom of thoughts and actions. It should be noted that this principle does not mean the immunity of punishment; the members who commit offenses are punished just like other members of society (Ghazi, 1993).

**- The principle of irresponsibility:**

In a subset of immunity principle, the interest has been paid to the principle of irresponsibility. In the principle of irresponsibility, the important point is that no representative should be prosecuted due to his/her beliefs and practices during his delegate tasks. This irresponsibility causes the representative to carry out his duties because of the fear of the prosecution by juridical authorities. This issue is stated even in the French constitution in the first article of the act 26. Irresponsibility includes all lectures and acts by a representative in a way that it contains his parliamentary performance such as votes, discussions, reports, researches and practices to defend public rights. The constitution council of France has pointed to the dispensation of this concept in the temporary mission of the parliament members which the government imposes to them.

It is evident that the representative is responsible for whatever he does out of the scope of his parliamentary duties.

**- The principle of untouchability:**

Another title for the immunity of members of the parliament is the principle of untouchability. In fact, this principle includes the support of representative in case of committing crimes and also legal violations out of the scope of parliamentary duties.

If each case happens for a representative and it needs prosecution, the parliament should permit. It does not mean that the representatives are exempt from their punishments, but some special protocols are considered to deal with those crimes by the members of parliament.

In the France constitution, article 1 act 26 also focuses on this topic. This article which had been modified at 1995, subjected the representatives to the parliaments' prior permission; but just this certificate is not necessary in the case of evident crime commitment (Pactet, 2003).

As it is observed this principle has regarded the principle of irresponsibility of the members of parliament explicitly; but the following principles related to the representative untouchability in the case of committing evident and non-evident crimes were not passed by parliament and it is one of the main weaknesses of the principle of immunity.

**Parliamentary immunity as a lawful right or privilege:**

From some jurists' point of view, the concept of right is applied in four different meanings:

1. right means power; like the individual right of his will on property;
2. right means charge; like the creditors right on the debtor;
3. right means freedom; like right of declaration;
4. Right means immunity to which the theorists mention some examples for this right such as right on privacy or delegates' right of statement. The important issue is that the lawful right on the representatives including immunity has been forecasted to supply public benefits (Bulletin, 1987).

Beside the concept of right, occasionally the parliamentary immunity is called a privilege; a privilege which is formed along other legal assurances. This privilege contains features which are considered to distinguish legislative parliament's members from other people by legislator (McGee, 2001).

**- Parliamentary immunity as a representative of a lawful immunity:**

In the discussion of criminal immunities, parliamentary immunity is called a lawful immunity which has been distinguished from other immunities due to its features and legal impacts.

Sometimes the parliamentary immunity is also represented as a prejudicial immunity as a result of which an act, basically identified as a crime by law, faces some limitations and barriers in respect of prosecution due to the agent's special status (Bonsaint, 1996).

**- Parliamentary immunity in terms of temporary barriers of public claim prosecutions:**

The trend of claims' proceedings requires respecting some rules which their correct executions play an effective role in supplying the objectives of criminal policy. Now, what is considered at the very beginning of criminal process is the start of procedural investigation in which the major responsibility is up to the prosecution entity. The prosecutor is at the center of this entity who states the necessity of prosecution and the defendants' position in a preliminary investigation. Then he decides about the charge and crime. In this respect, maybe he does not state some propositions regarding the general rules or present realities or directs them to the non-criminal justice system; but if a charge is imposed, this is impossible except with the prosecutor belief about the ability to charge the defendant and charge proof without any doubt (Samaha, 1996).

In such a situation, the prosecutor prosecutes the defendants by himself or his deputy. And applies the crimes triple elements (mental/ material and lawful elements) (Zanjani, 1994).

If there is not any deterrent element on the way of prosecution, this method is applied. Because in some cases, the prosecution entity encounters some barriers. These barriers are not the same and they have different legal natures. For instance, some barriers such as time lapse/ the closed criminal case and death of defendant

inhibit the prosecution entity; some other barriers such as parliamentary immunity are temporal. After acquiring some legal requirements, the prosecution becomes possible (Ashori, 1997).

Consequently, it is characterized that parliamentary immunity has embodied in the number of temporal barriers of public claim prosecution. So in most countries no prosecution is conducted until the prosecution entity requests for the prosecution of the members of parliament and it does not issue the permission to prosecute its members under special rituals and conditions. In other words, until the time of immunity deprivation, the prosecution of the member of parliament is impossible.

**- The history of parliament immunity:**

Form historical perspective, in practice the parliamentary immunity should be tracked to the ancient Roman empire. As the public right's advocates in national parliaments enjoyed tide and special supports which its analogue can be seen at present (McGee, 2001). But if it is studied formally, parliamentary immunity is rooted from the conflict between parliament, kings and juridical system of England and it dates back to the England parliament meeting at 1777 (Jendral, 1993).

The British parliament acknowledged a resolution which ensures some rights of parliament members. This resolution was named human rights document and it was supported explicitly in its article 9 of the parliament members' actions. Also in France after the revolution 1789, this necessity was formed based on the immunity of some delegates in order to protect them due to the ideas they stated in the parliament (<http://www.ho20.thinkquest>, Hostcenter. Ch).

**- The evolution of parliamentary immunity in legal system of Iran:**

Also in Iran's legal system the need to predict immunity for delegates elected by people was perceived from the very beginning of parliament formations (national consultative assembly and Sena assembly). At first, the parliamentary immunity privilege presented the conditional constitution inspired from western countries constitution. Therefore, the immunity of parliament members has paved its way to the country in the past from countries which their constitutions have been a pattern to formulate conditional constitutions.

**- Parliamentary immunity of representatives after revolution:**

After the Islamic revolution victory, Imam Khomeini in his command on February 4th 1979 appointed the temporary government's prime minister to establish the temporary government in order to govern the nations affairs especially referendum and public votes to elect representatives and to form constituent assembly to enact new constitution. Then to select experts and to formulate constitution, on August 3rd 1979 the public election was held through the country. Finally, constituent assembly of experts, under the name "the assembly to study the final constitution" on August 19th 1979 with 72 members was established. Thus, among different ways to formulate and enact constitution through the world, the Islamic republic of Iran selected the most complete and interesting method with features such as relying on the school and the nations firm support. Indeed, in spite of using one of these two ways: referendum or expert constitution, the nation selected a combination of them. In the third stage, the rules stated in the general meetings of experts consists of predominant islamologists, thinkers and lawyers, were reviewed. In the fourth stage, the final examination and voting were conducted. In the fifth stage, the studied rules were enacted. In the last stage also by holding referendum on 2 and 3 December 1979, 99/5% of all rotes were in favor of this national covenant (Amid Zanjani, 1994).

In this period, at first the parliamentary immunity was stated in the form of principle 61. In this principle, it is stated that "members of parliament are free to state their ideas or to vote" and they cannot be prosecuted due to them. But their arrest should be noted to the assembly immediately.

And the investigation or proceeding should be conducted in the presence of the representative. If a representative is charged with a non-evident crime, his seizure and retention before the conviction at the court, he is subjected to the deprivation of immunity on behalf of assembly, but his trial is conducted at the competent court such that it does not disturb the delegacy duties during the proceeding and the execution of final verdict about him does not need a deprivation. This principle which had been enacted after negotiations

of assembly or change in the format of principle 86 of the present constitution has been faced with challenges; because beside the advocates of this issue, there were some opponents too; although there was also a group who took a moderate way and claimed the parliamentary immunity by following a series of rules and issues. At last, beside these theoretical challenges in the final text of constitution the second part of principle 71 was omitted and its first part was enacted in the form of principle 86 at the 35<sup>th</sup> meeting of the parliament. According to this principle: "members of parliament are fully free in doing their tasks and whatever they say or in their votes. They cannot be seizures or prosecuted due to them. This principle remained intact in reviewing constitution following the review command issued on 1989 by Imam Khomeini.

**- principle 86 of constitution and parliamentary immunity:**

According to the principle 86 of constitution, members of parliament are free in their comments and votes completely and they cannot be seizure or prosecuted due to the ideas they stated at parliament or votes they make to do their duties. Based on principle 86 of constitution "members of parliament are free in doing their delegate tasks such as comments and votes and they cannot be seizure or prosecuted due to the ideas they presented at the parliament or votes they gave to conduct their duties". This principle is usually viewed as a supervisor on "parliament immunity". But about this and parliamentary immunity, some points should be noted:

In the constitution and our ordinary laws, immunity from invasion for members of parliament has not been confirmed and dealing with lawsuits against members has no rituals. And this is done for members just like other persons. But what is stated in the principle 86 considers the prejudicial immunity for the members of parliament. According to this "members of parliament are free to do their duties such as comments and votes and they cannot be seizure or prosecuted for what they have done on their delegate tasks".

The guardian council has frequently declared its opinion about parliamentary immunity. This council has announced such immunity against the constitution and religious during the investigation about several enactments of parliament to create immunity of invasion and to make special rituals to deal with charges imposed on members. Regarding prejudicial immunity and principle 86, the guardian council has presented an interpretive theory in 2001 as follows:

1. parliament proceedings' elaborations to investigate Iran's constitution regarding principle 86 indicate that the immunity doesn't have an Islamic root and all people are equal against right and act of God and anyone who commits a crime is prosecutable and if an allegation against him is presented, the justice system should prosecute it.
2. Several principles of the constitution such as principles 19 and 20, point to the equal rights for all Iranians.
3. Allocation of the subject matter of principle 86 relates to the comments and votes by members at parliament to do the delegate tasks and avoiding the unlawful acts.
4. lack of religious justification for prohibition of prosecution or guilty seizure.
5. Imam Khomeini's view as the leader and supervisor on the formulation of the constitution includes the necessity of avoiding peoples' outrage, compensate it of the parliament and dealing with it by judiciary.

"Principle 86 of the constitution is related to the liberty of delegates in their votes and comments to perform delegate tasks and the commitment of unlawful acts and titles is not included in this principle. This liberty is not against the responsibility of committing crime". This interpretation was done by the guardian council as the interpreter authority of the constitution. Of course, it is lawful and binding. If any criticism is made, it does not negate the necessity of its execution.

Form principle 86, it is followed that if a member of parliament "on the position of doing delegate tasks" votes or makes a comment, they cannot be accepted as evidence for his charge. However, this does not negate the right for people to make a lawsuit against him. Considering this, if any lawsuit is made, this is logically the judiciary that investigates and deals with it and if it rejects the charge in the investigation stage (court), an order for suspension of prosecution or in the stage of issuing the judgement, issues the innocence judgement.

So this is the judicial authority who has to decide whether or not the comment by an accused delegate has been made "on his position of doing delegate tasks". However, at present regarding the legal note "1" article 9 the principle of supervision on delegate's behavior, the decision about this issue is imposed to the supervision board. According to this note "the assessment of the instances of the topic in the principle 86 of the constitution and article 75 of the internal regulations of parliament is up to the board". The supervisory board is a board which has been formed under the mentioned article and it is composed of a member of executives of parliament, a member of article 90 commission, a member of juridical commission and four members of parliament (mps) (Seyed. Mohamed. Hadraji, source: Javan newspaper).

**- The immunity of members of the parliament:**

Considering the important point that the members of the parliament are representatives of the whole nation, so they are responsible for protecting public benefits. Thus to do their best, they need a series of legal immunities in the society (Hashemi, 2007). Also, delegates having this immunity can act freely and make this a defending means (Ghazi, 2009).

**- the parliamentary legal immunity of the parliament members:**

Members of legislative parliament should not be prosecuted and accountable because of their lectures, writings or acts to perform their lawful tasks; because to limit or deprive this right is the breach of legitimate functioning (Dadfar, 1964).

Some practices and lectures by delegates are considered crimes as they being committed by another person. Generally, these crimes include criminal titles, promotion of lies, disturbing public opinion and act against national security. The goal of granting legal immunity to the delegates is that they can perform their tasks freely and about the current events in the country they can express their ideas freely. Another goal of legal immunity is that while delegates do their tasks, they are not affected by centers of power (Ebrahimi, 2002). Because if the votes or comments by a delegate have consequences, he/she prefers not to say anything and be indifferent to the national problems. Hence, to prevent this, parliamentary immunity has been raised (Madani, 1995).

## **Conclusions**

The author has tried to assess the causes and effects of creating the principle of immunity for members of the parliament. Then the author presents the detailed structural drawbacks of the parliament, as imam Khomeini said the parliament is at the center of affairs, so the delegates should be able to maintain its dignity. To do so, delegates should be specialized and use it to enhance the capability of parliament; of course, the author does not target the delegates but he wants to recall the dignity of delegacy to the delegates. Having the immunity should not be used as a means for delegates for their benefit and should not help delegates in spite of helping public.

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