



## Analyzing the Dimensions and Components of the Challenges of Exercising the Duties and Powers of Judicial Officers in the Field of Individual Rights

**Majid Haghighizadeh<sup>1</sup>, Mohammad Reza Shadmanfar<sup>\*2</sup>, Mahmoud Malmir<sup>3</sup>**

<sup>1</sup>PhD Student, Department of Law, Emirates Branch, Islamic Azad University, Dubai, United Arab Emirates.

<sup>2</sup>Assistant Professor, Department of Law, Faculty of Administrative Sciences and Economics, University of Isfahan, Isfahan, Iran.

Email: m.shadmanfar@ase.ui.ac.ir

<sup>3</sup>Associate Professor, Department of Criminal Law and Criminology, Isfahan (Khorasgan) Branch, Islamic Azad University, Isfahan, Iran.

Corresponding Author: Mohammadreza Shadmanfar

### Abstract

Judicial officers, considering the works left throughout the history of Iran under various titles in order to help maintain and enforce the law, detect crime and prosecute the accused, have always had a special place in the governmental and judicial system. Creating security, establishing justice, social order and discipline, preventing crime, identifying the factors and conditions that lead to the occurrence of crime, and increasing the confidence and trust of the members of society depend on the positive interaction of judicial officers with the judiciary. The implementation of the criminal justice system, and at the forefront of it, judicial officers and prosecutors, intersects with the restriction of the rights and freedoms of individuals. From prosecution and arrest and interrogation and notification and investigation to the execution of the verdict, it directly conflicts with individual and public rights. However, despite the importance of the role of judicial officers in this field, there are challenges; for this purpose, in this study, using a descriptive-analytical method and with the aim of examining these challenges, the question was raised: "What are the challenges of exercising the duties and powers of judicial officers in the scope of individual rights?" In the legislative discussion, the legislator has not mentioned the right to remain silent. It has also not included some important issues, such as explanation of the charges and the right to access a lawyer, in Article 63, even though this issue is one of the most important defense rights of individuals under surveillance. Another challenge in this regard is the lack of attention to training officers and making them specialized. This issue arises from problems such as parallel work and similarity of duties, lack of unity of command, and the existence of multiple information centers, which affect the human dignity and rights of the accused. These challenges include the inadequacy of police resources and facilities to the volume of cases, the lack of specialization and the judicial system's focus on the individual, the weakness or inefficiency of the scientific discovery method of crimes, the lack of modern tools and equipment for crime detection, the accusation-centered and confession-centered culture that dominates the behavior of officers, and the prioritization of expediency over individual rights. And the solutions to deal with the challenges of exercising the duties and powers of judicial officers are to provide experienced human resources and facilities and equipment, cooperate and coordinate with the responsible agencies, and use the experiences of other countries.

**Keywords:** Judicial officers; individual rights; guarantee of criminal execution; guarantee of nullity execution; education.

## Introduction

The importance and necessity of conducting research stems from the fact that combating crimes and maintaining social security is one of the most fundamental duties of judicial officers, and the implementation of these duties and responsibilities must always be accompanied by the preservation of human dignity and inherent value, respect for legitimate freedom and citizenship rights. Judicial officers are of particular importance due to the duties and powers entrusted to them. The importance of the measures is because the first encounter of legal authorities with committed crimes is usually achieved by judicial officers. And the initial cornerstone of a criminal case is carried out by judicial officers, so that the actions of judicial officers can pave the way for judges to implement justice and, conversely, divert them from this path. In fact, judicial officers are the decision-makers of judicial cases and judicial authorities are their decision-makers, and the wide range of duties and powers of judicial officers has caused the issue of freedom and security of individuals to be threatened and violated; However, the generalization of the legislator and the need for interpretation in conceivable instances can lead to a violation of the dignity of individuals. Therefore, this fact indicates the necessity and importance of conducting this research. Also, today, the strategic principles of criminal law and especially the human-centered standards of criminal procedure, in the legal systems of many countries, have the same validity as the principles of the constitution, and by considering them "fundamental", the legislators have blocked the way for any violation or weakening of their effectiveness. If the rules of procedure are cruel and arbitrary and allow the government and law enforcement authorities to use arbitrary and tyrannical methods and measures, they will lose their effectiveness and political and moral legitimacy. Therefore, among the humane standards of criminal procedure is the right to a fair trial and the necessity of granting defendants this right and guaranteeing it by judicial officers. However, judicial officers face many challenges in observing these standards that have not been examined in any research so far. Given that this research attempts to examine these challenges and provide a solution to deal with the aforementioned challenges, it is innovative.

## Theoretical foundations and research background

[1], in his book entitled "Judicial Officers", tries to examine issues such as; the principles governing the professional behavior of bailiffs, the recognition of bailiffs, the duties and powers of bailiffs, the responsibilities of bailiffs, and the legal protection of them, and from this perspective it can be a guide for us. However, this research does not mention anything about the challenges of exercising the duties and powers of bailiffs in the scope of individual rights, and from this perspective it is different from the current research. [2], in his book entitled "Professional Ethics of Bailiffs", first mentions the foundations and concepts of the above subject in terms of the importance of professional ethics in the profession of bailiffs, explains the approach to the knowledge of professional ethics, and deals with a historical report on the literature on the professional ethics of bailiffs. Then the author evaluates human resource ethics in terms of the moral competences of bailiffs, their moral responsibilities, and those who receive services from the profession. At the end of the article, the ethics of processes, including the process of receiving a complaint, the process of the defendant's death, the process of arresting the defendant, etc., are reviewed. The process of escorting the defendant in professional ethics is considered one of the prominent topics in this work. This research on the study of the duties of judicial officers can be our guide, however, this research does not mention anything about the challenges facing judicial officers, and from this perspective it is different from the current research. [3], in their research entitled "Specializing Judicial Officers: A Step Towards Contractual Criminal Law", state; As officers who are on the front lines of the fight against crime, judicial officers play an important role in the implementation of criminal justice, because they are required by law to take action after a crime has occurred (in obvious crimes without the need for an order, and in non-obvious crimes with an order from a judicial authority) and to detect the crime, pursue and arrest criminals, interrogate them, and collect evidence of the crime. All of these actions are of particular complexity and importance. Therefore, having the necessary specialization is a prerequisite for carrying out this mission, especially regarding the manner of interacting and talking with the accused, which is considered the most

important part of this sensitive mission. This article, by stating the definition and goals of contractual criminal law or consensual justice, states the reasons for the necessity of specializing officers to achieve it. Then, in a practical way, it will state how to review the structure of officers and specialize them (by mentioning the types of officers and the problems existing in the current situation). This research on why it is necessary for bailiffs to be trained can be a guide for us. However, this research does not state anything in the field of individual rights and from this perspective it is different from the current research. [4], in his research entitled "Requirements for Training of Bailiffs with Emphasis on Observing the Defendant's Defense Rights", states; Bailiffs have powers and responsibilities in performing their duties and tasks, which require sufficient familiarity with substantive and formal laws and regulations in order to properly perform these duties and tasks, powers and responsibilities, which is possible in the absence of familiarity and knowledge of laws and regulations. The mission and missions of bailiffs do not reach their destination and do not neglect their intended goals and objectives, and this is not possible unless bailiffs have received the necessary public and private, scientific and specialized training regarding this matter, with respect to specific agents. Fortunately, the Criminal Procedure Code approved in 2013, which has addressed the issue of public and specialized training of bailiffs in various cases more than previous laws. This research aims to measure the level of training of judicial officers in the proper execution of assigned duties and the protection of the civil rights of the parties to the lawsuits, especially in the new Criminal Procedure Code. The main question is to what extent does the scientific and specialized training of judicial officers play a role in the proper execution of the officers, and also the new Criminal Procedure Code emphasizes the issue of training. The present research, in terms of its purpose, was completely an applied research and its contents were used and collected from documents, books, articles, and various sites. The results of the research show that general and specialized training completely equips judicial officers in the execution of assigned duties and tasks, and it is necessary to give more sensitivity to this issue in the judicial organization, and it is necessary for all officers to be familiar with their missions, responsibilities, and duties, and also to pay special attention to the acquisition of specialized sciences at different levels of the judicial organization so that the relevant organization can achieve its goals. The findings of the study indicate that the police, as one of the elements and pillars of the criminal justice system, are at the forefront of the criminal process and play a very sensitive and fundamental role in the preliminary investigation stage. They are always faced with many concerns in conducting investigations and detecting crimes, which they must be trained in various fields. Among the most important of these concerns are cases where police missions intersect with the defendants' defense rights and officers must prioritize one over the other. That is, where success in carrying out police missions coincides with the violation of the defendants' defense rights, they must inevitably choose one path: either achieving success in their assigned tasks or respecting the defendants' legal rights. This study can be a guide to why officers need to be trained. However, this study does not address individual rights, and from this perspective, it differs from the current study.

,[5]in his research entitled "Challenges and Practical Mechanisms for Respecting the Right to Silence in the Interrogation Process of Judicial Officers", states that the most important mechanisms for respecting the right to silence during judicial officers' investigations, such as compiling a charter of the accused's rights and a charter of ethics for judicial officers, focusing on evidence that is centered on the crime instead of confession-based, standardizing the behavior of interrogators and continuous monitoring and evaluation, invalidating some evidence obtained through illegal methods, equipping judicial officers with new and scientific methods for collecting physical evidence and creating the necessary information and technical platforms for discovering crimes, reviewing the judicial officers' reporting system and making them more specialized, have been introduced in order to identify the basis for creating a balance between concerns related to identifying and arresting defendants and ensuring that they enjoy a fair trial. At the same time, the most important challenges and obstacles in this field have been stated to be the lack of police resources and facilities in proportion to the volume of cases and the lack of specialization, the weakness or inefficiency of scientific crime detection methods, the lack of modern crime detection hardware and equipment, the accusation-centric and confession-centric culture that governs the behavior of officers, the silence of professional criminals, the delay of proceedings, the deviation of the judicial process, and the inability to effectively deal with crime. Recognizing the challenges can, to some extent, provide the necessary

foundations for the effective implementation of the new Criminal Procedure Code by officers. This research can be a guide in examining the challenges and practical mechanisms for observing the right to silence in the interrogation process of judicial officers. However, this research does not state anything about the rights of the accused other than the right to silence, and from this perspective it is different from the current research.

[6], in a study entitled "The Activity of Public Police Prevention Departments in Preventing Child Delinquency" at Miklós Rómeris University, considering the legal provisions, the performance and activities of the social police department of the Káns department and the results of sociological research on the prevention of child and adolescent delinquency are evaluated and measured. In this study, in response to the main question "What are the factors affecting the performance of the public police in dealing with child delinquency?", he conducted the research using a field method, and the results of the research indicate that if public prevention of juvenile delinquency is carried out, this type of preventive activities will be welcomed and approved by the public. In any case, the efficiency and effectiveness of these measures are largely reduced by the influence of some factors. High workload, lack of time required to carry out qualitative measures, shortage of staff and financial resources, insufficient cooperation of social institutions, weak local participation, deficiencies in the quality of updating of performances, insufficient wages in relation to the workload and, as a result, reduced motivation of police officers are among these factors. The relevance of this research to the present study is that it focused on the prevention of child delinquency and the factors affecting prevention.

### **Method under investigation**

The research method is descriptive-analytical and the method of collecting information is library-based, and the tools for collecting research information are records and databases, which include: translation, summarization, direct and indirect quotation. It should be said that since the research method in the present study is descriptive-analytical and does not rely on statistical data, an effort has been made to analyze the data using the logical reasoning method, which is the result of rational thinking and reasoning in existing legal research and sources, to achieve the desired outcome.

### **Sources and principles of observing the individual rights of the accused and the victim by judicial officers**

#### **Examining the concept of individual rights and its types**

##### **Individual rights:**

According to the definitions given of rights, individual rights should be defined as a specific type of right, but some have taken individual rights as synonymous with the meaning of rights in general and have stated: In order to regulate the relations between people and maintain social order, rights are established, recognize privileges for each individual over others and grant him/her a specific ability, which is called rights and is also called "individual rights" [7].

##### **Types of individual rights:**

Different analyses and classifications have been made of individual rights, which despite their diversity, have a close semantic relationship. These classifications, by considering the individual as entitled to realize these rights, have obliged individuals or society and the state as the ones obliged to observe the standards or to take action.

The most famous of these divisions is the Hofield division, which is used today by most philosophers as a framework for analyzing these rights. According to Hofield, the term individual right can encompass four types of legal relations [8].

##### **The concept of bailiffs and their types**

In this speech, the concept of judicial officer is first examined in two paragraphs, and then the types of judicial officers are discussed.

**Judicial officers:**

"The word judicial officer is derived from the root of the word "zabd" and literally means "keeper, preserver, ruler, governor, and inspector, and one who governs a city on behalf of the sultan." [9] Therefore, a judicial officer is a person who has many powers in various aspects, including executive and financial factors, and is the guardian of the security, welfare, and order of his place. [10] In the book Terminology of Judicial Officer Rights, it is stated as follows: "The block was divided into several districts and an office was established for each district as a district office, and the head of that office, who was the representative of the Ministry of Interior in that district, was called judicial officer or supervisor." This book also states in the definition of judicial police: "Officers who investigate and detect crimes and take measures to prevent them from escaping and hiding" [11].

**Principles of attention and observance of the rights of the accused****Fundamentals of Human Rights:**

The fundamentals of human rights, which are mentioned in international human rights documents such as the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, the European Convention on Human Rights, the American Convention on Human Rights, Articles 8 and 9, as one of the recognized human rights, have become the axis and basis for unifying procedural rules in various fields. According to these principles, everyone has the right to have their case heard publicly by an independent and impartial court, fairly and within a reasonable time, with equal opportunity for the other party to defend themselves. Accordingly, from the beginning of the proceedings until the execution of the judgment, it is necessary to observe certain guarantees for the parties to the case, regardless of whether the case in question is considered civil, criminal or administrative, and regardless of whether the investigating authority is considered a court (in the classical sense) from an organizational point of view. In order to conduct a fair trial, a set of principles must be observed, including: the principle of innocence, the right to have a lawyer, the principle of the public nature of the trial, the right to be informed of the charges, the prohibition of torture, the principle of the independence of the court, the right to silence, and the prohibition of arbitrary deprivation of liberty.

**Religious and divine:**

The most important principles and rules related to the rights of the accused are a common and homogeneous issue between Islamic law and customary law. Islamic law, as an independent criminal system and its reliance on sources such as the Quran, Sunnah, consensus and reason, includes rulings and orders that firmly and firmly guarantee the rights of the accused and, with its orders, lays the foundation of an efficient judicial system along with ensuring security and judicial justice - to protect the life and dignity of the accused - and securing the material and moral rights of the accused. Islamic proceedings, with a style and context different from modern proceedings, are based on a single-stage method in which some of the rights known to the accused in the stages of the proceedings - as is common in the current judicial system - are not conceivable in the Islamic judicial system; such as the right to be informed of the charges and the right to benefit from a lawyer in the preliminary stage; but at the same time, their legitimacy in the Islamic perspective can be proven by citing the sources of inferring rulings. In some proven rights, the absolute relationship between public and private prevails for the accused between Islamic law and customary law. For example, in the issue of appeal, jurists have accepted it in specific cases due to the precision and caution that the Holy Law has considered a condition in appointing a judge, the most important of which is justice and ijtihad; because in this case, there is no room for doubt in his verdict to be appealed, while in customary law, this right is given to the accused without any conditions to appeal the judge's verdict within the prescribed period.

**Social foundations:**

Today, the concept of security and freedom and the observance of justice and individual rights is of great importance. The existence of security is an unparalleled divine blessing that is considered one of the main needs of the individual and society in all aspects of human life, and its development is also the duty of the nation and the state. No school or legal system can consider itself indifferent to the issue of security. Security that oversees the feeling of confidence of individuals against any unconventional action and also removes the mental concerns (feeling of insecurity) of citizens regarding their existence. In the manifest religion of Islam, as a comprehensive and progressive legal system that responds to the individual and social needs of individuals at all times and places, this rule is not an exception, as it is seen by considering religious texts, Islamic rulings and regulations that the importance of security has been studied in all areas. One of the cases of creating social security can be considered respecting the rights of the accused. In fact, creating sustainable and comprehensive security without respecting the rights of the accused and establishing a fair trial in which the rights and freedoms of the accused are respected will never have a chance to emerge. The Islamic judicial system, which is based on the principle of human dignity and respect, as an independent system alongside other judicial systems, includes principles that guarantee the rights of the accused to the highest degree. The most important of these rights include: immediate explanation of the charges, trial without delay, presence in court and defense by a lawyer, prohibition of forced confession, prohibition of torture and harassment and the imposition of inhuman and degrading punishments, prohibition of arbitrary arrest and detention, the right to immediate information about the reasons for arrest and detention, the right to visit, the necessity of preserving the dignity and human character of the accused, the necessity of compensating for the losses incurred by innocent detainees or convicts, etc.

#### **Requirements for observance of the individual rights of litigants in criminal proceedings by judicial officers**

##### **Specific duties of judicial officers in protecting the rights of victims:**

Judicial officers have duties to protect the rights of victims in the three stages of discovery, prosecution, and preliminary investigations, which we will examine in this topic in the form of two speeches.

##### **Protecting the rights of victims in the discovery and prosecution stages:**

In terms of assistance and support, today the victim enjoys a relatively appropriate position due to the harm and loss that he or she has suffered under the influence of criminological findings; because in the past, most of the attention was focused on the accused and protecting his or her rights, and the victim was given less attention. But today, the prevailing belief in criminal law is that in all parts and components of the criminal justice process, the rights of the victim as a vulnerable person should be protected by establishing appropriate rules, and under the influence of this approach, a new science called protective victimology was born and grew. With the birth of a field called victimology in different countries, fundamental developments occurred in the direction of protecting the rights of victims, and it also caused the United Nations to emphasize the importance of the role of victims in the criminal justice process and attention to their rights and interests in its official declaration.

Protecting the rights of victims of crime as the other side of the scale of justice and the other half of the criminal process is one of the important issues that has been addressed in the 1392 Criminal Procedure Law. Ensuring the rights of victims and witnesses and creating the necessary mechanisms in line with the modern judicial system at all stages of the investigation is not only in the pursuit of rights, but also has a significant impact on preventing possible victimization and criminality of victims in the future. In order to protect the rights of victims, the behavior and performance of the police as the first official authority for victim protection will have a significant impact on the type of perception of the victim of the criminal justice system. In fact, the appropriate treatment of officers can have a great impact on creating a sense of satisfaction and security in victims.

##### **Protecting the rights of the victim during the investigation phase**

During the investigation phase, judicial officers have duties towards the victim, which we will examine here.

### **The right to ensure the safety of the victim and her witnesses by judicial officers**

Another right of the victim is to ensure the safety of himself and his witnesses in the criminal process. For this purpose, measures must be taken to reduce the difficulties and troubles of the victims, protect their private lives, and ensure the safety of themselves, their families, and their witnesses when threatened. Finding solutions to these threats is considered another way to respond to the needs of the victims. Ensuring security includes: supporting the victim in confronting the accused, supporting the victim against the accused, and protecting the identity of the victim[12], and the orientation of these measures should be directed first towards the physical health and then towards the mental and emotional health of the victim[13].

### **Duties of Officers in Protecting the Rights of the Accused**

When the accused is placed in the custody of the officers of justice after a crime is discovered, he has a series of rights that must be respected by the officers of justice. In this topic, we will examine the protection of the rights of the accused by the officers of justice in the form of two speeches.

#### **Protecting the rights of the accused in the discovery and prosecution stage:**

The foundation of criminal cases is formed in the discovery stage. Discovery of the crime is the first and one of the most important stages of the criminal trial process; because until a crime is discovered, the cycle of criminal justice will not be set in motion[14]. According to the fifth paragraph under the eighth paragraph of Article 4 of the NAJA Law and the first paragraph of Article 15 of the Criminal Procedure Law of 1378 and the Criminal Procedure Law of 1392, detecting a crime is one of the duties of judicial officers. All officers are obliged to detect a crime. In the event of a crime, in order to restore order to its previous state and compensate the victims of the crime, the perpetrator must be identified; the matter of the crime must be reported to the judicial authority and the criminal must be handed over to the justice system.

#### **Protecting the rights of the accused during the investigation stage:**

The preliminary investigation is an important and decisive stage because the investigation that is carried out in order to protect the rights of the accused must be in accordance with principles and procedures. In the 2013 Criminal Procedure Code, the legislator has included many innovations to protect the rights of the accused. Accordingly, in this article, we will discuss the protection of the rights of the accused by judicial officers.

### **The principle of innocence**

In modern criminal procedure systems, the principle of innocence is considered one of the most fundamental principles governing a fair and just trial because it protects the rights of citizens against certain power-seeking institutions[15].

### **Challenges Facing Judicial Officers in Respecting the Individual Rights of Litigants**

#### **Disciplinary challenges of Article 63 of the Criminal Procedure Code of 1392**

According to this article, violation of the provisions of Articles (30), (34), (35), (37), (38), (39), (40), (41), (42), (49), (51), (52), (53), (55), (59) and (141) of this law by the officers shall result in a sentence of three months to one year of dismissal from government service. Various opinions have been expressed regarding the criminal or administrative nature of the guarantee of the implementation of dismissal from government service. This distinction is of great importance. The most important effect of this is that if the bail is criminal, in addition to the fact that it must be issued after going through the legal steps from the explanation of the charge to conducting preliminary investigations and issuing a warrant for the arrest and summons to trial and holding a trial session and finally issuing a conviction by a competent criminal court, it is also subject to the general provisions of the Islamic Penal Code in terms of its nature, including the provisions on multiple and repeated offenses.

#### **Regulatory challenges contained in other miscellaneous laws**

Judicial officers are individuals who are considered military personnel and, as described in Article 1 of the Criminal Code of the Armed Forces of the Islamic Republic of Iran, are members of one of the military and law enforcement authorities and are engaged in the performance of their duties. For this reason, if they commit a violation contrary to military honors during their professional and military activities, as well as while performing their duties, they will be subject to disciplinary punishment. The Disciplinary Regulations of the Armed Forces of the Islamic Republic of Iran, which include 144 articles and 32 notes, were approved by the Supreme Commander on 20/10/1369. One of the chapters of this regulation is related to disciplinary incentives and punishments. Article 1 of the relevant regulations defines the Armed Forces of the Islamic Republic of Iran as the General Command Headquarters, the Army, the Revolutionary Guards, the Law Enforcement Force, the Ministry of Defense, and affiliated organizations.

### **Criminal challenges contained in the Penal Code of 1996**

In many cases, the law has accompanied the commission of some illegal behaviors by judicial officers and law enforcement officers with guarantees of criminal and law enforcement enforcement due to the sensitivity of their duties and powers. The guarantees of criminal enforcement stipulated in the Penal Code and the Criminal Procedure Code are among the most important guarantees of legal enforcement in this field. This category of crimes committed by judicial officers is classified as general crimes because it is not recognized as a crime in military laws and regulations and no punishment is foreseen for it, and it is not considered military in nature. It is classified as general crimes specifically for judicial officers because it is committed exclusively and if committed by judicial officers. On this occasion, we have tried to examine the crimes resulting from the actions of judicial officers in order to clarify the legal dimensions of these crimes and the ambiguities in some of their legal articles.

### **Criminal challenges covered by Article 7 of the Criminal Procedure Code of 1392**

Despite the legislator's innovation in discussing defense rights and their enforcement guarantees, in some cases these defense rights were not explicitly mentioned, or if they were mentioned, they were not subject to the enforcement guarantees and disciplinary guarantees of Article 63.

### **Civic challenges**

Compensation for losses and damages resulting from the actions of judicial officers is one of the main guarantees of enforcement contained in all laws, especially the Criminal Procedure Code. After examining the theoretical foundations and guarantees of criminal-disciplinary enforcement of judicial officers, we will examine the guarantees of civil enforcement of judicial officers due to violations of the defense rights of persons under surveillance.

In carrying out their duties, judicial officers are responsible for establishing order and security and ensuring public and individual comfort. As a result, they must use all their efforts to achieve this goal in compliance with the law; of course, judicial officers may sometimes go beyond the scope of their duties and cause damage to persons under their supervision[16].

### **Liability arising from unlawful detention:**

Arrest before trial and obtaining a final verdict is one of the clearest examples of deprivation of liberty. It is no secret that the arrest and imprisonment of individuals not only causes financial losses to the detained individual and his dependent family, but also causes mental anguish and great moral and reputational damage to his family members. Before the enactment of the Criminal Procedure Code of 1392, there was no explicit provision in Iranian law for compensation for damages resulting from unlawful detention or imprisonment, although Article 58 of the Islamic Penal Code of 1370 had generally referred to this issue. According to this article, whenever a person suffers material or moral damage as a result of a judge's fault or error in the matter or in the application of a ruling to a specific case, in the case of material damage, in case of fault, the guilty party is liable according to Islamic standards, and otherwise, the damage is compensated by the state, and in cases of moral damage, if the judge's fault or error causes someone's reputation to be tarnished, steps must be taken to restore his reputation. In fact, this article, in



implementing Article 171 of the Constitution, has incompletely and inadequately repeated the provisions of the aforementioned article in ordinary laws.

### **Responsibility arising from torture:**

Preserving human dignity and high values, respecting legitimate freedoms, citizenship rights, and observing Islamic principles and values are among the correct and just actions of the elements of the judicial system. According to the law, not only must convictions be in accordance with legal arrangements and judicial principles and standards, but also the discovery, prosecution of crimes, the arrest of criminals, the investigation and handling of their charges must be based on compliance with the laws and with judicial orders and orders, and on the basis of correct and logical communication and interaction of the components and elements of the criminal process, and the exercise of any personal preferences and abuse of power or the use of any violence and torture must be avoided. In the performance of the legal duties and responsibilities referred to the officers, resorting to violent behavior against the accused and perpetrators of crimes who are encroaching on the lives and dignity of individuals without a judicial order is inevitable and there can be no doubt about its permissibility. For example, acts of violence, such as removing danger and arresting a person who is committing murder or transporting drugs, without a judicial order is logical because killing time and seeking permission leads to murder or another crime and is rationally acceptable, but Islamic criminal law, based on respect for human dignity and honor, has also condemned any kind of harm and harassment against humans. According to the teachings of the Islamic school, inflicting any kind of illegitimate harm and harassment against humans is absolutely and unconditionally forbidden. Article 38 of the Constitution is the most important legal provision regarding the prohibition of torture in Iranian domestic law. This principle has a firm and unconditional position on the issue of the prohibition of torture (Hashemi, 2005: 316) and states: "Any form of torture to obtain a confession or information is prohibited. Forcing a person to testify, confess, or swear is not permitted, and such testimony, confession, and oath are without value or validity." Regardless of the criminal protection and criminalization of the act of torture, the legislator has also ruled on the compensation of blood money according to the legal article. Article 452 of the Islamic Penal Code indicates that blood money is a personal right of the victim against the victim or his guardian, as the case may be, and has the provisions and effects of civil liability or guarantee. The perpetrator's liability is not discharged except by paying blood money, reconciliation, exoneration, and trade-off. According to the article, in the event of torture that is subject to blood money, the bailiff will be held civilly liable. In addition, the accused can claim damages as referred to in Article 14 of the Criminal Procedure Code that resulted from the torture.

Liability arising from pursuit and escape: In obvious crimes, judicial officers have the authority to take all necessary measures to preserve the tools, instruments, traces, signs and evidence of the crime and to prevent escape or hiding and collusion. Pursuit and escape of the accused usually occurs in the context of his escape or hiding. Where a person attempts to commit a criminal act and, in order not to be identified and punished, attempts to flee from the scene of the crime. The legislator has stated in Article 2, Clause A of the Executive Regulations, Note to Article 3, Clause 5 of the Law on the Use of Weapons by Armed Forces Officers in Necessary Cases, that the relevant officers, if they observe the escape of a detainee or prisoner, shall use the available facilities to pursue and arrest the fugitive. In fact, the legislator has tried to specify the limits and limitations of the pursuit and escape permitted by law for judicial officers, and officers must be fully aware of the laws in their area of duty, as Article 2 of the Law on the Use of Weapons by Armed Forces Officers in Necessary Cases states that armed officers, in addition to being physically and mentally fit for the assigned mission, must have training, mastery, and complete familiarity with the law and regulations on the use of weapons.

### **Civil Liability for Shooting:**

Civil liability for shooting is one of the most important issues raised in the field of civil liability for officers. The reason for this is the sensitivity of the issue of shooting and the use of weapons by officers. In this type of liability, we are looking to know when a judicial officer has the right to use a weapon? What are the

conditions for using it and the levels of use of the weapon? The answer to these questions can determine whether the judicial officer is responsible or not? Because according to Article 12 of the Law on the Use of Weapons by Armed Forces Officers in Necessary Cases, officers who use weapons in compliance with the provisions of this law will not have any criminal or civil liability for this.

### **Liability arising from property:**

A- Authorized seizure; If the judicial officers take action to seize the property of individuals according to the law, the said property is in trust with them and the judicial officers' hands in these cases are in trust; That is, in the event of damage to the seized property, the bailiff is not responsible for the damage to the property unless he commits an offense or neglect. In the event of an offense or neglect, the bailiff's hand changes from a trust hand to a guarantee hand, and the bailiff is responsible for any damage to the seized property, even if the defect or deficiency is not due to his actions and is due to the Cairo force. For example, if the bailiff seizes property in accordance with the regulations in cases of stop and search, but commits an offense or neglect in the case of trust property and damage occurs at this time, he is civilly liable. Of course, the ambiguity that may arise in this case is the damage to the property after the offense or neglect by the bailiffs. There is a difference of opinion among jurists on this matter: some believe that the description of trust is irreversible and that the trustee is the guarantor. Some believe that damage after transgression and negligence and during the time of good faith of the bailee does not cause his liability[17].

### **Substantive challenges**

The actions of judicial officers in collecting evidence in visible and invisible crimes are considered the cornerstone of a criminal case. Therefore, identifying the authorities and duties of judicial officers in how to obtain evidence and observe the defense rights of individuals from the beginning of the criminal process, especially the action under observation, is of great importance. A fair and just trial requires that the judicial officer, in addition to collecting religious and legal evidence, observe the method of obtaining religious and legal evidence so that the person's defense rights, which are among the consequences of the principle of innocence, are preserved. Those responsible for investigating and obtaining evidence in the criminal trial process are required to observe the principles and rules that the legislator has foreseen. The principle of legitimacy of the acquisition of evidence is one of the principles and rules governing criminal proceedings, the non-observance of which can render academic evidence invalid. The legislator in Iranian criminal law has briefly and implicitly mentioned the guarantee of enforcement of the non-observance of the acquisition of legal and religious evidence, which criminal proceedings and legal doctrine refer to as invalid. However, fair proceedings and the maximum observance of the rights of defense of individuals required the legislator to be explicit about the guarantee of enforcement of the invalidity of evidence, which unfortunately the legislator has neglected this important matter.

### **Discussion and Conclusion**

Individual rights have various fields and dimensions, attention to which can lead to the reduction of some of the problems of citizenship that are currently being addressed by the institutions in charge of urban affairs. The issue of individual rights, on the one hand, concerns the dignity and status of individuals and the acceptance of their human and social existence, and on the other hand, the development of mechanisms for its consolidation and expansion will not only lead to cultural advancement and growth, but will also lead to a reduction in social, law enforcement, and judicial costs. Among the important functions of law enforcement is the protection of citizenship rights and the attention of citizens to individual rights and duties, the foundations and principles of which are recognized within the framework of the country's official laws as well as general social norms and values. Today, the importance of the role of judicial officers in the police institution as a force that ensures order and security is obvious to everyone. These forces deal directly and indirectly with a large population of people from different economic and social backgrounds and are required to act in accordance with laws and regulations and in line with the orders of judicial authorities to promote order and security; in a way that citizens also feel this promotion of order and security. It seems that the challenges of exercising the duties and powers of judicial officers affect the human dignity and rights of the accused. Providing experienced human resources and facilities and

equipment, cooperation and coordination of the responsible agencies, and using the experiences of other countries are among the executive solutions to deal with executive problems in order to deal with the challenges of exercising the duties and powers of judicial officers. In the Criminal Procedure Code of 2013, special attention has been paid to the necessity of training officers and its methods and observing citizen rights, because with an expert view of the issue in recent years, this policy and planning in training and specializing judicial officers has been considered, such as the establishment of a judicial police formation unit or in the 2013 Criminal Procedure Code, which is considered in Article (30) of training and specializing judicial officers. The explanation of the duties of judicial officers in three stages, discovery, prosecution and preliminary investigations in the trial process, has been explicitly accepted by the legislator in the Criminal Procedure Code. Since this institution, as part of the criminal justice system, plays a decisive role in the formation of criminal cases, it is necessary to take necessary measures in the constitution to protect the rights, dignity and honor of individuals involved in the trial process, including victims, accused, witnesses and individuals not involved in the case. Therefore, it is appropriate for this position to be held by someone who has the necessary competence and competence to guarantee the rights and security of individuals. Public order is a set of legal and legal regulations and mechanisms that the proper conduct of affairs related to the administration of the country, moral protection, security, etc. depends on their presence. Security is also the same peace of mind and confidence that, if established, individuals in society do not have to fear for their lives, livelihoods, and material and spiritual rights. Any kind of disturbance and threat in the field of social security of the country prevents the realization of the noble goals of the Islamic system in various dimensions. The duties of this type of police, which are often referred to as the judicial branch, are stated in the Criminal Procedure Code approved in 1392, and include detecting crimes, preliminary interrogations, preserving the traces and evidence of crimes, preventing the escape and hiding of the accused, and notifying judicial documents and decisions. Also, today, the importance of the role of judicial officers in the police force as a force that ensures order and security is obvious to everyone. These forces deal directly and indirectly with a large population of people from different economic and social classes and are obliged to act in accordance with laws and regulations and in line with the orders of judicial authorities to promote order and security; in such a way that citizens also feel this promotion of order and security. However, due to errors, this issue may encounter shortcomings and the limits of these demands cannot be accurately determined. With this explanation, two main points can be mentioned. As a first point, it should be said that only using powerful forces is not enough and in fact, in order to establish security and order and increase the security of society, practical measures should be implemented to maintain and protect the rights of the people and respect the rights of citizens mentioned in the laws and regulations of the body, without considering other legal components. Otherwise, despair and hopelessness will spread in society. Citizens conclude that their expectations, rights, and demands are ignored, and the criminal justice system ultimately implements its decisions and policies without considering their demands. The second point is that although the criminal justice system has had a successful and positive performance in detecting crimes and fighting violent gangs compared to regional countries, this performance has not been defensible in the area of social security, and this issue affects the positive performance of the criminal justice system in detecting crimes, etc., and their positive performance is not taken into account.

### **Suggestions**

- 1Given that placing individuals under surveillance results in the deprivation of liberty and is an exceptional measure, it would have been better for the legislator to have foreseen the right to object to the order of keeping them under surveillance in the law, as is foreseen with regard to the criminal security order leading to arrest.
- 2The legislator should explicitly refer to all the defense rights of the individuals under surveillance in the surveillance measure in order to prevent self-incrimination by judicial officers; the right to silence is a clear example of this type of right.
- 3Benefiting from the valuable experiences of natural and legal persons working in military and law enforcement authorities and obtaining proposals from the general departments for drafting laws and

regulations in order to eliminate legal deficiencies and reflect the problems of judicial officers and eliminate the relevant gaps.

-4Restoring the authority of judicial officers and explaining their legal status and position to citizens.

-5Grading the judicial officers in terms of their competence to conduct investigations according to the type and classification of crimes, specializing their field of activity, and dividing duties based on their expertise and scientific and practical experiences.

-6Drafting laws that are appropriate to the general needs of society and the legitimate demands of the masses, moving in the direction of universal law, and avoiding the adoption of vague and inconsistent laws. Therefore, it is hoped that the new Code of Procedure, which is currently being drafted, will define the officers in a comprehensive and unobtrusive manner, specify the duties and responsibilities of the officers, and provide the necessary enforcement guarantees so that effective steps can be taken to respect the rights of citizens.

-7The set of Iranian codified laws does not have explicit provisions on crime prevention, especially regarding officers. Therefore, it is suggested that the legislator should pay attention in this regard and approve a set of clear regulations, considering the priority of crime prevention over combating it after it occurs.

8- It is suggested that, to the extent possible and according to the possibilities, the Iranian penal code should be changed in a way that aligns with the new approach to criminal law. Therefore, it is necessary for the legislator to equip itself to fundamentally confront criminals by enacting appropriate laws, taking into account the advancement of technology, science, and the specialization of some types of crime.

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