



## Analysis of the protection of the right to health of prisoners and defendants in Iranian criminal law

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### Abstract

Education and the right to health and public hygiene are interconnected issues that cannot be imagined without each other. According to Article 14 of the Covenant on Economic, Social and Cultural Rights, States have undertaken to take the necessary measures to fully implement human rights education and, if they fail to do so, they will be committing a breach of international obligations. Therefore, considering the importance and position of education in the international human rights system, it can be acknowledged that enjoying other fundamental human rights, such as the right to health and public hygiene, will be possible in enjoying human rights education. The present study was conducted as a case study and the purpose of writing it is to explain the concept and dimensions covered by human rights education in the field of health and public hygiene. The main question that this study seeks to answer is that, given the recent developments in the process of entering this right into the international human rights system, should the approach of states regarding the said right be rights-oriented or treatment-oriented? Our hypothesis suggests that the approach of governments regarding public health and hygiene and its education is rights-based. Therefore, the lack of attention to public health and hygiene education can lead to severe social harm in human societies. Therefore, governments should increase their executive capacities by taking advantage of international cooperation to ensure that individuals in societies benefit from such a right. The research method is descriptive-analytical with the collection of resources.

**Keywords:** Education, right to health, prisoners and defendants, Iranian criminal law, prison regulations and security and educational measures.

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### Introduction

One of the most important fundamental rights of individuals is the right to health. This affects how individuals behave and their ability to function as members of society. This is even more important in the closed prison community. Conditions of imprisonment, by their very nature, can have a detrimental effect on the physical and mental health of prisoners. Also, those who are imprisoned do not lose their fundamental right to the enjoyment of good health, whether physical or mental, and are still entitled to a minimum level of medical care equal to that provided in the general community. In addition to these fundamental rights applicable to all human beings, prisoners enjoy additional protections due to their status. Therefore, this right encompasses all medical services, public health, adequate food, suitable housing, a healthy working environment and a clean environment. The right to health and public hygiene is the right to a system of protection that provides equal opportunity for all members of human societies to enjoy the highest attainable standard of health by governments. Therefore, in essence, all of these rights

can be considered to be the cause of the permanence of human individuality and its absence is the cause of the disintegration of human well-being and health. Therefore, every individual, as a member of human societies, regardless of racial, political and cultural considerations, has such rights and is entitled to them. (1) Therefore, one of the most important rights of prisoners and defendants is the right to their mental and physical health and hygiene. Providing health services to prisoners and defendants is of greater importance, because prisons and detention centers are suitable environments for the spread of many diseases, especially contagious and infectious diseases such as coronavirus, influenza, infection with dermatophyte fungi, hepatitis, AIDS, warts, etc., due to unfavorable conditions such as crowding, violence, lack of light and fresh air, food poverty, and risky behaviors such as unhealthy sexual relations, drug use, and tattooing. (2) Given the importance of the right to health in its absolute form, the importance and necessity of the right to health of prisoners and defendants as individuals who have been removed from the social environment and whose freedom has been restricted can be examined in a special way; which can also have a significant impact on the status of other rights of prisoners and defendants.

Therefore, in this study, we seek to answer the question of what measures have been taken in the field of the right to health of prisoners and defendants in Iranian criminal law, and have the measures taken been able to keep pace with and be in line with global standards? The Iranian legislator has foreseen the right to health of prisoners and defendants in statutory law. In the statutory regulations of Iran, the Constitution and many other laws and regulations, including the Executive Regulations of the Prisons Organization and Security and Educational Measures approved in 1400, have recognized the right to health as a fundamental right for prisoners and defendants and have identified it in their legal system, which has been able to step in line with the global obligations of the United Nations and in line with them to some extent, although it is not enough. Therefore, the government is obliged to consider a comprehensive plan or national policy to realize it and strive to create appropriate conditions for prisoners and defendants to access an achievable standard of health and to provide criminal protection for this right through appropriate policymaking and planning.

With the studies that have been conducted on the subject of this research, the right to health of prisoners and defendants in Iranian criminal law has not been specifically addressed in the sources, but there are several studies on the right to health in general and also on the rights of prisoners and defendants. We will refer to some sources that are more related to the topic of discussion, including the article by Hossein Al-Kajbaf (2013); The concept and position of the right to health in international human rights documents, which examines the content concept and constituent elements of this right and also the position of this right in human rights documents. In a thesis by Saeed Amoli (2019); The right to health of prisoners in the Iranian criminal justice system, this research examines the effects and consequences of the right to health of prisoners on prisoners in the Iranian criminal justice system. Another study, Ali Asghar Farghdan (2012); World Health Organization Mental Health and Prison: Leading Challenges, has reached the following conclusion: In Iranian prisons, there is no proportion between prisoners and prisoners, meaning that the number of prisoners is much higher than global standards, which means that many diseases are transmitted to them intentionally or unintentionally, including mental problems, which is a warning sign for society. After studies, it was found that numerous works have been written on this subject, but none of these works have included all aspects of the issue; however, examining the right to health of prisoners and defendants in a comprehensive manner is one of the innovations of this study. In order to examine the question and hypothesis mentioned and to explain the issue, it is first necessary to explain the necessary concepts, and then the foundations of the right to health of defendants and prisoners in jurisprudence and human rights will be examined. Then, the measures of the legislator and the judiciary in guaranteeing the right to health of defendants and convicts will be examined, and finally, we will conclude the discussion with a conclusion.

**Method and Materials:** This study, using a documentary method and a descriptive-analytical method, examines the measures taken by the legislature and the judiciary to protect the health of prisoners and defendants in prisons and detention centers across the country.

Findings and Discussion: The present study shows that appropriate measures and actions have been taken, including the laws and regulations that the legislature has enacted in this regard, as well as the measures taken by the judiciary, such as granting leave and concessions such as suspension, postponement, discount, etc.

### **1.The concept of the right to health**

The word "health" in the dictionary means to be free from harm, to be free from defects and diseases (3) integrity and health. (4) The term health concept in the World Health Organization is defined as: "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". (5) This definition emphasizes positive characteristics with a significant approach. Health as a right entered the legal literature with the establishment of the global human rights system in the 18th century. According to international human rights standards, all human beings have equal value and should benefit from equal protection and their human dignity and physical integrity should be respected. Therefore, the right to health as an inherent right means that everyone has the right to achieve the highest standard of physical and mental health, and this right includes all medical services, public health, a healthy working environment, a clean environment, etc. (6) On the other hand, although the freedom of individuals who are accused or convicted is taken away; they still have the right to health as a fundamental human right, regardless of any characteristics, including the commission of a crime, and this right should not be ignored. (7)

Therefore, the existence of different dimensions to health, various areas related to health and various factors affecting it have made it difficult to define the said right, and in order to ensure the possibility of a healthy life, governments are forced to take measures in a wide area, some of which require immediate action and others must be realized over time. Nevertheless, the "right to health" of prisoners and defendants is considered the most important desirable condition and dignity of every human being. Various domestic documents have recognized the right to health, including Articles 3, 29, and 43 of the Constitution, the Regulations on the Organization of Prisons and Security and Educational Measures, approved in 1400, and the Circular on Explaining the Rights of Detainees, Respecting Their Dignity, and the Method of Monitoring Detention Centers, approved in 1400, which were approved and promulgated by the Judiciary. The aforementioned right was also crystallized as one of the fundamental rights in numerous and various international documents, including the first international documents. Paragraphs 1 and 2 of Article 25 of the Universal Declaration of Human Rights of 1948, as one of the important international documents, recognizes the right to the health and well-being of the individual and his family in terms of food, housing and medical care and necessary social services... (8) It is also accepted in other documents, including: The World Health Organization of 1948 defines health based on the principles of human rights, as life, complete physical, mental and social well-being and in particular the absence of disease or infirmity, and refers to the achievement of the highest attainable standard of health.

### **2. The Basics of the Right to Health of Prisoners and Accused**

#### **2.1 Jurisprudential Basics**

One of the basic categories that Islam has focused on is health, health and individual and social welfare, which are considered the greatest blessings of God Almighty and man is asked to be grateful for them in order to increase the scope and duration of gratitude. This is why in Islam, the status of health is placed after faith and belief in God the Merciful.

Therefore, the most important fundamental human right is the right to health of prisoners and accused, the existence of which is essential for the exercise of other human rights; every accused and prisoner, as a member of society, regardless of racial, religious, political, cultural and judicial considerations, has the necessary entitlement to enjoy this right. When a state deprives individuals of their freedom, it assumes the responsibility to care for their health, whether in terms of the conditions of detention, their individual treatment or in compliance with the principles of medical ethics that may be necessary as a result of the conditions of detention; Therefore, it is essential for countries to pay due attention to the right to health of

prisoners and defendants and to observe the principles of medical ethics, regardless of the structure of their political system. Therefore, the norms of a large volume of extra-legislative, legislative, and sub-legislative regulations of the Iranian legal system and binding and guiding international documents related to the right to health of prisoners, which have been established in general and specific ways so that prisoners and defendants can also benefit from the right to health as a human right, are evidence of this claim. However, in order to observe the principles of ethics in prisons and detention centers, considering the specific environmental conditions, it is necessary to formulate codified regulations in order to observe the principles of ethics of doctors, nurses, and staff of health and medical centers in prison, because those who are imprisoned and detained do not lose their fundamental right to justice to enjoy desirable health, whether physical or mental, and equality in access to health and medical resources, and they still deserve medical care at least equal to that provided in the general community. (9)

If we make the Quran and narrations the basis and standard of morality in Islamic society and consider the implementation of laws as documented, then we will value the dignity of human beings (there is no difference between men and women) and will definitely consider valuable measures and programs for this group of society in the principles and basis of citizenship rights. Rights such as solitary confinement of women and contact with family, especially with their children, and proper diet that is monitored and evaluated by health officials and maintaining contact with the environment outside the prison can be mentioned. (9) Looking at the Quran and the content of its verses from the perspective of health has been of interest to many health researchers. The Quran considers health as the introduction to human guidance and happiness and in this regard, it presents homogeneous packages in the individual and social dimensions in a wide range, each of which completes a link in the health chain. Packages that, as objective health strategies, can have beneficial results in ensuring and managing human physical and mental health. (10) Social health is one of the emerging concepts that has attracted the attention of scholars in the theoretical and policy fields. Social health refers to the concept of social capital of citizens and institutions of a society. In other words, the higher the communication motives of an individual and the greater the number of lines of connection between the individual and the society, the better the social health of that individual and the society is evaluated. (9) Undoubtedly, human life is the highest value that all human societies have accepted, and this acceptance has been recognized as a right. Protecting this right requires providing prerequisites and requirements, including health, and enjoying health is a guarantee for providing life for every human being, regardless of other characteristics. Therefore, prisoners and defendants also have the right to health as a human right.

## **2.2 Fundamentals of Human Rights**

Human rights as a concept have always been evolving throughout human history and are closely linked to laws, customs and religions; therefore, human rights standards change over time according to their needs and interests (11). Human rights refer to the general privileges that every human being naturally possesses, and governments are committed to guaranteeing these rights to individuals in various ways, including legislation and the provision of effective enforcement mechanisms. This is why the literature governing international human rights instruments is obligation-based in relation to governments and rights-based in relation to individuals (12). The right to health is one of the fundamental human rights. This right is inextricably linked to the "right to life" and the right to a healthy environment, and is tied to the right to health and social security (13). Therefore, health as a human right was first recognized in 1946 in the Constitution of the World Health Organization. The preamble to the Constitution describes the right to health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." (14) Article 1 also identifies "the attainment by all of the highest attainable standard of health for all" as the primary mission of the Organization. It is noteworthy that in 1998, the World Health Assembly adopted the "Health for All in the Twenty-First Century" agenda; this agenda focuses on the basic human needs for primary health care in the areas of disease prevention, control and treatment, and pursues objectives such as education on disease control and prevention, provision of safe and adequate food, safe and hygienic drinking water, maternal and child health care, vaccination and immunization against

infectious and communicable diseases, control and prevention of endemic and local diseases, and provision of essential medicines.

In 1948, the Universal Declaration of Human Rights considered health as part of an adequate standard of living and in Article 25, paragraph 1, it considered "health care" to be among the minimum economic and social conditions for an adequate standard of living, well-being and health of every individual. However, the most important international document in this regard is the 1966 Covenant on Economic, Social and Cultural Rights. The most important international document that fully addresses the "right to health" is the International Covenant on Economic, Social and Cultural Rights of the United Nations. According to Article 12 of the Covenant, member states recognize the right of everyone to achieve and enjoy the highest attainable standard of physical and mental health. The measures that states must take to achieve and fully realize these rights include the prevention, treatment, and control of communicable diseases, as well as the creation of conditions to provide all medical services and care in times of illness. (15) The Covenant considers this right to be a privilege for all people in the world. In the opinion of the Committee, four essential elements of the right to health exist in all its forms and levels: availability (goods and facilities such as sanitation, hospitals, etc.), accessibility, (16) acceptability and quality (17) Acceptability means that all health goods and services must be provided in accordance with medical ethics and with due regard for the culture of individuals, communities and the needs of gender, minorities, etc. (18)

Therefore, regarding the right to health of prisoners and defendants, it can be inferred from this article that; those who are imprisoned or detained do not lose their fundamental right to enjoy good health, whether physical or mental, and are still entitled to additional medical care - at least equal to that provided in the general community.

Article 10 of the International Covenant on Civil and Political Rights also states: "All persons deprived of their rights shall be treated with humanity and respect for the inherent dignity of the human person".

However, the United Nations Principles on Medical Ethics (19) states: "All persons concerned with the health of prisoners have the obligation to treat their patients with a quality of care equal to that enjoyed by other members of the community." In fact, although there are still doubts in some countries about the extent to which human rights apply to prisoners, human rights instruments and treaties are relatively clear that prisoners are entitled to all human rights except those that are expressly denied them. (20) States are therefore obliged to provide prisoners with diagnostic and therapeutic interventions appropriate to their needs on an equal basis with other members of the community. (21)

Similarly, Rule 24 of the Mandela Code of Rules states that: 1. The provision of health care and treatment to prisoners is a State responsibility. Prisoners shall enjoy the same standards of health as are available to all in the community and shall have access to essential health care services, regardless of charge or without discrimination on the basis of their legal status. The Fundamental Principles for the Treatment of Prisoners recognise the right of prisoners to access health care and, in Article 9, state that prisoners shall be provided with appropriate medical examinations as soon as possible after their admission to a place of detention or imprisonment and shall be provided with medical care and treatment where necessary. Unfortunately, however, there have been cases where the transfer of prisoners has been delayed or refused altogether on the grounds of security concerns. As a result, a prisoner, like any other member of society, should enjoy the right to medical treatment and care, and prison authorities are obliged to respect this right. (22)

Prison hygiene is a top priority, as imprisonment in itself is detrimental to the physical and mental health of prisoners. As international instruments clearly state that the punishment imposed on an offender should be the only deprivation of liberty, imprisonment should not involve physical danger or psychological abuse by staff or other prisoners. Negligence in prison management conditions and the provision of health care to prisoners means the creation of health and social problems as a result of contact between the prison and the wider community through staff, visitors and released prisoners.

### **3. Legal and Judicial Measures to Protect the Right to Health of Prisoners and Defendants in Iranian Criminal Law**

Respect for the right to physical and mental health is of greater importance for prisoners due to their more vulnerable status compared to other individuals. In fact, the limited right of states under domestic or international law to deprive individuals of their liberty entails a commitment to protect the health of prisoners and to provide them with medical and therapeutic care when necessary. This issue is all the more important because in the discourse of official authorities, it is mostly marginalized individuals from the lower classes of society who are represented as the majority of the prison population. For example, according to the former head of the country's Prisons and Security and Educational Measures Organization, "nearly 80 percent of those who enter prison live with their families in marginal areas and informal settlements, which causes many diseases." (23) Regardless of the extent to which such a statement is based on scientific data; It should be noted that such a discourse is a kind of naturalization of the existence of diseases in the prison environment. The naturalness of the existence of diseases in prison makes it easier to accept that the physical health of prisoners is at risk. In such an environment, hearing a small news report about the death of prisoners does not arouse much public sensitivity. While, according to the principles and legal rules known in domestic and international systems, improving prison conditions to respect the health of prisoners is the obligation of all governments, and basically, the obligation of prison administrators to respect the right to health of prisoners cannot be ignored with such a justification that supposedly most of the prison population consists of people from the lower classes who enter prison with illness.

However, it can be stated that in Iranian criminal law, the possibility of benefiting from health and medical facilities and care for people in detention centers and prisons should be greater than for other ordinary people. In the meantime, the conditions of these people should be considered more than other people because these people do not receive appropriate and sufficient health and medical care under normal conditions, even in developed countries. (24) In this regard, the legislator and the judiciary should take steps to respect the right to health of prisoners and defendants in prisons and detention centers by enacting appropriate laws and judicial measures. Therefore, we will continue to examine the legal and judicial measures that have addressed and recognized the right to health of prisoners and defendants.

### **3.1 Legislative measures to ensure the right to health of defendants and convicts**

The right to health of prisoners and convicts and the necessity of observing it are part of the social and cultural rights of the people of the country in domestic laws and regulations and need to be given serious attention. Reducing mortality, maintaining health, healthy living conditions, easy access to medicine, financial and credit support related to insurance are among the main rights and demands of prisoners and convicts in the field of health and safety, and the laws and regulations related to these areas must be put in order. In the following, we will examine some of the principles of the Constitution and articles of the Criminal Procedure Code related to the health of prisoners and convicts.

Therefore, Article 39 of the Criminal Procedure Code takes into account the respect for the human dignity of defendants and prisoners and prohibits and punishes any form of insult to the dignity and honor of prisoners. (25) The aforementioned principle prohibits mistreatment and disrespect towards defendants and convicts. (26) Therefore, the right to health is one of the human rights that is of particular importance today in the laws of countries, especially Iran, the international community and international documents. Historically, it has been stated and declared as a principle in the constitutions of many countries in the world. (27) In paragraph 12 of article 3, article 20, article 21, paragraph 1 of article 43 and article 29 of the Constitution of the Islamic Republic of Iran, the right to health services, treatment and medical care for everyone is recognized as a fundamental right. A brief look at these principles of the Constitution indicates that paying attention to the health and hygiene of the people of the society is one of the most important human rights that the legislator has paid special attention to and recognized, this issue provides the necessary basis for the implementation of the law and providing its means through the Constitution.

Article 29 recognizes and declares the right to health and medical services for everyone: "Social security in terms of retirement, unemployment, old age, ... the need for health services and medical care in the form of insurance, etc. is a universal right." These two principles indicate the observance of health services and care for prisoners and detainees, especially in specific and contagious diseases. Therefore, it can be said that the

main basis of the right to health in national law is "human dignity." This right is emphasized in paragraph 2 of Article 6 of the Constitution.

Today, a significant part of penal systems create numerous laws in their laws on the observance of the rights of prisoners and defendants, and in Iran's legislative criminal policy, special attention has been paid to the health of prisoners based on the Criminal Procedure Code. Therefore, Article 501 of the aforementioned law stipulates: "The execution of punishment shall be postponed in the following cases by the judgment and order of the judge executing the sentences: a) During pregnancy; b) After childbirth for a maximum of 6 months; c) Breastfeeding period until the child reaches the age of 2; d) Execution of the punishment of flogging during menstruation or menstruation". Also, Article 502 of the same law states: "If the convicted person suffers from a physical or mental illness and the execution of the punishment causes the exacerbation of the illness or delays his recovery, the judge executing criminal sentences shall postpone the execution of the punishment by obtaining the opinion of a forensic doctor until the patient recovers. If in Ta'zir crimes there is no hope of the patient's recovery, the judge executing criminal sentences, after determining the convict's illness and its impediment to the application of the punishment, shall, stating the reason, send the case to the authority issuing the final verdict for conversion to another appropriate punishment, taking into account the type of illness and punishment". According to the note of this article in Ta'zir crimes, if the convict becomes insane after the issuance of a final verdict, the execution of the sentence shall be postponed until he recovers; except in the case of financial penalties that are collected from the convict's property; And according to the note to the article, in the case of insanity, a person sentenced to imprisonment or a person who is in prison due to non-payment of a fine shall be kept in a mental hospital or another appropriate place until he recovers, and these days shall be counted as part of the term of his sentence (Article 503). And if treatment of a person sentenced to imprisonment outside of prison is necessary, the judge executing criminal sentences shall determine the period of time required for treatment according to the opinion of the forensic physician and shall postpone the execution of imprisonment by obtaining appropriate security. If the convicted person does not provide appropriate security, his treatment shall be carried out in a hospital under the supervision of bailiffs and the period of treatment shall be considered part of his sentence (Article 522). Therefore, criminal policymakers have accepted the health rights of prisoners and defendants in formal laws through the rights of prisoners to health, and this law explicitly refers to ensuring the rights of prisoners and the principles of humanity in judicial and prison procedures, and also emphasizes the need to meet the medical and health needs of prisoners.

#### **4. Judicial measures to ensure the right to health of defendants and convicts**

The right to health of prisoners and defendants must be taken seriously, and all relevant institutions and authorities are obliged to implement this right and provide the necessary conditions for its observance. Therefore, the physical and mental health of detained or imprisoned individuals may be exposed to serious harm in those environments for various reasons, such as lack of health facilities and lack of access to healthy water and food. On the one hand, the high and above-standard density of the penal population compared to their capacity reduces the per capita access to health facilities and medical care for defendants and prisoners deprived of their liberty, and on the other hand, the lack of adequate medical facilities in many detention centers can itself endanger the lives of prisoners and detainees in some cases. In addition, the occurrence of high-risk sexual behaviors and the development of sexually transmitted diseases, along with fights between prisoners, which have become epidemic in many prisons, in turn pose a fundamental threat to the physical health and sometimes the lives of the residents of those environments. Similarly, the deprivation of a particular group of detainees or prisoners can also function as a form of torture. On this basis, preventing harm to the physical health of detainees, especially in cases where government authorities deliberately refuse to provide the necessary facilities, has a significant impact on their physical health and, to a greater extent, on their right to life.

According to international standards, the prevention of violence is an implicit part of the obligations of health workers. For example, the UN Principles of Medical Ethics for the Role of Health Workers, 1982, states that (28): In protecting prisoners and detainees from torture and other cruel, inhuman or degrading

treatment or punishment, doctors have a special obligation to provide them with the necessary physical and mental care. Similarly, the UN Standard Minimum Rules also place the responsibility of medical staff to pay attention to the physical and mental health of prisoners and require them to report to the prison director whenever the physical or mental health of a prisoner is or is likely to be seriously endangered by the conditions of detention. Since physical and psychological victimization is directly related to interpersonal violence, the prevention of this violence should be the focus of attention and commitment of health care professionals in prison. The (European) Committee for the Prevention of Torture also states that health care services related to the prevention of violence in prison should be of high quality. Medical documentation should focus on identifying signs of violence, i.e. systematic and continuously updated data on injuries and follow-up information on all recorded injuries, which are secondary to all forms of violence. (29)

For example, the legislature and the judiciary can facilitate the process of granting leave to prisoners (during the Corona period, the judiciary took action to prevent the transmission of this virus in prisons and affiliated centers by issuing regulations and several circulars, including the circular on granting leave to prisoners, as well as the circular on monitoring and screening of prisons, etc., and in addition, it provided the use of legal exemptions such as postponing the issuance of a sentence, suspending the execution of punishment, converting imprisonment to other punishments, etc. Circulars No. 100/132450/9000 dated 04/09/1399 and No. 100/132450/9000 dated 18/04/1399 and 100/94830/9000 dated 25/05/1399) or temporarily release prisoners who are in prison due to committing violent crimes, such as the conditions (In prisons, we must also distinguish between vulnerable and normal people, because vulnerable people, such as the elderly or people with specific and chronic diseases, need more health and medical care than other people.) (30) Of course, it should be noted that measures have been taken in this regard, but they do not seem sufficient.

#### **4.1. Executive Regulations of the Prisons Organization and Security and Educational Measures**

According to Article 2 of the Executive Regulations of the Prisons and Security and Educational Measures Organization 1400, all prisoners or detainees must be treated with respect in view of their inherent dignity and human value. Any torture or inhuman and degrading treatment and any unjustified discrimination and arbitrary personal preferences based on race, sex, language, religion, political beliefs or financial means are prohibited. The safety and security of prisoners, prison staff, service providers and visitors to the prison must be guaranteed at all times.

Therefore, in the second chapter of the aforementioned regulations, several articles refer to the health, treatment, nutrition and clothing of prisoners, some of which we will mention in this section. According to Article 60 of the aforementioned regulations, at the beginning of a prisoner's entry into prison, he is examined by a doctor and psychologist in the prison diagnosis department and, if necessary, tested. His physical and mental condition is recorded and, if necessary, measures related to medical care and treatment of the patient are taken. If, based on the results of the examination and the documentation obtained, it is determined by the doctor or psychologist that the prisoner has a physical or mental disability and that keeping the disabled prisoner in the institution is accompanied by physical and mental risks for him or her, or if imprisonment causes an exacerbation or delay in the recovery of the prisoner's illness, or if the illness is such that it prevents the execution of imprisonment and the prisoner's treatment outside the institution is necessary or there is no hope of the patient's recovery, the prison director shall be notified so that the matter can be reported to the judge executing the sentences and appropriate decisions and actions can be taken based on Articles 502 and 522 of the Penal Code of Iran, approved in 1392.

Therefore, Article 139 of the aforementioned regulations refers to the mandatory presence of a doctor or nurse in the prison on a 24-hour basis or during certain hours of the day. Therefore, prisoners must have access to medical and treatment services. These services include medical examinations, treatment of diseases, and receiving necessary medications. In many cases, the lack of facilities and medical staff in prisons causes dissatisfaction and harm to the health of prisoners. In this regard, the aforementioned regulations recognize medical examinations and tests in Article 138, which stipulates: "The health and

medical unit of the institution is obliged to conduct a complete examination of newly arrived prisoners in the diagnostic section and, if necessary, to treat or refer the prisoner to other medical centers”.

Therefore, the health department of the institution or prison is obliged to conduct complete medical examinations of newly arrived prisoners and, if necessary, plan medical diagnostic tests and, if necessary, take action on treatment by referring him to the relevant centers, and record all medical measures in the prisoner’s file. Similarly, Article 51 of the Iranian Criminal Procedure Code also stipulates: “At the request of the person under surveillance or one of his close relatives, a doctor, with the approval of the prosecutor, shall conduct an examination of the person under surveillance. The doctor’s certificate is recorded and recorded in the file.” The provision of this mechanism can be important for both the person under investigation and his relatives, as well as for prison administrators. On the other hand, since in many cases, claims of suicide or illnesses such as heart attacks are the first claim made by prison administrators and officials in cases of death of a prisoner in prison, the provision and application of this article can be important in order to prevent such claims from being made. In fact, recording and recording a report on the health of the person under investigation at the beginning of his entry into the detention center and his relatives’ access to the information in that file in cases of necessity largely eliminates the possibility of making unfounded claims such as illness or suicide.

The mechanism provided for in Article 51 of the Criminal Procedure Code, on the other hand, provides the possibility for criminal justice institutions to record and record a doctor’s certificate in the file in cases of necessity, providing a record of the prisoner’s health status in order to respond to the prisoner’s claims with his relatives regarding the lack of medical care.

Article 146 of the Executive Regulations of the Prisons Organization also states regarding the prevention of diseases that are likely to occur in prison: “A prisoner suffering from mental, contagious, and high-risk diseases must be kept and treated separately, taking into account the opinion of a specialist physician and the policies of the Ministry of Health, Treatment, and Medical Education, until he/she fully recovers and the high-risk condition is resolved.” As is clear from the text of the article, the prison warden is required to make this proposal, not free, and this is a legal, moral, and humane obligation, because keeping such a prisoner in prison imposes a punishment greater than what they have been sentenced to, which is physical torture caused by the disease, which may in some cases lead to the death of the prisoner. In addition, since factors such as overcrowding in prisons lead to high-risk behaviors of prisoners and, consequently, the spread of contagious diseases (such as Corona), which in some cases can even endanger the lives of prisoners; The exacerbation of latent diseases in prison that manifest themselves due to prison conditions, the deprivation of prisoners from treatment, and the lack or absence of necessary medical care necessitate that their health status be examined medically at shorter intervals than other individuals.

Other provisions protecting the right to health of prisoners are also foreseen in the aforementioned regulations, some of which include: the necessity of granting a 1-month leave and the possibility of extending it to prisoners who are suffering from incurable diseases or whose treatment is not possible in prison or whose continued imprisonment will cause the severity of the disease or delay their recovery or who are unable to tolerate imprisonment, and the necessity of presenting a proposal for pardon by the prison warden for convicts suffering from mental illnesses and specific and incurable diseases. It is also noteworthy that Articles 25 and 27 of the Judicial Security Document approved in 2019 emphasize the availability of welfare and health facilities during criminal proceedings. In summary, it can be stated that improving the medical and health system in prisons will make it possible to guarantee the realization of the human rights of prisoners and defendants.

## **Conclusion**

The "right to health" of individuals, especially prisoners and defendants, has been recognized as one of the fundamental human rights in the international human rights and criminal law system of Iran. Therefore, in the regulations of Iran, in principles such as 39, 21, 29 of the Constitution and many other laws and regulations, including the Executive Regulations of the Prisons Organization and Security and Educational Measures approved in 1400, the right to health has been recognized as a fundamental right for prisoners

and defendants and has identified it in its legal system, which has been able to somewhat move in line with the global obligations of the United Nations and in step with them, although it is not enough. The judiciary, as the ruler of the implementation of justice and fairness in any country, is also obliged to respect the rights of sick prisoners and defendants from the stage of the prosecution until they are released from prison. Despite the policies, laws, and regulations that have been enacted at the domestic level to protect the health of prisoners, this issue is faced with challenges in practice, such as resorting to techniques such as denying the issue or obscuring it, denying and not stating all the events inside prisons and detention centers for reasons such as security or confidentiality of issues inside prisons and detention centers, and the weakness of medical and health infrastructure, which if this weakness is resolved, will lead to a reduction in the relevant problems and protecting the health of prisoners and defendants.

Therefore, the weakness of basic health infrastructure and the inadequacy of necessary medical facilities in prisons and detention centers provide the necessary conditions for the emergence and spread of many diseases. In some cases, the opposition of judicial authorities to sending sick prisoners out of prison, especially in the case of prisoners for whom prison facilities are insufficient to treat them, creates conditions for endangering their health and lives. Accordingly, providing the necessary health facilities for a simple and normal life in prison can to some extent prevent the occurrence of some diseases, and the limited number of health services and bathrooms per capita greatly reduces the access of residents of overcrowded prisons. On the other hand, employing specialist doctors, proportionate to the population of each prison, and ultimately sending prisoners to hospitals outside the prison where prison facilities cannot meet their medical needs, can prevent the exacerbation of prisoners' diseases. Nevertheless, and in this regard, the government is obliged to consider a comprehensive program or national policy to realize it and strive to create appropriate conditions for prisoners and defendants to access an achievable standard of health, and to provide criminal support for this right at the legislative and judicial levels through appropriate policymaking and planning.

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### **Conflict of Interest**

The authors declare no potential conflicts of interest in relation to the research, writing, or publication of this article.

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