

## Criminal Policy of Having Fair trial Components in the Criminal Justice System of Iran

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### Abstract

The right of having fair trial that is identified as an international human right norm to support individuals against depriving or limiting freedom and their fundamental rights, is a general concept that important international and regional documents such as Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and The European Convention on Human Rights have predicted elaborately mechanisms to exercise this right and conditions to ensure them. Fair trial consists of judicial investigation and decision-making by a legal, independent, impartial and competent judicial authority and according legal regulations and with compliance with established safeguards for both parties. Some scholars have considered fair trial as a human right principle and as backbone of rights and procedural safeguards under which are principles such as impartiality and independence and equality of weapons and finally procedural safeguards will end up to fair trial. In practice, realization of this issue requires prediction of legal mechanisms.

Article 10 of Universal Declaration of Human Rights in and article 14 of Covenant have predicted the fundamental right of having fair trial for all people. Islamic Republic's constitution, however, hasn't stated as explicit as the two above mentioned legal documents the right of fair trial for citizens, but provisions included in principles 32, 34, 35, 36, 37, 38, 39, 156 and 165 clearly suggest admission of this right as a basic principle that has been source of several rights. This article intends to investigate different aspects of Iran's criminal policy regarding fair trial.

**Keywords:** Criminal Policy; Iran; Fair Trial; Component.

### Introduction

Communicating accusation to an accused is earliest and most basic right that an accused has whether he has a lawyer or not and other rights are based on this right. Among basic

needs of any individual for life are security and freedom to choose and behavior. Accuracy and reflection on introduction and different articles of the United Nations Charter particularly clause B of article 13 indicates the fact that one aim of the mentioned organization establishment is protection of basic human freedoms and ensuring respect for

the inherent dignity of human beings and human high dignity. Universal Declaration of Human Rights (1948) in articles 1, 3 and 9 emphasizes on the right of freedom and personal security for all people and considers no one is authorized to deprive arbitrarily the others' freedom. Personal security means security against violation of any legal rights for an individual against others including government officials. This right is treated ensuring all kinds of personal freedom, such that without it, personal freedoms can not be existed. The mentioned right due to importance has been emphasized in articles 1 and 9 of International Covenant on Civil and Political Rights and also in article 1 of International Covenant on Economic, Social and Cultural Rights. Constitution of Islamic Republic of Iran in this regard and inspired of Islam teachings, has introduced freedom and human beings' dignity as its objectives priority and has required everyone to follow it. Islam considers human as self-conscious, benevolent, right-directed, justice seeker, law-directed, responsible, perfection seeker and in one sentence free, optional and having inherent dignity. The right of freedom is an inherent right and unlike many rights isn't deprivable or transferable to other and an individual by virtue of having freedom has no right to trample his freedom and submit to humiliation and slavery. Accordingly, in ninth principle of the Constitution, even territorial integrity and political independence of the country hasn't been considered superior than personal rights and freedom and no official hasn't been given the authority of depriving citizens' legitimate freedoms, however under the name of independence and territorial integrity and political independence of the country and through legislation and clause 7 of third principle obliges government to employ its all facilities to ensure political and social freedoms in legal limits. For this reason in exceptional cases, exercising limitation on some aspects of people' freedom must be confined to necessity limit and bounded to exact and transparent legal constraints and is considered as a last solution and final action. In this regard, the provisions of criminal procedure (in the general sense of this word), that includes the requirements of the judicial system regarding defendants' rights and liberties, is the best measure to realize the level of practical adherence to the principles of the Constitution and compliance of Iran legal system with the provisions predicted in international documents. The emphasis on respect for innocence principle also is taken place for this reason, since "the conviction of innocent people means that an error exists in the performance of criminal justice system". Also in clauses 4 and 6 of respect for legitimate freedoms and protecting civil

rights approved in 2004 respect for ethics and islamic standards in dealing with people and even crime performers and avoidance of people harassment and humiliation have been emphasized in terms of case.

#### *Right of Communicating Accusation to Accused in International Documents*

The main basis for communicating the rights of the accused persons by justice officers is ensuring the rights of defendants. The defense right of accused is set of privileges and facilities which an accused person must have in a fair trial in order to can defend from him against a claim that has been brought up unlike the assumption of innocence against him and in free and human conditions. Facilities such as the right of communicating accusation and its reasons, the right of silence, the right of consultation and visiting with a lawyer clearly entail applying defensive right of defendant, defendant's awareness about them, such that the equality of weapons for defendant against officials including justice officers is observed and defendant isn't forced to self-accusation.

According clause 3 of article 14 of the International Covenant on Civil and Political Rights 1966, every one is accused to committing a crime must have full equally his defensive rights. The principle of weapons equality means that in the criminal process parties are treated such that both equal positions are secured in trial. Therefore, supplying equal rights for both parties of a criminal trial is unavoidable. Otherwise, there will not be a fair trial.

Obviously the main necessary premise for realization of weapons equality and a defendant enjoy his defensive rights is communicating these rights to him. Weapons and facilities of officials and officers aren't comparable with defendant in terms of legal and judicial information. Exposure of individuals to accusation circumstances or keeping in police station or detention center, provide a set of defensive rights for them that mostly they are either unaware about them or mental damage and distraught resulting from those conditions take away from them the opportunity of correct thinking, and in this respect put them in a unequal situation toward justice officers. Hence, considering the innocence principle such individuals must be informed about their rights and for this reason the International Covenant on Civil and Political Rights 1966 in clause (d) of article 14 has clarified the necessity of communicating the right of having a lawyer to a defendant.

Also defensive rights of defendant must be secured

such that prevent stimulating him to accuse himself. In fact, requiring a defendant to accuse himself violates the innocence principle because such a requirement entails presenting a reason for his guilty. Considering that a prosecuting prosecutor and the complainant are required to prove a defendant's criminality in the extent of conscience persuasion for magistrate, requiring a defendant to accuse himself violates the rule of proof against plaintiff.

Self-accusation means stating statements that possibly aren't in the extent of an explicit confession but exposes the teller to accusation and can be used against him. The principle of lack of self-accusation is the logical requirement of silence right. Both of them follow a same logic and that is protection of a person against compulsion or illegal action of criminal justice system particularly police. The right of silence and lack of self-accusation from this point of view prevents deviation of criminal justice system. In fact, even a defendant response to questions of officials is treated participation in self-accusation because he can and has to know himself essentially innocent. Hence, to prevent stimulation to self-accusation, police must communicate the right of silence to defendant before investigation because all people don't know this right.

Emphasis on the principle of preventing a defendant from self-accusation results from a particular sensitivity concerning how defendants' statements and confessions are taken during the process of preliminary investigations and especially police inquiries. According this principle, a defendant's ignorance hasn't to be used to take statements or confessions from him. Particularly that space of police center normally creates in individuals conditions in self-accusation direction and this can be an indication for unreliability of statements taken in police station. Hence, to avoid stimulating a defendant to self-accusation and securing reliability of his statements, the mechanism of communicating defendant's rights is used. From this view, communicating defendant's rights merely imply removing defendant's ignorance and unawareness or reminding his rights in stressful conditions due to exposing to an accused position, but contain the question from defendant that If he intend to say anything? Or he want to exercise silence right? Using the mechanism of communicating defendant's rights is a practical tool to secure officers loyalty to respect for defendant's defensive rights from investigations beginning. For this reason communicating defendant's right can't be dependent on defendant's unawareness from his rights or even his mental anxiety. But even a former judge that is in accused

position, and is without mental distress, also must be communicated his rights.

Exposure of individuals in particular conditions when charged to a crime and as a result increases of their vulnerability, requires that they become aware of their legal rights and tasks until they can defend themselves using legal tools. The importance of this necessity doubles when arresting defendants. Exposure to detention environment provide a set of defensive rights for defendants that mostly they are either unaware about them or mental damage and distraught resulting from arrest, makes them neglectful and confused, take away from them the opportunity of correct thinking, and in this respect put them in a unequal situation toward justice officers. In view of innocence assumption and the possibility of individual's innocence in these circumstances, their rights must to be communicated to them.

#### *Defendant's Right of Communicating Accusation in Criminal Procedure Code*

Communicating accusation is a defendant's most basic right and constitutes beginning of a correct trial and without an exact communicating accusation the possibility of an effective defense is denied from him.

#### *The Concept of Charge*

Charge is the same criminal title that is ascribed to an accused person. In the other word, when some one claims that a defendant has committed a criminal action in fact ascribes a charge to him. Ascribing charge to a defendant results in rights for him that before the ascription he lacks the mentioned rights. For example, defendant's right to have a lawyer or silence is results of becoming accused. Hence an individual that is cited as informed has no right to take a lawyer for himself. Concerning witness also is the case. But both witness and informed one can refuse to answer questions and no one can be forced to give information or testify.

#### *The Concept of Communicating*

The right of communicating defendants' rights by justice officers can be considered subset of a more general right under the name of information right. Information right meaning citizens' right of access to information existing in government institutions is one of the important instances of human right that has been paid attention seriously in international arena. The most of main documents of human rights in international level have recognized the right of

search and access and diffusion of information as an integral part of freedom of speech. These rights can be considered as consequences of the principle of legality of crime and punishment that has been paid attention in the human rights documents. For example, article 19 of the International Covenant on Civil and Political Rights 1966 states: "everyone has the right of freedom of speech; this right includes freedom in any kind of information and thoughts search, access and diffusion, without considering limitations, whether verbal or written or printed or artistic or in the any other way according a person's choice".

In fact the right of access to information is one of the inherent requirements of freedom of speech. Since without complete and reliable information, nothing remains to state. Referring to the same relation is that some consider the right of access to information as a consequence of freedom of speech right among fundamental human rights.

In our country also the right to information was entered in a public and inclusive form into justice system in 2009 by approving Act of free diffusion and access to information, approved in 2009/./... According article 5 of this Act "public institutions are required to make available for people the information subject to this Act in as least as possible time and without any prejudice". According clause (d) of article 1 of the Act, public institutions also includes Judicial and disciplinary authorities and according clause (c) of the same article, general information, contain impersonal information such as rules and regulations and hence include legal rights of defendants in Judicial and disciplinary authorities. Also, according the note 5 of the mentioned Act, "information containing right and task for people, in addition to the existing legal cases, must be informed to people through diffusion and public announcement and public media". Concerning defendants, according to clause (b) of article 14 of the International Covenant on Civil and Political Rights 1966 full observance of freedom of speech right in order to provide sufficient facilities to defense entails the right of access to information and informing then about legal and judicial information in criminal process. This right, have a general expression under the name of communicating rights, and certain expressions such as the right of communicating charge and its reasons, right of consultation and visiting with a lawyer. While the right of communicating rights contains a general mechanism to require officials to present all necessary information to introduce defendant's rights to them. The right to communicating charge

and its reasons and the other mentioned particular expressions design especial mechanisms for presenting legal and judicial information to defendants. Particular expressions of defendants' right to receive legal and judicial information in a criminal process in human rights documents have been paid more attention than general expression of this right. But regarding general expression of the mentioned right, namely the right to communicating rights, just part (d) of clause 3 of article 14 of the mentioned Covenant has stated explicitly that "the right of having a lawyer is communicated to a defendant". Hence, the right to communicating all rights of defendants has been considered less in the form of a general rule and under the subject of general expression of their right to receive legal and judicial information during a criminal process.

Criminal process has different stages. But among all these stages, the stage of police investigations – that in the evident crimes, before judicial order and at most within 24 hours and in the non-evident crimes is performed with judicial order by justice officers – has a particular sensitivity. Because normally in this stage the first formal intervention concerning defendants is taken place by justice officers. So for the same reason violation of the rights of defendants can results in more harmful effects than the other stages, since it is possible that total orientation of a criminal case about an innocent defendant is directed to prove of criminality. In particular, of a defendant from the beginning is unaware about his legal rights and provide the ground for this issue by his charge-inducing statements. Hence, this study attempt to address to the reason of communicating defendants' rights by justice officers and then legal types are studied that must be communicated to defendants by officers and finally the way of surveillance on this legal task and sanction of its violation are explained.

#### *Why Charge is Communicated to a Defendant*

In the Iran legal system, in addition to part d of clause 3 of article 14 of Covenant regarding informing the right of having a lawyer to a defendant during trial, article 55 of Prisons Organization Administrative Code also has predicted some regulations in incomplete form in this regard. This article that is a sub-legal rule without a sanction, just include defendants in prison, while informing all people that in any form are exposed to a charge and familiarizing them with all rights of themselves is evident.

The necessity of communicating charge to a

defendant and his other rights by officers is that defendant in defense position must know the kind of accusation and reasons that are stated against him. Without awareness of an accusation nature and understanding it and why he is exposed to the charge, a defendant has no ability to defend himself effectively.

#### *The Kinds of Rights Communicable to Defendant*

According article 52 "whenever a defendant was placed under surveillance, justice officers are required to communicate the rights contained in this Act about an under surveillance person to the defendant and present to him in written form and receive a receipt and attach to his case". The rights contained in this Act aren't very clear and it isn't known if officers just have to communicate rights concerning preliminary investigations stage to him or all stages of trial? It seems that this task despite of law order implication must be considered about stage that a defendant is in control of officers and in the next stages each of officials are required to communicate defendant's rights to him. For example, interrogator is required to mention the kind of accusation in the defendant summons and inform him the right of having a knowledgeable lawyer and communicate this right during the communicating accusation process to him. However, the aforesaid rights can be considered among cases that have been recognized for a defendant in the Code of Criminal Procedure:

1. The right to have a lawyer, that officers according article 489 must communicate this right to defendant. According article 190 "a defendant in the preliminary investigation stage can have a one lawyer with himself. This right must be communicated to defendant by interrogator. As a defendant is called this right is inserted in the summons and communicated to him. Defendant's lawyer by obtaining information about the charge and its reasons can state matters that considers necessary to detect truth, defend defendant or enforce law. Lawyer's statements are written in the minutes.

Note 1. Denial of the right of having lawyer and lack of communicating this right to defendant results in disciplinary punishments of eighth and third grades, respectively.

Note 2. in the crimes that its punishment is deprivation of life or life imprisonment, as a defendant wouldn't proceed to introduce a lawyer in the preliminary investigation, interrogator chooses a public defender for him.

Note 3. Concerning this article and also as the alleged accusation is related to chastity violation, contents of article 191 is enforceable.

2. Defendant's right to silence, that according article 197 "a defendant can take silence. In this case his refuse orders to answer the questions or signing statements are inserted in the minutes".
3. In the event that a defendant be a foreigner according note 2 of article 236 "in the case of prosecuting foreigners and their request interrogator is required to announce their characteristics and type of accusation immediately to attorney general of the country in order to necessary action until through which the provisions accordance is declared to concerned authorities. As prosecuting these people's results in a decisive conviction, the judge of orders enforcement announce a summary of trial in order to enforce this note to attorney general. In the case of visit request from the associated consulate, the stages are announced to attorney general until according to the decision of that authority an action is taken place consistent with regulations".
4. Defendant's right to contact with family, according article 50 "a person under surveillance can inform by phone or any possible way his family members or acquaintances of his being under surveillance and officers also are required to give necessary help in this regard, unless they recognize according a necessity that the person under surveillance hasn't to use such a right. In this case the stages must be informed to a judicial authority to take a due order".
5. Defendant's right to medical examination, according article 51 "based on the request of the person under surveillance or one of his close relatives, one physician chosen by attorney general examines the person under surveillance. The physician evidence is recorded in the case".

#### *The Way of Supervision on Officers' Task in Communicating Defendants' Rights*

According article 32 of Criminal Procedure Code "presidency and supervision on Justice Officers is responsibility of prosecutor in terms of tasks that they have as officers. The other judicial authorities also are the right of surveillance in the affairs that refer to officers.

Note - referring an affair from judicial authority to officers or authorities those according laws aren't treated as officer, results in disciplinary conviction

up to grade four.

Article 33 refers more explicitly to prosecutor's surveillance task and quality of exercising it and provides that "prosecutor in order to supervise on good execution of officers' tasks investigates the related units at least every two months and in each case, records the stages in a special notebook that is provided in this regard and issues necessary orders".

Article 34 in order to clarify officers' tasks and prevent excuses and in order to prosecutors' orders being reasonable and documentary provides that "judicial authority's orders to justice officers must be issued as written, explicit and by indicating date. In the immediate cases that issuance of written order isn't possible, the order is issued verbally and justice officer while performing orders and recording normal stages and actions in a minutes, as soon as possible and at most during 24 hours get its signed by a judicial authority". And in the completion of surveillance task of prosecutor, article 35 provides that "justice officers are required as soon as possible and during the time prosecutor or associated justice authority determine, proceed to execute orders and complete the case".

According article 46 "justice officers are required to inform results of their actions immediately to prosecutor. As a prosecutor doesn't consider sufficient the performed actions, can ask its completion. In this case officers must perform investigations and legal actions according prosecutor's order to detect a crime and complete investigations, but they can't keep defendant under surveillance. As in the evident crimes, keeping defendant is necessary to complete investigations officers have to communicate the charge subject and its reasons immediately and in writing to defendant and inform the stages instantly to prosecutor to make a legal decision. Anyway, officers can't keep defendant more than 24 hours under surveillance". According article 47 "whenever a person out of office hours is prosecuted because of any criminal titles, stages has to be informed to prosecutor or judge on duty up to 1 hour. Prosecutor or judge on duty also is required to examine the issue and if needed with presence in the location of defendant keeping take a legal action".

#### *Sanction of Violation of Communicating Defendant's Rights by Officers*

Article 63 of Criminal Procedure Code has determined a sanction for violation of communicating defendant's rights to him by justice officers and also other rights that have been determined in law.

According the aforesaid article "violation of regulations of articles 30, 34, 35, 37, 38, 39, 40, 41, 42, 49, 51, 52, 53, 55, 59 and 141 of this Act by officers, entails conviction of dismissal from government service from three months to one year". Now, the question is that if the provided sanction has a criminal or disciplinary aspect?

It seems that the provided sanction has to be described qualifying criminal trait and with this quality it will be out of article 576 of Islamic punishment law. Since legislator in the Criminal Procedure Code itself has foreseen sanction of violation of tasks provided in the aforementioned cases.

### **Conclusion**

Defendant's defensive rights are a part of human rights. Human rights is born of modern human attitude and worldview that has been emerged in the international and regional documents. In this worldview human has a inherent dignity and due to this feature just because of being human has non-deprivable and inwaiveable rights and personal differences such as gender, color, belief, nationality, religion,... isn't involved in the enjoyment of them. A section of these rights are substantive rights and another section is procedural law in order to prevent ruling system's dictatorship and bullying in confrontation with citizens anomalies and design a ground and mechanism to deal with violators actions in a scientific, logical and appropriate form.

Defendant's defensive rights have particularly a close relation with political modernity. Political modernity is more a deep and comprehensive attitudinal change in the modern human thinking than a historical event or period that its political reflections in human society cause that unlike pre-modern age, government is separated from civil society and consequently, the public domain of government from private domain of society and finally as a result of these two, human is viewed from two different perspective. He/she is considered a member of government from this side and participates actively in political and social activities and has political rights. Is counted citizen and from the side that belongs to civil society is a single and separated individual. From modern human view, individual isn't placed under dominance of whole and although is a member of government and dependent on it, as an individual can independently enjoy from personal rights and freedoms and has private life and activity.

There is dispute on basis of defendant's defensive

rights. Some consider its root in the natural rights of human and other ones that are proponents of realization school consider it resulting from government will. The first theory hasn't serious advocates today and regarding formation of legal norms. Realization view is more governing that considers a government will not only the source but also basis of legal norm.

Concerning defensive rights basis it must be said that in ancient times, there wasn't any right for accused persons and criminals. Lockups and prisons were built in the form of black holes for arrested individuals' gradual death. Destiny of a defendant was completely in the hand of ruler and judge and anyway that he desired they were treated and no one had permission and right for objection. This situation continued until late middle ages.

Over time and emergence of reformist and humanitarian ideas and also science development including criminology, the view to accused and criminal changed and by effect of human rights on offenders rights and recognition of human inherent dignity principle for all human beings, the philosophy of punishments and objective of their execution changed, such that revenge aspect in dealing with accused and punishment exercise was faded and reform, training, rehabilitation of criminals, were suggested as philosophy and main objective of punishment.

Thinkers such as Thomas Hobbes, John Locke, Rousseau, Montesquieu and Kant can be named that by stating their humanitarian thoughts, founded natural rights school. Thoughts and basic principles of this school regarding recognition of the human inherent dignity caused that values such as freedom and prosperity of hidden talents in human nature get importance and human identified as right owner in this regard. Under affect of these findings and works published by other great individuals such as Cesare Beccaria, accused people and offenders released from the hard and cruel situation.

Countries - including Iran in Criminal Procedure Code approved in 2013 - also by inspiration from international and regional documents on human rights in their domestic laws have required themselves to observe defensive rights of defendants. In international documents and laws of different countries, the necessity of assuming innocence until decisive conviction of defendant by a qualified court and complying with fair standards were emphasized. Offender was paid attention as a patient needing assistance and help. Along this and by admission of the right of defendant's enjoying from innocence presumption, it was attempted unless in

the necessary and exceptional cases, an offender can have legal rights like other members of society and in order to prevent violation of his rights, the judicial authorities and performers' power were limited and bounded to terms, so they can't abuse from their superior position to damage a defendant.

Today development of human rights concepts and criteria and observance of its measures and guarantees in criminal trials is accounted one of the most obvious signs of civilization and most striking indicators of legal development. Respect for status and dignity and personality of human beings entails observance of such criteria, measures and guarantees. The concepts and criteria of human rights in criminal trial process have a more important role than other sections.

The necessity of law-directedness to limit individual rights and freedom that are considered of theoretical and political bases of criminal trial code, in the second section of article 11 second section of article 29 of Universal Declaration of Human Rights have been emphasized and this issue can be treated as start point of globalization of criminal rights process.

Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), the United Nations Directive regarding minimum standard rules for treatment of prisoners (1955), Convention against torture, cruel or inhuman or degrading conduct or punishment (1984), Set of principles for the protection of all persons under any form of detention or imprisonment (1988) are among most important international documents available in this regard.

Among the aforesaid documents, aside Universal Declaration of Human Rights that because of global admission and becoming an international convention has executive power and documentary capability to all nations, the International Covenant on Civil and Political Rights also in Iran has legal validity, because it was approved unconditionally in 1975 by legislation parliament. After victory of Islamic Revolution in order to perform the Islam Orders, along with the above mentioned documents and in line with global changes in Constitution of the Islamic Republic of Iran and some normal laws such as Islamic Punishment Code and the law of respect for legitimate freedoms and protection of citizens' rights (2004), some regulations were predicted and approved in protection of all citizens including accused ones and afterward also in the Criminal Procedure Code approved in 2013 detailed regulations were foreseen.

**References**

1. Dr Mansour rahmdel, The "Ne bis in idem" rule in Iranian criminal law, *Journal of Financial crime*, Vol. 11 Iss: 3, pp.277 - 281.
  2. Rights of accused LAW, WRITTEN BY: The Editors of Encyclopedia Britannica in <https://www.britannica.com/topic/rights-of-accused>.
  3. I.L.O. Convention Concerning forced or compulsory labour, 1930, Art. 2.
  4. International Covenant on civil and political Rights (1966), Art. 8 (3) (a), un Doc. A/ 6316 (1966).
  5. Forced labour Convention, Convention No. 29 Concerning Forced labour Adopted on 28 June 1930 by the General Conference of the International labour organization, Entry into force 1 may 1932.
  6. Abolition of forced labour convention, convention No. 105 concerning the Abolition of forced labour Adopted on 25 June 1957 by General Conference of the (Ilo), Entry into force 17 January 1959.
  7. American convention on Human Rights, Art. 6 (2), oEA/ ser. I/ Vii. 23 Doc. Rev. 2.
  8. The Arab Charter on Human Rights 1994, Res. 5437.
  9. Units 222 (1950). Convention for protection of Human Rights and fundamental freedoms, Art 4/213.
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