

THE FOUNDATIONS, POSITION, AND EFFECTS OF THE DEFENDANT’S RIGHT TO DEFENSE IN IRAN’S LEGAL SYSTEM

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ABSTRACT

The right to defense is the most important right of the accused. This right has certain foundations and effects that the present study tries to address with the approach of international law. The findings of this research show that the most important principles of the defendant's right to defense in Iranian law include "the principle of innocence", "the principle of human dignity", "the principle of equality of arms" and "the principle of legality". Each of these principles in Iran's legal system has been influenced by international law and has been expressed in various legal articles. For not complying with them, there is a guarantee of criminal executions, damages or disciplinary violations. Based on these principles, in Iran's legal system, it is necessary to explain the charges to the detained accused, and from the very beginning, the detained accused has the right to have access to the file and, in cases of need, to have an interpreter, as well as to have a lawyer of his choice. Even in cases of crimes with high punishment, the judge will hire a lawyer for him, and other necessary facilities for self-defense will be provided to him, and any torture of the arrested accused to obtain proof and confession is expressly prohibited in the Iranian constitution.

Keywords: fair trial; principle of innocence; principle of dignity; equality of arms; right to have a lawyer

INTRODUCTION

The right to defense is one of the essential components of a fair trial. It is not an exaggeration to say that ensuring the right to defense is the most significant philosophy behind holding court sessions. The importance given to the right to defense in criminal matters stems from its guaranteeing protection against severe, painful, and humiliating criminal sanctions such as execution, imprisonment, or heavy fines.

Therefore, every effort must be made so that, firstly, an innocent person is not considered guilty based on false accusations, and secondly, a person accused rightfully does not receive more punishment than they deserve. This effort reaches its desired goal when the accused can defend themselves against all aspects of false accusations. Understanding the origins and foundations of this right leads to a better appreciation of its importance and position, and considering the consequences that each foundation brings

about delineates its scope and boundaries. The present study tries to identify the basics of the right of defense with the approach of international law, and secondly, to explain the results obtained. This study begins by examining the principle of innocence as the primary foundation for defending an accused person. It then analyzes human dignity as an important factor in preserving individuals' status during court proceedings. It also explores equality among arms as it plays a significant role in achieving justice in trials. Finally, this study discusses freedom as well as legality principles that greatly influence upholding the right to defense.

The present study has a descriptive-analytical method and uses library sources to identify the basics of the defendant's right to defend himself against imputed charges in Iran's legal system. As the primary origin of the right to defense in Iran's legal system is rooted in Islamic sources and the international law system, these two systems are briefly discussed to outline the basics of the right to defense. Also, the position and reflection of the right of defense in Iran's legal system and its effects on the current order of Iran's legal system have been assessed.

THE PRINCIPLE OF INNOCENCE

The Principle of Presumption of Innocence is one of the constitutional pillars of modern democratic state system. (Rosales, 2022) The principle of innocence is one of the foundations of ensuring the defendant's rights. Innocence is defined as "freedom, liberation, exemption, and release from doubt, disgust with something, purification from defect and accusation, and release from debt." (Sayyah, 1994) In Arabic dictionaries, the word for innocence comes from the word 'bara' meaning "to release and exempt" from obligation, accusation, harm, and responsibility. Innocence is repeatedly used in this sense in the Quran (Encyclopedia of the Islamic World, 2002). In terms of the conceptual meaning of innocence, first, its

legal usage is examined, and then the views of jurists are explored in this regard. In legal terminology, terms such as criminal innocence principle, presumption of innocence for the accused, presumption of innocence in criminal law, and presumption of innocence have been used as equivalents. Some consider the term "presumption of innocence" the most appropriate equivalent for the principle of innocence and view other synonymous terms as unrelated and meaningless (Mohammadi, 2009). The purpose of the principle of innocence is primarily to support the accused because potential courts seek to prove the guilt and also to protect society from false attributions of crimes to individuals and thereby preserve societal interests (Jamal, 1972). Judicial authorities must always refrain from expressing opinions and making public judgments about the accused and prevent limitations such as detention under the pretext of maintaining order and security at detention centers until a fair trial takes place. Individuals cannot be detained except under exceptional circumstances, and if this happens before trial and proof of guilt has been established, they must be kept separate from other criminals.

Over time, after arrest and before trial (referred to as "precautionary detention") or in the event of the accused's bail being rejected, no harm is done to the principle of innocence, and detainees are not considered criminals before trial under any circumstances (LRWC, 2013).

THE PRINCIPLE OF INNOCENCE IN INTERNATIONAL LAW

The presumption of innocence is an internationally recognized standard of criminal justice. (Khablo, & Svoboda, 2024) In international law, especially in documents related to human rights and international criminal trials, the principle of presumption of innocence is highly regarded. These documents oblige domestic systems to uphold the provisions of this principle. This

is explicitly stated in Article 11 of the Universal Declaration of Human Rights, Article 14(2) of the International Covenant on Civil and Political Rights, Article 6(2) of the European Convention on Human Rights, Rule 91 of the European Rules of Human Rights, Article 8(2) of the American Convention on Human Rights, Article 21(3) of the Former Yugoslav Tribunal Statute, Article 20(3) of the Rwanda Tribunal Statute, and Article 66 of the International Criminal Court Statute.

Article 55(b) of the Statute of the International Criminal Court explicitly states a rule that reflects the consequences and presumption of innocence, such as the right to remain silent without any inference regarding guilt or innocence. It maintains that “the right to temporary freedom and grounds for review that are broader for defendants than for prosecutors.” (Fazaeli, 2011). The international system promotes this norm regarding innocence, where every person should be presumed innocent or treated as an innocent individual until proven guilty in a fair trial that guarantees minimum fair procedures.

THE POSITION AND EFFECTS OF PRESUMPTION OF INNOCENCE IN IRAN'S LEGAL SYSTEM

The Iranian Constitution explicitly addresses the principle of presumption of innocence in Article 37 :“The principle is innocence, and no one shall be considered guilty unless proven so by a competent court.” The first paragraph of Article 4 in Iran's Code of Criminal Procedure emphasizes this principle in criminal proceedings. The presumption of innocence as a basis for defending entails certain effects aimed at preserving this right. As a person is presumed innocent according to Article 53 of Iran's Code of Criminal Procedure, they must be informed about charges or reasons for detention at their earliest opportunity upon arrest or detention. This article stipulates: “Judicial officers are obliged to record statements made by individuals under their

supervision along with reasons for supervision, date and time when it commenced, duration between interrogations, and date and time when they were presented before a judge during court sessions and obtain their signature or fingerprint.” Accordingly, a defendant who is being interrogated has the right to remain silent and refrain from self-incrimination because every person is presumed innocent, and it is up to the accuser and prosecutor to prove their guilt with evidence. Therefore, a defendant does not need to prove their innocence. According to Article 197 of Iran's Code of Criminal Procedure: “The defendant may choose silence...”

The accused's refusal to answer or sign statements is recorded in the minutes of the session. According to this legal provision, the accused should not be obliged to express any content against themselves, and the silence of the accused should not be considered as evidence of their guilt. Among other defense rights that guarantee the principle of innocence is the right to have sufficient conditions, facilities, and opportunities to prepare a defense statement, as well as the right to access a lawyer and legal services from the beginning of preliminary investigations. Article 48 of the mentioned law addresses this matter: “Upon being placed under supervision, the accused may request the presence of a lawyer. The lawyer must meet with and pay attention to confidentiality in their interactions with the person under supervision, and at the end of the meeting with the accused (which should not exceed one hour), they can provide their written observations for inclusion in the case file.” Beyond the right of having a lawyer, Iranian legislators have stated provisions for benefiting defendants with special conditions such as lacking criminal eligibility due to mental capacity, age, or lack of financial stability in Articles 13, 415, and 347 of the Criminal Procedure Code. However, paragraph 48 restricts fundamental

rights regarding crimes against security and organized crimes, which has raised concerns among Iranian jurists (Tavajjohi & Kourehpaz, 2020). This paragraph stipulates: “In crimes against internal or external security, as well as organized crimes punishable under Article 302 of this law, during preliminary investigations, both parties in litigation can choose their lawyers from among official judicial attorneys approved by the head of judiciary power. The names of these attorneys are announced by the head of judiciary power.”

THE PRINCIPLE OF HUMAN DIGNITY

Human dignity is the fundamental principle and basis of all human rights (Weber, 2024). Since the right to defense of the accused is one of the rights that, if not respected, can harm the social status and position of individuals, it is protected by the principle of dignity. Dignity, in its literal sense, means value, sanctity, status, nobility, honor, humanity, position, and integrity free from impurities (Dehkoda, 1998). The word dignity in English means “nobility, honor, entitlement, position.” (Campbell, 1991). Human dignity has two types: inherent dignity and value-based dignity. Value-based dignity arises from utilizing the positive talents and abilities of a person and striving for the growth and perfection of virtues. This dignity is acquired and optional, and the ultimate value of a human being lies in this type (Jafari Tabrizi, 1991). A human being naturally possesses a pure and immaculate essence and remains free from any crime or wrongdoing as long as they do not defile this pure canvass with their own will and choice.

DOCUMENTATION OF HUMAN DIGNITY IN INTERNATIONAL LAW

The dignity of human beings is emphasized in the preamble of the United Nations Charter, Article 1, paragraphs 55 and 56, paragraphs 1 and 2 of Article 62, and Articles 68 and 76 with titles such as respect for basic human rights, human dignity, human worth

and personality, and equality of human rights. In all three important international human rights documents, human dignity is emphasized. The Universal Declaration of Human Rights (1947) mentions “the inherent dignity of all members of the human family” and “the dignity and worth of the human person” in its preamble. The preamble to the International Covenant on Civil and Political Rights (1976) and the International Covenant on Economic, Social and Cultural Rights (1976) emphasize the inherent dignity of all members of the human family: “These rights derive from the inherent dignity of the human being.” This is also mentioned in the Vienna Declaration on Human Rights (1993): “All human rights are derived from the dignity and worth of the individual.” The American Declaration on Human Rights and Duties (1948) also states: “The people (continent) have accepted the dignity of human beings.” Some principles of the Universal Declaration of Human Rights that are also emphasized in Islam for preserving human dignity are: right to life, in Article 3 of the Universal Declaration of Human Rights; natural freedom of individuals and fight against slavery; Articles 1, 3, and 4; abolition of torture, Article 5; abolition of discrimination; Articles 2 and 7; right to justice and fair trial in a competent court, Articles 8, 9, and 10; presumption of innocence, first paragraph of Article 11; legality principle in crime and punishment, second paragraph of Article 11; respect for personal privacy, Article 12; freedom to choose residence and leave it, Articles 13 and 14; right to citizenship and its change, Article 15; freedom to participate in meetings and associations, Article 20 and the fourth paragraph of Article 32; right to participate in political affairs in a country’s administration, first paragraph of Article 21; personal and social security right, Articles 3 and 22; protection of individuals’ honor and reputation, Article 12; and freedom of expression and change of belief, Articles 18 and 19. According to the United Nations Charter and the Universal Declaration of Human Rights, “the identification of the

inherent dignity of all members of the human family, and their equal and inviolable rights, is considered the foundation of freedom, Justice, and peace in the world.”

The International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights express that all human rights stem from human dignity. The concept of dignity is also referenced in judicial decisions (domestic and international). Based on the mentioned content, the foundation of human rights in the international system is based on the principle of human dignity. The goal of human rights today is to protect and promote human dignity to its highest level. Therefore, naturally, one of the foundations in creating and expanding the rights of defense for defendants in the international system is human dignity.

THE POSITION AND EFFECTS OF THE PRINCIPLE OF HUMAN DIGNITY IN IRAN'S LEGAL SYSTEM

Article 2 of Iran's Constitution states: “The Islamic Republic is a system based on belief in 1) the One God (as monotheism) and His exclusive sovereignty and right to legislate; 2) divine revelation and its fundamental role in setting forth laws; 3) resurrection and its constructive role in the evolution of mankind towards perfection; 4) justice as a basic attribute of God; 5) imamate and continuous leadership as essential to the continuation of Islamic revolution; 6) high esteem, respect, and freedom alongside responsibility before God for every individual.” As observed in clause 6 of this principle, belief in human dignity, high esteem, respect, and freedom, along with responsibility before God, are mentioned alongside religious principles such as monotheism, prophethood, resurrection, imamate, and justice. This indicates the fundamental importance of the subject matter of human dignity to such an extent that denying it is tantamount to denying and negating the main pillars of an

Islamic government system, i.e., being republican and Islamic. This principle indicates that not only faith and belief in inherent human dignity are conditions for establishing an Islamic Republic system, but also “it is a condition for continuing the life of an Islamic Republic system.” In other words, belief in this principle and practical commitment to its effects and requirements are the most important guarantees for preserving the legitimacy of Iran's Islamic Republic system.

Article 4 of Iran's Criminal Procedure Code states: “Any restrictive action that deprives individuals' freedom or invades their privacy shall not be carried out except by order of law while observing regulations under judicial supervision. In any case, these actions should not be implemented in a way that harms individuals' dignity or status.”

Article 11 of the Law on Respect for Legitimate Freedoms and Protection of Citizenship Rights also emphasizes the dignity of the accused: “Questions must be useful, clear, and relevant to the accusation or charges, and should refrain from curiosity about personal and family secrets, questioning about past crimes of individuals, and addressing irrelevant issues in the case under review.”

Beyond this principle, dignity is a factor in condemning any physical or mental harm or torture of individuals for the purpose of obtaining information or reasons for accusation. The prohibition of torture, which is a consequence of the principle of dignity, allows individuals to defend themselves freely without any pressure or fear and refute false accusations. Therefore, in addition to Article 38 of the Constitution explicitly declaring torture as illegal, Article 60 of the Criminal Procedure Code also declares any coercion or compulsion as illegal and emphasizes the invalidity of statements resulting from coercion or compulsion: “In interrogations, it is prohibited to use insulting

words, suggestible or misleading questions, and questions unrelated to the accusation. The statements made by the accused in response to such questions as well as statements resulting from coercion or compulsion are not valid.”

Furthermore, torture is declared a crime under Article 578 of the Islamic Penal Code in Iran. This article stipulates punishment ranging from six months to three years of imprisonment for any judicial or non-judicial government employee who physically harms or tortures a suspect to force them to confess.

PRINCIPLE OF EQUALITY OF ARMS

The principle of equality of arms means that “each party to a dispute must be able to present their claims under conditions that do not put them at a significant disadvantage compared to their opponent.” (Sagheyani, 2006). In fact, this principle requires the court to ensure a real balance and not just an apparent balance between the prosecution and the defense. (Barbu, et al.: 2019) Equality of arms requires that there be a fair balance between the opportunities afforded by the parties involved in litigation (for example, each party should be able to call witnesses and cross-examine the witnesses called by the other party). The principle of equality between tools and weapons has similarities with the defendant’s defense rights because this right includes equality before the court, access to necessary defense facilities, presumption of innocence, public trial rights, presence in court for self-defense purposes, as well as summoning witnesses and questioning them. These rights are among the most important protections that a defendant needs for their defense.

The “equality of arms” cannot be defined as the equality of the power of the parties in either side (Khalilov, 2021). It is important here that each party has equal opportunities for claims and protection, and that one party can no longer exercise rights in

the proceedings than the other (Taner, 2019). The concept of equality between tools and weapons means that “each party to a dispute must be able to present their claims under conditions that do not put them at a significant disadvantage compared to their opponent. Equality between weapons means equal legal or criminal procedural capabilities in self-defense. Both parties must have equal opportunities.”(Saffari & Mohammadzadeh, 2010). This right represents two aspects of equality. Besides emphasizing the necessity for equal facilities for both complainant and defendant, it also refers to equal treatment by judges and authorities handling the case, as the judicial practice has shown that in criminal courts, all government institutions pursue prosecution against suspects while supporting complainants. However, this principle takes steps towards safeguarding and ensuring personal defense rights for suspects and provides sufficient opportunity for them to prepare their defense against the prosecutor’s actions. An important function of the principle of equality between tools is predicting the right opportunity and facilities for preparing a defense during preliminary investigations.

Summarizing, this represents "what must be proven in the criminal process" (Mateuț, 2019, p. 450), i.e. the administration of the evidence provided by law in order to establish the existence or non-existence of the facts or factual circumstances that constitute the crime (Damian et al., 2021), that have to be clearly deduced from the judgment and which represent the factual basis of the criminal and civil action (Udroiu, 2020, p. 273).

ORIGINAL DOCUMENTS ON THE EQUALITY OF WEAPONS IN INTERNATIONAL LAW

The principle of equality of weapons is an accepted customary practice incorporated into state laws and international law. It has not been explicitly stated in any international

documents but can be inferred from Articles 1 and 3 of Article 14 of the International Covenant on Civil and Political Rights, Article 6 of the European Convention on Human Rights, Article 8 of the American Convention on Human Rights, Article 7 of the African Charter on Human Rights and Peoples' Rights, Article 67 of the Statute of International Criminal Court, Article 19 of ICTY Statute, and Article 20 of the ICTR Statute.

THE POSITION AND EFFECTS OF THE PRINCIPLE OF EQUALITY OF ARMS IN THE LEGAL SYSTEM OF IRAN

The principle of equality of arms for the defense of the accused is a right that puts the accused on an equal footing with the justice system. Naturally, in all criminal systems, prosecutors and the judicial system will take steps towards protecting victims' rights. However, the principle of equality of arms aims to establish a balance between the judicial system and the accused. It must be acknowledged that although the principle of equality of arms has not been explicitly stated in domestic laws and regulations, its concept and effects have been manifested significantly in Iran's legal system based on Islamic law and human rights provisions. For example, Articles 19 and 20 of the Constitution respectively establish the foundations for "equality of citizens' rights" and "legal protection for them," which are fundamental principles underlying the equality of arms. Article 2 of the Criminal Procedure Code enacted in 2013 defines this principle as follows: "Criminal proceedings must be based on law, guarantee the rights of both parties to a lawsuit, and apply equally to individuals who are under investigation for similar crimes under equal conditions." The right to have a lawyer, as stated in Article 48 of the Criminal Procedure Code, is also an important right that the accused must enjoy based on the principle of equality of arms. This is because, according to the innocence resulting from a balance between powers,

dignity, and other principles, the prosecutor must prove their guilt by relying on valid evidence while the accused seeks to prove their innocence with the help of a lawyer and legal advice. Another aspect of this principle for defending oneself is providing opportunities and facilities for defense by ensuring access to case files and having access to an interpreter. These rights are reflected in Articles 191 and 200 in Iran's Criminal Procedure Code, respectively.

THE PRINCIPLE OF LEGALITY

One fundamental principle in criminal law is legality, i.e., that crimes and punishments must be prescribed by law. The principle of legality is a principle in law that is found in almost all of the constitutions of each country. The principle of legality is very important and must be maintained for the sake of certainty of rules in a country (Mela Sri Ayuni et al, 2022). According to this principle, no crime or punishment is legitimate or lawful without explicit provision in an authorized law. Any act or omission by a person that may harm society is not punishable as long as it is not foreseen by law. In other words, human actions are permissible as long as the legislator does not recognize this action or their omission as a crime and does not determine a punishment for it (Gandomani & Baharlooyi, 2018). This principle is one of the important achievements of human rights in the past two centuries and has been established as a fundamental principle since the beginning of the legislation of Islam as a revealed religion (Hashemi, 2015).

THE LEGAL BASIS IN INTERNATIONAL LAW

Article 11 of the Universal Declaration of Human Rights addresses the principle of the legality of crime and punishment. This article states: "No one shall be held guilty of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was

committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed.” Additionally, Article 14, paragraph 1 of the International Covenant on Civil and Political Rights stipulates that everyone has the right to have their case heard by a “competent, independent, and impartial tribunal established by law.” This right extends to criminal courts for charges against individuals. Therefore, it can be said that everyone has the right to be accused in a court “established by law” and have their case heard while ensuring other procedural guarantees are upheld (Maqami & Rostami, 2021).

Despite similarities between the Islamic legal principle of “qabah aghrab bilabayan” (presumption of innocence) and the principle of legality of crimes and punishments in international legal systems, there are differences between them. One is that the principle of legality requires enactment, promulgation, and publication, whereas jurists have adhered to this principle wherever an individual is ignorant of their obligation. In qabah aghrab bilabayan, expressing intention is meant rather than issuing a statement. Therefore, this principle encompasses a broader scope than the principle of legality (Mohaqeq Damad, 2013). In other words, in Islamic jurisprudence, it is sufficient for a person not to have knowledge of their guilt for them to be acquitted. It does not matter if guilt has been previously declared. However, in international legal systems, sometimes declaration replaces knowledge, and even if a citizen is unaware of their guilt but an announcement has been made regarding it, they may still be sentenced. The presumption of ignorance is not audible in law; it is based on this (Mohaqeq Damad, 2013).

POSITION AND EFFECTS OF LEGALITY IN THE LEGAL SYSTEM OF IRAN

In the legal system of Iran, the principle of legality of crime and punishment is explicitly

stated in Article 36 of the Constitution: “The judgment and execution of punishment must only be carried out through a competent court and in accordance with the law.” Article 2 of the Islamic Penal Code also states: “Any behavior, whether an act or omission for which a punishment is prescribed by law, shall be considered a crime.” This principle has several effects, including “non-retroactivity of criminal laws,” “narrow interpretation of criminal laws,” and “acceptance of ignorance as an excuse for violating the law.” (Hashemi, 2015). Among these, the issue of non-retroactivity is addressed in Article 169 of the Constitution. This article states: “In government regulations and procedures, punishments and preventive and educational measures must be prescribed by law before the commission of a crime, and no act or omission can be considered a crime retroactively according to a subsequent law. A similar rule exists in civil matters.” Although the narrow interpretation of criminal laws is commonly used by Iranian courts as a customary practice, it lacks explicit provision in ordinary or constitutional laws. However, acceptance of ignorance as an excuse for violating the law has no legal standing in the Iranian legal system, and even Article 155 of the Islamic Penal Code states: “Ignorance does not prevent punishment for committing an offense.” This means that ignorance cannot be accepted as an excuse for not imposing punishment on an offender. However, exceptions are mentioned later in this article, where it states: “Unless acquiring knowledge is usually impossible for them, or ignorance is considered an excuse according to religious law.”

CONCLUSION

The right to defense is considered the most important right of every accused person and is one of the requirements for a fair trial. This fundamental right is based on certain principles such as “presumption of innocence,” “human dignity,” “equality of

arms,” and “legality.” These four principles not only have numerous documents in contemporary international law but also have credibility in Islamic jurisprudence and have often been explicitly mentioned. It can even be argued that some principles, such as the presumption of innocence and legality, have their roots in Islamic jurisprudence centuries before the emergence of modern international law, and their primary origin is within the Islamic legal system.

Each of these principles discussed in this article as foundations for the right to defense supports certain aspects of defense rights and can affect defense rights. For example, the presumption of innocence supports aspects such as “having a lawyer” and “having sufficient opportunities and facilities to prepare a defense statement.” The principle of human dignity emphasizes “respecting the accused” and “prohibition against torture.” The principle of equality of arms supports “the right of the accused to access the case file and to an interpreter” in addition to emphasizing “the observance of necessary defense measures.” “The prior declaration of criminal behavior” is also a result of the principle of legality or the rule of preponderance. These effects of the right to defense in the legal system of Iran are reflected in various articles of the Constitution and multiple provisions of ordinary laws, as discussed in the previous article.

ACKNOWLEDGEMENT

No financial aid was received from any person or organization for this article.

CONFLICT OF INTEREST

The authors declare that no conflicts of interest exist.

AUTHORS' CONTRIBUTION

E.S: Data collection, analysis, manuscript drafting.

S.B: Data collection, analysis, article editing.

E.M: Data collection, analysis.

R.K: Article editing

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