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TÍTULO: Los indicadores del buen gobierno en el poder judicial.

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RESUMEN: En este estudio, se explican y analizan componentes en el contexto del lugar judicial y las funciones relacionadas con los derechos constitucionales en Irán. La pregunta principal determina: ¿Hay alcance de prestar atención a los indicadores de buen gobierno del poder judicial al definir las funciones y autoridades del poder judicial? Se utilizó un método de análisis descriptivo, y de acuerdo con los hallazgos, el poder judicial está obligado a respetar los derechos de ciudadanía y un juicio justo en la constitución y otras leyes; sin embargo, la explicación y la formulación de las funciones judiciales no se han llevado a cabo como debería ser de acuerdo con los componentes de buen gobierno. La rendición de cuentas y la supervisión del poder judicial están muy alejadas de los componentes de buen gobierno en la estructura de los derechos constitucionales iraníes.

PALABRAS CLAVES: principios jurídicos, principios de justicia, independencia, poder judicial, tribunal.

TITLE: The indicators of Good Governance in the judiciary.

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ABSTRACT: In this study, it is explained and analyzed components in the context of judiciary place and functions related to constitutional rights in Iran. The main question of the study indicates: is there an extent of paying attention to the Good Governance indicators of the judiciary in defining the functions and authorities of the judiciary? A descriptive-analysis method was used and according to findings, the judiciary is required to observe citizenship rights and a fair trial in the constitution and other laws; however, the explanation and formulation of the judiciary functions has not been performed as it should be according to the good governance components. The accountability and supervision on judiciary is far apart from good governance components in the structure of the Iranian constitutional rights.

KEY WORDS: Judiciary, Governance Indicators, Constitution, Civil Rights, Innocence, Political Science.

INTRODUCTION.

The purpose of present study is to investigate good governance indicators in the judiciary. As a concept, raised recently in political science, public administration and development management, good governance has emerged alongside concepts and terms such as democracy, civil rights, popular participation, human rights and social development, and has been tied with the public sector reform in the last decade (Sharifzade & Gholipour, 2003: 93-109).

Good governance has been defined by some individuals or institutions (World Bank experts) based on its characteristics namely transparency, responsiveness, consensus oriented, equity and inclusiveness, effectiveness and efficiency, accountability that constitutes the strategic perspective of

good governance (Gholipour, 2008: 67). The good governance components include: 1) participation, 2) rule of law, 3) transparency, 4) responsiveness, 5) equity (justice) and, 6) effectiveness and efficiency.

In the Iranian constitutional rights, the head of the judiciary, at the top of the organization, is the highest-level authority of this body. Article 110, paragraph 6 of the Constitution has noted the dismissal and installation of the head of the judiciary among the authorities of the Supreme Leader, and, according to the Article 157, the head of the judiciary is appointed for a five-year period. Based on the Article 156 of the Constitution, the judiciary functions include: to review and issue the ruling on indemnities, abuses, complaints, settlement of claims and resolving conflict, and decision making, and action required about the issues that the law specifies. This is the responsibility of an organization of the judiciary, which is called the justice administration, and includes courts and tribunals.

Article 159 of the Constitution considers the justice administration as the official authority for claims and complaints and knows the formation of courts and the determination of their competence subject to the rule of law. Therefore, issuance of an order is the responsibility of the courts. The restoration of public rights and the development of justice and legitimate freedoms, supervision the good application of laws is the responsibility of the Supreme Court and the General Inspection Office in courts and the departments and organizations, respectively.

The discovery of crime, the prosecution and punishment of offenders, and the implementation of the criminal penal code of Islam are also the primary functions of the public prosecutors' office. Accordingly, the basic question raised here is what is the position of the good governance components in Iran's judiciary? How much the legal status of the judiciary in Iran is compatible with the components and indicators of good governance based on the authority and responsibilities that are defined for it? The present study aimed to investigate and answer the mentioned question.

Accordingly, the duties and responsibilities of the judiciary are explained and analyzed on the basis of good governance components.

DEVELOPMENT.

Rule of law.

The rule of law can be defined based on its constituent components, referring to adherence of all classes of society, especially the officials and governors to the law. Thus, all government acts are under the legal framework and the rulers are responsible for their actions in a law-governed society (Hashemi, 2005: 434). Here, the law refers to general meaning of the Constitution, the parliament approvals, the international treaties, the law general principles, administrative regulations, and orders of the courts (Rousset, 2004, p. 38), not the specific sense which is strictly limited to the rules adopted by the legislature and the referendum (Katouzian, 1998: 122).

In Chapter three of the Constitution under the title of "Rights of the nation", the individual rights and freedoms have been discussed, and principles have been established that all parties, including the judiciary, are required to comply with them. The status of the rule of law in the judiciary and the legal requirements, established by legislator to comply with the judiciary, are examined.

The individual immunity principle.

The principle 22 of constitution considers ensuring the dignity and reputation of individuals in this way that "The dignity, lives, property, rights, housing, and occupation of individuals are inviolable, unless the items required by law". Furthermore, the constitution noted the right to life in several principles and confirms it. For example in the sixth paragraph of the second principle states "the dignity and supreme value of man" as the foundation of the system's faith; the dignity which is necessarily achieved through respect for human life, as well as providing a healthy living without material poverty and intellectual ignorance for the general public. Also, Article 22 explicitly states

that the lives of individuals are immune from any offense, except the cases determined by law. The mentioned principle prohibits getting the right to human life and respect for the life of the people, except in cases where the guilty person is acting in such way that is deserved to death according to the Penal Code.

The Constitution also recognizes the security of people's housing as one of the important rights of citizens, Not only that public and private individuals have right to invade it, but also, the provision of housing for peoples is among government social duties based on Article 31 and paragraph 1 of Article 43.

Accordingly, and based on the Article 22, housing is inviolable, except in cases where the law of the Islamic Law prescribes admission to the privacy of individuals. Article 34 of the Constitution also noted that litigation is the absolute right of everyone, and anyone can refer to competent courts for the purpose of litigation. All people have the right to have such courts available, and nobody can be excluded from a court that all have the right to refer to it under the law. Hence, according to Article 34 of the constitution of the Islamic Republic of Iran, the government is required to establish competent courts in accordance with Islamic standards in order to let people referring them. It is the right of the people that have no concerns about illegal offenses from others or judiciary with the access to competent courts and judges.

This right also includes the individuals' immunity of communication and conversations. Since man is a social being and collectivist, it is thus inevitable that he is in contact with his pairs in any spoken or written way, in person or in an indirect manner. With the help of its intellect, human beings have invented the devices that gradually evolved from simple operation to a very complex mechanism, in order to facilitate this need. It is then a certain the need for communication with others rooted in the nature of mankind. Therefore, the provision of it is a human right and to violate this right is the violation from the rights of the relationship parties (Tabatabai Motameni, 1991: 1991). Article 25 of

the Constitution states that "Inspecting and unpacking letters, recording and disclosing telephone conversations, exposing telegraph and telex, censoring, transmitting and eavesdropping and any kind of inspection is prohibited unless by law.

It can be seen that government agencies and their agents have been prohibited from doing the acts referring to in article 25 due to the maintenance of the privacy of people's private relations, so that as the intervention in relationships is permitted only by law.

The principle of innocence.

The principle of innocence, as a logical consequence of the principle of the law of crimes, has a wide application in criminal affairs and it is very important. This principle has a long history in Islamic jurisprudence and is one of the most valid rules. This principle is also based on Article 9 of the Declaration of Human Rights and Citizenship of 1789 in French law. Article 37 of the constitution of the Islamic Republic of Iran has identified the principle of innocence as an important principle.

As this principle knows the person innocent from the tolerance for the performance of a criminal offense prior to the occurrence of a crime, it actually establishes a certain legal status of the individual, until his crime is proved. In other words, the legal status of citizens is always fixed, and they only change with the admission of crime. Accordingly, it is possible to find out the relationship between this principle and the principle of legal immunity. In fact, the principle of legal security requires citizens to ensure that the legal status of people will never change until the proof of crime, and they will always be protected by the legal system before they change their legal status.

Acceptance of the principle of innocence has two main effects in the criminal procedure: the accused defense rights and the right to ensure the accused freedom (Bahmani Qajar, 2008: 170). There is another principle that deserves to be noted along with this principle which is the principle of "the customization of crimes and punishments" which is also as the corollary to the principle of innocence.

It should be noted that both of them are the principles that limit the scope of the crime and the

punishment to the accused and, in fact, maintain the legal status of people. So, it can be said with a little caution, that these principles are related to the principle of legal immunity and are the subset of this principle.

Recognized in Article 37 of the Constitution of Iran, the presumption of innocence has some effects on the investigation process so that the accused can collect and provide defense reasons. This principle requires that those involved in the criminal justice system, while adopting the measures that restrict the freedom of the accused, provide all the facilities to the accused, so that he can defend himself with complete freedom, based on reason and logic (Najafi Abrandabadi, 2005: 108).

The right to litigation in competent courts.

Through the provision of measures, it is essential for the judiciary to provide more favorable conditions for establishing justice, eliminating oppression and helping the oppressed. The most important condition for the fulfillment in this regard is the establishment of competent courts so that everyone can have access to the courts for petitions and lawsuits. Obviously, the training of judges and the necessary efficient and effective administrative staff, and their helpful and worthy presence are considered to be the main pillar of the competent court.

Accordingly, the government is required to establish competent courts in accordance with Islamic standards in order to allow them to be brought to justice according to the Article 34 of the constitution of the Islamic Republic of Iran. It is the right of people not to have any concern about illegal harassment through accessing the competent courts and judges.

The Islamic Republic of Iran is required to provide the necessary judicial facilities without any restriction and manipulation so that the people of the society are protected from oppression and corruption. However, many people are not able to properly litigate because of lack of familiarity with the litigation system and lack of dominance over the rules of the judiciary. So, they may ultimately not achieve the desired result after spending time and money, or with out-of-order spending. Hence,

implementing a lawyer is essential. In principle 35, the constitution of the Islamic Republic of Iran has made it clear that the parties have the right to use lawyers in all courts for defending their rights and litigation, and the government should provide this as much as possible.

The Principle of the legality of offenses and penalties.

The legality of penalties has been considered in the Article 32 of the Constitution of the Islamic Republic of Iran: nobody can be arrested except by the order and procedure specified by the law, and the subject of the charge should be sent immediately to the competent judicial authorities and the premises the trial will be made as soon as possible in case of arrest; the offender will be punished according to the law.

Article 36 also states that "The punishment and execution of a sentence must be only through the competent court and according to the law." The law explains the criterion of personal and social life, and it is the guide of conduct and the interactions of individuals with each other. The rule of law has at least this basic advantage that the limits of the rights and duties of all citizens are predetermined and they are not wandering and uncertain in the conduct and regulation of their relationships. Violation of the law causes responsible for the offender. Some of these offenses are "crime" and committing it requires "punishment".

The mentioned logical link to the crimes and penalties is significant in the following assumptions: the individuals will surely not be punished if they commit criminal offenses without knowing the legal limits. By committing a crime and deserving punishment, the accused are ensured that they will not be punished more than the provisioned legal punishment. Also, the individuals are ensured that society will restore their lost security by resorting to law and prosecution and punishment if they are harassed by other people.

In the aforementioned assumptions, in a system of sovereignty, the law is the main criterion for the definition of crimes and punishments, and thus, ensuring the safety of citizens. This system is referred to as the "principle of the legality of crimes and punishments" (Hashemi, 2005: 210).

Accountability of the judiciary in the Iranian constitutional rights.

The general idea of accountability is that a public authority having the general power about decisions and actions based on predetermined rules and norms, provides explanations in various forms (as prescribed by law) to the people, authorities and relevant public institutions. The purpose of accountability of public authorities and institutions is to guarantee the responsibility of power towards society (Griffith & Shaw, 1998: 13-14). Bowens define accountability as "the relationship between an agent and a principal, based on which the agent is responsible for explaining and justifying his or her behavior. The principal can ask questions and judge about the performance of the agent based on the answers received. The agent may face the results and consequences as a result of its performance. An agent can be an individual or an entity or a group of organizations (the entire judicial system) (Contini, 2007: 31).

It should be noted that judicial accountability can be reviewed at two levels of a) the personal accountability of judges regarding judicial decisions and b) the accountability of the judiciary regarding the functioning of these entities.

The need for and the importance of judicial accountability (including judges and the judiciary) in assigning tasks and managing judicial affairs has been emphasized along with emphasis on strengthening the methods of securing the independence of judges and increasing appeals for the institutional independence of the judiciary from the executive branch. It should be noted that various mechanisms have been designed to ensure the neutrality of the judges and their accountability from the standpoint of personal autonomy, including the direct mechanisms (such as the disciplinary responsibilities of judges, the possibility of their dismissal and the regular performance assessment

of judges) and indirect mechanisms (such as holding public sessions, hearings of the reasons of parties, the requirement for documentation, and the possibility of criticism and evaluation of judicial decisions).

How should the judiciary respond to its performance from the institutional dimension? Accountability is considered as a necessity for the public authorities to enjoy public authority in a democratic system today. As other public service providers are accountable about their performance, judicial authorities must also respond appropriately in their own way. It is obvious that, given the importance and sensitivity of judicial independence, the authorities (judges and officials of the judicial institution), cannot and should not respond to their functions, like other executives and agents of public institutions, but also, mechanisms should be designed according their specific status and characteristics.

The most important question is what part of the judiciary should be responsible to which individuals and institutions with which guarantee (s). The judiciary, as an institution, must be accountable to the society regarding its management and organization. This entity must be able to provide a litigious provision in such a way that is not only fair and law-abiding, but also efficient, effective, result-oriented with a high degree of expertise and professionalism. The judicial independence requires that judges are not accountable to the relevant ministry in the same way as public servants (Ibid. P.1).

Considering the dominant model of the administration of the judiciary in the current legal systems, namely the executive model based on which the Ministry of Justice is responsible for the administration of administrative, employment and financial affairs and, in general, the support of the judiciary, the accountability of such systems is similar to the other ministries is the responsibility of the Minister of Justice, as appropriate, is responsible for providing the necessary human and financial resources against the head of the executive branch or the parliament, and is responsible for his decisions and actions (Ferejohn, 1998).

In order to ensure simultaneous judicial independence and accountability in the judiciary in some legal systems, it has been attempted, through structural mechanisms, and specifically in determining the composition of members of panels and councils within the Judiciary (Garoupa, 2008) with functions Management, to act in such a way that a balance exist in the role of any government organs in the administration of justice to stop power through power.

Determining roles for executive and legislative authorities in the judiciary may undermine the assumption of the independence of the judiciary as one of the main elements of systems based on theories of rule of law and separation of powers since it is necessary for the judiciary to be away from unhealthy relations of political power. For more explanation, it should be noted like the legislative and executive functions, the judicial function is an obstacle to the exercise of public authority. Without having the power of the government, the judiciary is not unable to perform its duties and responsibilities. It can be seen that the judicial accountability is referred in the comparative literature within public hearings, the issuance of judicial decrees in a documented and well-documented way, the possibility of revising and publishing, and providing a framework for criticizing and reviewing judiciary opinions.

The mentioned mechanisms are intended to control and ensure the legality of the processes and decisions of the judges of the courts; however, the accountability is not in the precise meaning of the word (Ibid, p. 32). It appears that the mentioned cases are mainly related to the legal guarantees of ensuring judicial neutrality compared to judicial accountability mechanisms. Although, a degree of judicial accountability is also obtained indirectly as a consequence of ensuring the impartiality of the judiciary.

According to what was said above, there has no well-defined mechanism for the accountability of the judiciary in Iran's legal system. Although the spokesman for the judiciary is generally present at the

press conference with the media and answers journalists' questions, but there is no mechanism for judiciary accountability to the people in the bureaucratic sense.

The judiciary responsiveness in the Iranian constitutional rights.

Good governance requires institutions and processes to provide services to all stakeholders at the right time. This is only possible when these institutions are sensitive and responsive to the wishes, expectations and needs of individuals and groups. The principle of human responsibility arising from his consciousness and authority as a kind of ethical behavior that is obligatory; a commitment that is not in conflict with human discretion and judgment. Moral responsibilities are sometimes as "individual ethics." That is, every person as a real person is responsible for his or her own behavior, family and society regardless of his work, and must be accountable in this regard.

The ethical responsibilities are sometimes as "job ethics." Each person has specific moral responsibilities according to his/her job such as the moral responsibilities of the physician, the bank employee, the attorney and the teacher. The third type of the moral responsibility is "organizational or professional ethics" (Qaramaleki, 2003: 97-107), which deals with the responsibility of individuals as legal persons, with the exception of personal and job responsibilities in which individuals are held accountable as the real person.

As mentioned earlier, the principal tasks of the judiciary are noted in Article 156 of the Constitution. "The judiciary is an independent entity that supports personal and social rights and is responsible for the realization of justice, and has the following duties: 1. To process and issue sentences for claims, damages, complaints, disputes and dispositions, and to take decisions and action in that part of the affair which the law determines; 2. Restoration of public rights and the spread of justice and legitimate freedoms; 3. Monitoring the good law enforcement; 4. Discovery of the crime and prosecution of punishment of offenders and implementation of the criminal laws and regulations of Islam; 5. Take

appropriate action to prevent crime and reform the perpetrators". These responsibilities are described below from the judiciary nature perspective.

The first part of paragraph 1 of article 156 of the Constitution is about "reviewing and issuance of sentences concerning claims, damages, complaints, disputes and dispositions of hostilities". In short, we can say that hearing and issuing a ruling on a claim is one of the functions of the judiciary. "Claim" in the realm of law can be used in three ways: the right to file a lawsuit, claim against another and for its own benefit and litigation (Shams, 2005: 298 294). This section of the Constitution seeks to convey the responsibility of the judiciary in various forms.

In adversarial cases, we face with a three-way relationship. The initiator of this claims that by making a lawsuit against the defendant, asks the judge to handle his claim. The examination of the veracity of the claim (or the issue of the dispute) and the issuance of the appropriate vote is the intrinsic duty of the judge (and the judicial system), and the first edition of the arbitrariness is also the chapter of disputes between individuals. The interpretation of some jurists in the definition of the judiciary also relates to this issue. "The arbitrariness is judge between people when the conflict and quarrels and solving the conflict and the end of the dispute between them" (Tabatabai Yazdi, 1424: 413).

Another function of the judiciary is to "take the decision and action in that part of the affairs that the law determines." According to Article 1 of the law of assigned duties, the purpose assigned duties or "duties that the courts are obliged to take action and make a decision without having to stop them in the event of disputes between individuals and to bring actions on their behalf"; these duties include affairs such as dealing with absent people. The intervention of the judicial authority in these cases has a protective and preventive approach and the interference with it does not stop at the discrepancy. The first martyr's statement in the definition of the judiciary includes the following "there is a legitimate mandate for vote in public interests before the Imam" (Ameli, 1414: 65).

Public interests have a broad meaning and include intervention in affairs in order to protect public interests, in addition to eliminating the conflict. Historically, it was also confirmed that, in the early days of Islam, judges only solved the claims, but later, other occupations were assigned to the duties of caliphs and rulers due to the expansion of Islamic civilization; so that, the wills, the endowments, the guardianship of the maniacal property, the marriage of the orphans, the guardianship of the orphans, the care of the Friday and the Feast prayers and the prayer recitation were considered as duties of the judges (Ibn Khaldun, 1964: 425). This affair was not at the core of judicial affairs by itself, but trust in the judicial system has led to transferring them to the judiciary and judges, and they are of an administrative nature due to the existence of a dual relationship.

"Restoration of public rights and expanding justice and legitimate freedoms" is another responsibility of the judiciary. According to the first paragraph of Article 3 of the Law on the Establishment of Public and Revolutionary Courts, "the Prosecutor's Office is responsible for prosecuting a crime, prosecuting the offender, instituting legal proceedings in respect of the issue of the maintenance of public law and Islamic limits". As violations of the rights of the society and legitimate freedoms, crimes require someone to file a lawsuit on behalf of the society.

In the past, the criminal offenses were prosecuted in criminal cases with a plaintiff's complaint, but with the passage of time and the limitation of the right of the victim to lodge a lawsuit against the perpetrator of a crime and to increase the general aspect of crime and the marginalization of the aspect privately, there was a reference to the protection of the public interest of the society. This task has been delegated to the judiciary in the constitution of Iran; however, given that the court is affiliated with the executive branch in most countries (Kooshki, 2007: 89; Kashani, 2008: 149), this task is delegated to the judiciary in those countries.

"Monitoring the good law enforcement" is another task for the judiciary (paragraph 3 of article 156 of the Constitution). According to Article 174 of the Constitution, this duty is the responsibility of the General Inspection Office. According to the Article 1 of the Law on the Establishment of the General Inspection Office, "Supervision and Inspection in the sense of this Law is a set of continuous and regular activities aimed at collecting necessary information about the stages before, during and after the actions of the entities covered by article 2 of this law, analysis them, matching their performance of the device with the goals and legal assignments and provide appropriate proposals for the good flow of affairs".

As a two-way relationship between the supervisor and the supervised person, supervision is different from the concept of judgment in nature. Although the supervisor may also assess the person under jurisdiction, this assessment is different from that of the judgment. In the meantime, reference to the detailed negotiation of the adoption of the constitution is useful. During the approval of Article 174 of the Constitution, one of the experts (Mousavi Jazaeri) asks: "What is the relation of this organization [the General Inspection Office] to the Administrative Justice Court? Is it the same or something else?" (Anonym, 1985: 1682). "The Administrative Justice Court has the right to sue someone, but it is not a complaint" (ibid.). The vice-chairman replies.

In order to clarify the distinction between the concept of supervision and judgment, it is useful to refer to the detailed negotiation in enacting the law establishing an entire country's General Inspection Office. One of the parliamentary representatives (Omid Najafabadi) states: "... As you know, this inspection is actually a kind of investigations, and those who have information in the judiciary know that the judicial task is essentially the same investigations" (Detailed minutes of the parliamentary negotiations, 1981: 20 and 19). Another representative (Qarabagh) declares: "... the purpose of this organization is not to judge; this inspection is a matter of whether the country's organs, the laws of the country are well implemented, or violated and not enforced. This is a kind of detection; there is

no judgment. They are responsible to report and the final judgment will be with the judiciary, that is, by the judiciary ..." (ibid., P. 20). To clarify, the inspection is comparable to the actions of the judiciary in detecting a crime; however, with this obvious difference that in inspection, detection of crime and offenses is considered with an active and preventive approach.

Supervision in the exact sense of the word means "the control and review of the actions of a government official by another authority whose purpose is to ensure that the abovementioned measures are kept in legal form" (Raskh, 2009: 20 & 21). Supervision is rooted in the theory of equilibrium and balance; each of triple forces will monitor the performance of other forces in order to harness the power of them.

The supervision of the judiciary in the light of Article 174 of the Constitution can be explained in this way. Hence, there is a significant natural difference between the supervision and judgment, and if the supervisor detects an offence or crime, he should report to the judicial authority or the referring court. The distinction of constitution between the "supervising good law enforcement" and "reviewing and issuing a decree on claims, damages, complaints, litigation, and resolution of hostilities" also implies the difference between the two concepts of supervision and judgment.

"The discovery of crime and the prosecution and punishment of offenders, and the implementation of the criminal laws and regulations of the Islamic Republic" is another task of the judiciary According to Article 156 (4) of the Constitution. This paragraph is related to the previous steps (detection of crime and prosecution) and the subsequent (punishment of offenders and implementation of the criminal laws and regulations of Islam) of judicial review.

The explanation for the crime and prosecution of the perpetrator has already passed and avoided repeating it. The sentence for punishment is the responsibility of the judge as a retrial; however, execution of the sentence is not one of the examples of the execution of a sentence consistent with the concept of a triple structure and is based on the obligation to enforce the punishment, and is similar

to the requirement resulted from the law be passed by the legislature in this respect that creates duties for the law followers; with the difference that the obligation to comply with the judge's ruling is occasional. Hence, the enforcement of a punishment has not a judicial aspect and, in the event of a difference in the interpretation of the decree, the judge will have the right to interpret. The majority of legislatures in the transfer of punishment to non-judicial institutions (Goldoozian, 2004; Singh et al, 2017), confirmed this claim.

It is possible that the "principle of Judicial punishment " may be called into question, but as it has been said, the principle is used in two ways: first, the intervention of a competent authority with appropriate powers to determine the amount of penalties in line with the principle of punishment customization and second, that only the competent judicial authority can decide on its punishment and enforcement (Nobahar, 2010; Ravindaranaath et al, 2017). This principle refers to the stage of issuing a judgment in both cases and is not related to the enforcement of the sentence.

Another function of the Judiciary is introduced as "appropriate action to prevent offenses and correcting offenders" according to article 156, paragraph 5, of the Constitution. There is a controversy about the notion of "appropriate action to prevent crime" in this paragraph; in macro perspective, some consider this as a precautionary measure, and some considers it subject to criminal measures, and some believe in an intermediate approach (see Fakhr and Rostami Ghazani, 2011: 124 97). Of course, in all three cases, crime prevention is in the form of measures with an executive nature (such as education, training, execution of punishment and caring and cultural measures), or that the result of judicial proceedings, and in both cases, the prevention of a crime that is not of a judiciary nature; this is also true about the "correction of criminals.

Efficiency and effectiveness.

The efficiency is related to the doing things right in the organization, that is, decisions aimed at reducing costs, increasing the amount of production and improving the quality of the product (Taheri,

1999: 9). Efficiency is defined as the ratio of the actual return achieved compared to the standard and determined (expected) return or the ratio of the amount of work that is done to the amount of work that should be done.

Good governance requires the existence of processes and institutions that meet the needs of the society with the best application of resources. The concept of efficiency and effectiveness within the framework of good governance includes sustainable use of natural resources and environmental protection (Sharifzade; Golipour, 2003: 85). Some others believe that the state institution also seeks to improve its efficiency and effectiveness in order to achieve new legitimacy and obtain secondary legitimacy through efficiency, thereby maintaining its sustainability with increasingly guarantee citizens' satisfaction. Efficiency demonstrates the ability to manage the country by competent executives and achieve maximum satisfaction from the government. The purpose of efficiency in the use of efficient bureaucracy is to manage and apply the correct policies (Naghibi Fard, 2010: 125). The following items can be noted in assessing the efficiency and effectiveness of the judiciary.

1. Inappropriate interactions with clients.

The misconduct of the officers with the client, due to lack of familiarity with the correct approach, provides the ground for engagement with the client, and, in addition to making the crisis between the parties more acute, it also creates new cases in the judiciary; because in case of the objection by the client, the court proceedings can be indirectly prolonged by filing a statement of disobedience and resistance to the officers, or disrupting the law enforcement order or insulting the officers, both in the armed forces and in the judiciary (Same, 2006: 98).

2. Executives' ignorance from the judiciary position.

The current rules and regulations that determined the duties of the police force have provided a situation where the police consider themselves to be partners rather than the officer of the judiciary system and take the lead against the decisions of this force as their supervisory and police chiefs. One

of the examples of this can be the issue of rousing the judicial authorities from the police; the NAJA commanders had banned this through circular, but the circular was revoked by the Administrative Justice Court. Another example is the request for the judges to demonstrate the severity of the actions against the defendants and the perpetrators by the police. These examples indicate that the police are not paying attention to the status of the judiciary and the science of law and independence of the judges, and the supervision right of this entity over officers (Same, 2006: 120).

- Failure to fulfill the officers' legal obligations in evident crimes: this issue sometimes eliminates the effects of the offense and, consequently, the prolongation of prosecution, The prolongation of preliminary investigation and the lack of planning for sending files and sending them in large amounts to the prosecutors also cause them to be returned.
- Identity department's delay in responding to inquiries into the subject of forgery.
- Delay in obtaining local investigations from law enforcement agencies.
- The police's negligence in executing judicial orders and prosecution for not complying with the guarantee of criminal acts and refusing to execute orders causes the prolongation of trial.
- The police weakness in obtaining the accused: the lack of internal organization supervision over the performance of the police, the lack of cooperation of the apparatuses to introduce the accused, the weakness of the material and spiritual support of the police in obtaining the accused and the regional division of the police services and the impossibility of Interventions arise in other areas (Legal and Judicial Development Deputy, 2007: 11).
- Delays in introducing the accused by law enforcement agencies and failing to submit the cases to the judicial authorities in the early official hours.

3. Lack of motivation and unfavorable work conditions.

The lack of motivation for police is another set of factors that cause inefficiency and effectiveness. Police officers often lack the ability to perform their duties because of livelihood problems and fatigue resulting from their sever work (Same, 2006: 43).

The environmental conditions and lack of facilities also cause inefficiency and effectiveness. Some of the problems in this category are raised below:

a) Excerpts of law enforcement officers at their place of residence at the time of service: even for one to two years, police service in their place of residence causes excerpts to perform their duties decisively and on time. These excuses sometimes lead to a delay in the preservation and collection of reasons, and lead to more complicated issues and prolonged trials (Same, 2006: 63).

b) Delivering a large number of cases with defendants to the judicial authorities by one or two agents. In most cases, a large number of defendants and the cases, together with one or two agents, are sent to the judicial authorities, which are referred to different branches by referring each case. Prosecution and sometimes the handing over of some accused to the enforcement unit and referring to the computer system for filing files and introducing the defendants to jail, and many other actions, are out of the power of two young and inexperienced officers, and result in the dissatisfaction of the people and the prolongation, the escape of the accused, the wanderings of client and delay the execution of judicial proceedings (Same, 2006: 67).

Also, some cases must be restored to the Sheriff, after the receipt of a judicial order, to complete the investigation or remedy possible deficiencies; however, due to the plurality of the case and the client, and without any need and solely because of the presence of the official in the prosecutor's office or court, it is necessary to be present until the completion of the administrative time (Rashidi, 2004: 59);

c) The disproportionate of the police duties with its material resources and its human resources: Some useful actions by some police officers are now largely due to years of individual experience, and specialist courses related to judicial functions are rarely held.

d) Unconscious induction of the weakness of the actions taken by the authorities and the loss of confidence in them in relation to the frequent return of cases: the Article 36 of the A.D.K states that: "The report of the complainants is valid if it is not unlikely, contrary to the circumstances and circumstances, and is according to legal rules and regulations". Accordingly, regardless of the currents that reduce the value of the investigation, it is a matter of fact that this legal authority will enable the judge to return the case to the police in order to be sure, and these regulations, unconsciously induce the weaknesses of the actions and discourage them, and will leave the judges to reject many credible reports (Same, 2006: 77).

e) The lack of specific regulations for the execution of judicial orders: There are no specific rules for the execution of judicial orders by the police so far, and no specific officer is appointed for each case, and unfortunately, multiple agents with different experiences and mindsets in a case that will delay the trial (Same, 2006: 83).

f) Inadequate crime detection equipment: Most provinces do not have the facilities and equipment needed to detect complex crimes such as murders, rape, and electronic crimes, and most of the crimes are not discovered promptly and on time, and as time passed from the crime commitment, the chance of their discovery becomes less and naturally longer.

g) The multiplicity of executives' duties that sometimes takes the opportunity to deal with judicial affairs (Same, 2006: 89).

CONCLUSIONS.

The present study aimed to answer this question that what is the place of the good governance components in the judiciary.

According to the results of this study, the good governance components are not well-applied as it should be, especially in cases such as accountability and efficiency in the Iranian judiciary context, and there are clear legal gaps in this regard. Unfortunately, despite the guarantees provided by the government for good governance in some areas and in order to secure citizens' rights, it should be acknowledged that the provision of judicial services is not, in a way, that attracts the public satisfaction.

It is necessary to take steps towards judicial development in order to bring the judiciary closer to the components of good governance. Development is a dynamic movement that can be upgraded to the desired status relying on the existing capacities. From another perspective, "judicial development" refers to the field, which provides the context for human rights expansion and development based on the jurisprudential principles of Islam and understanding the time requirements.

As one of the theoretical and theoretical foundations, some principles are established in the constitution of the Islamic Republic that appropriate grounds for the realization of "social justice" and "security" can be provided based on them in various cultural, political and economic spheres, and for the sake of excellence and prosperity of material and spiritual talents of all classes of society as the public rights. Then, the Iranian judicial system is considered as one of the criteria for assessing development.

The Judiciary has been recognized as an independent force that supports the individual and social rights of the people and "securing justice" and creating "judicial security" in Article 156 of the Constitution. According to the above paragraphs, it is verified that the judiciary is a reference that

always seeks to revive the rights of the people and eliminate various abnormalities by issuing various rulings in civil, legal and criminal matters and this is possible in the light of good governance.

Creating space in order to achieve "speed" and "accuracy" is something that needs to be addressed in the new developments in the judicial system, in the proceedings, so that no one is sacrificed; however, it should be noted that the occurrence of many events, specifically the crimes, cannot be caused by a single agent in the complex relationships of today's societies. Thus, the subject must be studied by various experts by referring to the collective intelligence of each causative agent in applying the guidelines.

The first element that will contribute to the provision and restoration of public rights is the preparation and drafting the laws, tailored to the needs of the society and allow access to justice. However, the point is that the role of the judiciary in proposing judicial bill in the legislative process should be in such a way that would prevent adding to the problems that have already led to diminished domination of judges in addition to refine the past laws. Furthermore, stable and non-controversial laws and efficient administrative systems are among the factors considered important in providing competent judicial services.

In fact, the presence of trained staff and necessary equipment, such as computer-equipped buildings, can play an important role in executing court orders and expediting the process of proceedings. Other elements that matter is that the judicial system should have such authority that, firstly, no one can penetrate the stages of the proceedings, and secondly, no one has the right to refuse to comply with the decrees and orders of the judicial authorities. However, their current situation and the moral status of judges, is not in such a way that they are able to operate as worthy of an Islamic system.

Undoubtedly, the material needs should be considered in examining the root causes judges to strengthen them; but this is also due to recruitment of a number of judges who are not of a high scientific degree, that this problem should be solved by the holding and continuation of training

periods. Generally, it can be said that the success of judges is related to dealing with cases with accuracy and speed and the existence of a tool such as clear and explicit rules, efficient human resource and lack of any intellectual concern can be considered among the necessities to achieve this purpose.

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