



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 400-2 esq a Lerdo de Tejada, Toluca, Estado de México. 7223898475*

RFC: ATI120618V12

Revista Dilemas Contemporáneos: Educación, Política y Valores.

<http://www.dilemascontemporaneoseducacionpoliticayvalores.com/>

Año: VII

Número: Edición Especial

Artículo no.:94

Período: Febrero, 2020.

TÍTULO: Evaluación de la supervisión del poder judicial en la Constitución de la República Islámica de Irán a la luz del Buen Gobierno.

AUTORES:

1. Ph. Stud. Mahsa Majdzangeneh.
2. Dr. Abolfazl Jafargholikhani.
3. Dr. Mohammadreza Yosefi.

RESUMEN: Este estudio descriptivo-analítico basado en estudios bibliotecarios se realizó para evaluar la supervisión del poder judicial en la Constitución iraní a la luz del Buen Gobierno. Los resultados indicaron que los componentes de la buena gobernanza, como la rendición de cuentas y la transparencia, no están adecuadamente definidos y tomados en cuenta para el desempeño del poder judicial en la Constitución iraní.

PALABRAS CLAVES: poder judicial, supervisión, Buen Gobierno, constitución.

TITLE: Evaluation of Supervision over the Judiciary in the Constitution of the Islamic Republic of Iran in the light of Good Governance.

AUTHORS:

1. Ph. Stud. Mahsa Majdzangeneh.
2. Dr. Abolfazl Jafargholikhani.
3. Dr. Mohammadreza Yosefi.

ABSTRACT: This library studies-based descriptive-analytical study was conducted to evaluate the supervision over the judiciary in the Iranian Constitution in the light of good governance. The findings indicated that the components of good governance such as accountability and transparency are not properly defined and taken into account for the performance of the judiciary in Iranian Constitution.

KEY WORDS: judiciary, supervision, good governance, constitution.

INTRODUCTION.

In the Iranian Constitution, the head of the judiciary is at the top of the organization and he is its highest authority. According to the Section 6 of Article 111 of the Constitution, the appointment and dismissal of the Head of Judiciary is among the Supreme Leader's authorities and in accordance with Article 157, the Head of Judiciary is appointed for a period of five years. According to this article, there are three conditions for this: 1) being a righteous mujtahid, 2) being aware of judicial affairs, and 3) being resourceful.

According to Article 156 of the Constitution, the judiciary duties include: 1) investigating and issuing judgment on grievances, violations, complaints, resolving disputes and hostilities, and making the necessary decisions and taking measures in those non-litigious matters determined by law. It is the responsibility of an organization of the judiciary, called Ministry of Justice, which includes public prosecutor's offices and the courts.

According to Article 159 of the Constitution, the official authority for judicial complaints and appeals is the Ministry of Justice, and formation of courts and the determination of their jurisdiction is subject to the rule of law. So, it is the responsibility of the courts to issue a judgment. 2) Restoring public rights and the promoting justice and legitimate freedoms. 3) Supervising the proper law enforcement, which is the responsibility of the Supreme Court within the courts and the responsible of the inspection of the General Inspection Organization (GIO) within the offices and organizations. 4)

Crime detection, prosecution, and punishment of criminals, and enforcement of the Islamic penal code, which are primarily the responsibility of the public prosecutor's office. Supervision over the judiciary is mainly carried out by the Supreme Leader, since according to Article 157 of the Constitution, the head of the judiciary is appointed by the Supreme Leader. However, at the stage of implementation of the legislative, judicial and executive tasks, each of the three branches has a specific scope of activity under the provisions of the constitution, which exercise some degree of control over each other regardless of the different nature of the tasks assigned to each of them.

The Iranian Parliament, as the People's House, determines the duties of other branches by enacting the law and defining the limits and duties and how to perform them. At the same time, it has the power to intervene in other matters to the extent permitted by the Constitution through the enactment of the law, and to monitor the functioning of the judiciary in terms of its compliance with or inconsistency with the law and the complaints of individuals, through legal and natural means, using mechanisms provided by law such as Article 91. However, from the point of view of the judiciary, parliament can only inquire into its administrative, financial, support and service sectors. In other words, it does not have the right to inquire into the judicial affairs.

Considering the generality and applicability of Article 76 of the Constitution, and to the fact that attached or detached or rational and non-literal specificatives have not entered on its general provision and since none of the affairs of the judiciary are outside the "affairs of the State" and there is no difference between judicial and non-judicial affairs of the Judiciary in terms of the possibility of investigation by the Iranian Parliament, Article 76 of the Constitution on the right of inquiry and examination of the Iranian Parliament seems to be fully inclusive of all matters of the judiciary, including administrative and judicial affairs, and the Iranian Parliament can investigate all matters of this branch with no exception (Gholipour, 10: 2015).

Based on the above, the question arises as follows: In terms of good governance, how can supervision over the judiciary be evaluated? What is the mechanism for supervision over the judiciary in Iran? And, to what extent is supervision over the judiciary in Iran consistent with the components and indicators of good governance?

DEVELOPMENT.

Literature review.

In her study, Heidari (2016) stated that the Constitution of the Islamic Republic of Iran is at the prospect of good governance. Then, the book *Reviving Democracy: Citizens at the Heart of Governance* was reviewed, layers of good society were identified and finally the Constitution of the Islamic Republic of Iran was analyzed. The results indicated that the Constitution of the Islamic Republic of Iran considered the needs of people in all three layers.

For Mousavi (2008), guaranteeing the independence of the judiciary is against the executive and legislative branches in Iran, the US and France. Separation of powers is one of the most important principles of democracy developed by thinkers such as Aristotle and John Locke and evolved by thinkers such as Rousseau and Montesquieu. In the meantime, absolute separation of powers in today's complex world alone cannot fulfill the purpose of the theory of separation of powers, which is to eliminate despotism and prevent the concentration of power. However, a tool is needed by which three powers can control each other so that a balance is established between them.

The independence of the judiciary, which itself includes the independence of judges and the independence of the courts, and consequently, individual and social rights and freedoms are realized, has been recognized and viewed from different angles in the three countries of Iran, the US and France. The theory of separation of powers and solutions to guaranteeing the independence of judges

were examined in the first chapter in order to explain the guarantee of the independence of the judiciary against other powers.

Questions.

The main question:

Is supervision over the judiciary in the Constitution of the Islamic Republic of Iran compatible with the components and indicators of good governance?

Sub-questions:

1. What is the mechanism for supervision over the judiciary in Iran?
2. How is the supervision of the judiciary by the legislature and the executive powers in the legal structure of Iran?
3. What are the solutions for realizing the components of good governance in the judicial system of Iran?

Hypotheses.

The main hypothesis:

From the legal point of view, supervision over the judiciary is far from the components of good governance.

Sub-hypotheses:

1. In the Iranian Constitution, there is no mention of supervision over the judiciary, and that is largely supervised by the Supreme Leader.
2. In the Iranian Constitution, the legislature can exercise direct supervision over the judiciary through the adoption of laws and directly through the Article 90 Commission, but the executive

branch has not been granted the right to monitor the judiciary by the executive branch has not been recognized.

3. Paying attention to human rights standards is one of the most important factors in the realization of the components of good governance in the judicial system.

Methodology.

This study was conducted using a descriptive method of content analysis. The library method (books, laws, judicial procedures, legal theories, related papers and websites) was used for data collection. In this study, data analysis qualitative method was used because the variables were not measurable accurately and quantifiably.

Types of supervision in the Constitution of the Islamic Republic of Iran.

Supervision is frequently discussed in the Constitution of the Islamic Republic of Iran both directly and indirectly. Sometimes there is an explicit mention of supervision, for example in Section 2 of Article 111 of the Constitution, and sometimes though there is no mention of it, the realization of the article will not be possible without supervision, for example as in Section 11 of Article 111 of the Constitution. In order to refer to the many articles of the constitution on supervision, all of the articles were divided under into political supervision, legal supervision, judicial supervision, and financial supervision.

1. Political supervision.

It is the supervision over government agencies and agencies their employees and property by the political institutions or authorities of the country. In the Islamic Republic of Iran, this supervision is accomplished through the following (Amid Zanjani et al., 2010, 73):

Supervision by Parliament in the form of investigation (Article 76 of the Constitution).

Supervision by Parliament through interpellation (Articles 88 and 89 of the Constitution) or priori supervision of ministers through a vote of confidence (Articles 87 and 133 of the Constitution).

Supervision through Article 91 of the Constitution (submitting a complaint to the Parliament on the performance of the Parliament, executive or the judiciary powers).

Supervision over the IRIB (Article 175 of the Constitution).

Supervision over the three powers by the Supreme Leader (Article 57 of the Constitution).

Popular supervision: It is the supervision over government institutions by the people and the public institutions. The Constitution of the Islamic Republic of Iran has put forward several solutions for this purpose:

- General and public supervision (Article 8 of the Constitution).
- Supervision Freedom of the Press (Article 24 of the Constitution).
- Supervision through political parties and groups (Article 26 of the Constitution).
- Supervision through assembly and protest (Article 27 of the Constitution).

Here, we refer to another type of supervision, namely civil supervision. In the Preamble to the Iranian Constitution, it has been emphasized as "the continuous supervision of the Muslim Ummah over the competent and faithful officials". According to Article 3 of the Constitution, the Government of the Islamic Republic of Iran is obliged to use all its facilities for the participation of the people in determining their own political, economic, social and cultural destiny. Also, according to Article 8 of the Constitution, in the Islamic Republic of Iran, Enjoining good and forbidding wrong is a public and reciprocal duty on the people towards one another, on the government towards the people, and on the people towards the government. Moreover, the Iranian Constitution refers to more explicit and objective forms of public supervision in a modern and civil society, including "freedom of the press

to express content" under Article 24, "Freedom of political parties, associations, and political and trade unions" under Article 26, and" freedom of assembly and protest" under Article 27.

2. Legal supervision.

It is the examination of the conformity of the actions of government authorities and institutions with the laws and regulations by the supervisory authority, with the aim of establishing a legal order in all government affairs (Amid Zanjani et al., 2010, 117). It should be noted that all types of supervision can be considered legal. However, the purpose of this type of supervision is to bring the actions or approvals of legal entities into line with current law so that one's actions are not considered as other types of supervision:

- Supervising the good implementation of the general policies of the system by the Supreme Leader (Section II of Article 111 of the Constitution).
- Supervising by the Guardian Council, including: a) supervision over compatibility of legislation with the Constitution and Sharia (Articles 94, 91, 72, 40 and 96 of the Constitution), and b) supervision over elections (Article 99 of the Constitution).

Supervision over approvals of the Council of Ministers by the Iranian Parliament Speaker (Articles 85 and 138 of the Constitution).

3. Judicial supervision.

It is the supervision exercised by the judiciary, in particular with regard to monitoring the actions and decisions of executive authorities and government b, by the judicial body (Bahadori, 2010, 32) and includes:

- Supervising the proper law enforcement by the Supreme Court (Article 161 of the Constitution).
- Supervising the decisions or approvals of executive authorities and bodies by the Administrative Justice Court (Articles 171 and 173 of the Constitution).

- Judges case supervision over the Government regulations contrary to sharia and the law and their non-enforcement (Article 171 of the Constitution) (Sharifzadeh, 2015: 63).
- Supervision by the GIO (Article 174 of the Constitution).

Good Governance.

For some, good governance is a concept recently developed in political science, public administration, and development management. This concept has emerged alongside concepts such as democracy, civil rights, public participation, human rights and social development. In recent decades, it has been linked to public sector reform and is considered as a new concept and model in the public management that emphasizes the role of public managers in providing high quality services. This concept also advocates for an increase in managerial autonomy, in particular a decrease in the supervision by the central government (Sharifzadeh and Gholipour, 2013: 93).

Some individuals or entities define it by its characteristics (World Bank experts). For them, components such as participation, rule of law, transparency, responsiveness, accountability, public opinion, consensus, equity, effectiveness and efficiency form the strategic perspective of good governance. The World Bank as one of the prestigious international institutions, in a report published in 1989, for the first time defined good governance as providing efficient public service, a reliable judicial system and an accountable administrative system (Gholipour, 2016, 67).

According to James Gustave Speth, the administrator of the United Nations Development Programme, good governance is a partnership of transparency and accountability, effectiveness, and efficiency. He also introduces indicators for good governance that emphasize accountability, consensus, participation, rule of law, efficiency, effectiveness, justice, accountability and transparency (Gholipour, 2014, 85).

UNESCO (2012) defined good governance as: the meaning of the mechanisms, processes and institutions through which citizens, groups, and institutions pursue their civil interests, enforce their legal rights and fulfill their obligations. In addition, good governance has been defined as the process of decision making and implementation of decisions with a focus on formal and informal actors (Gholipour, 2015, 10).

In 2000, UN Resolution 2.52, known as the Millennium Declaration, highlighted the implementation of human rights standards and indicators of good governance. In 2000, the Human Rights Commission introduced, in its resolution 64, the key elements of good governance as participation, accountability, rule of law and transparency. In September 2000, the UN Advisory Committee set out a list of indicators for executive and programmatic issues to work with the United Nations including participation, human rights, rule of law, accountability, and e-government.

According to Mahathir Mohamad, Malaysian Prime Minister, good governance is the exercise of political, economic and administrative authority to manage a nation's affairs. This definition includes a complete set of mechanisms, processes, relationships, and institutions through which issues such as public life are managed. Good governance goes beyond public administration, since the democracy desired in good governance helps countries to address the challenges they face. Good governance is both the means and the end.

If all the important elements of satisfaction are shown, good governance becomes its goal. As a result, good governance is the highest state of development and management of the affairs of the nation. It is a democratic form of government where people are involved in the decision-making process, services are provided effectively, human rights are respected and the government is transparent and accountable. Good governance is a means to achieve economic development, human rights development and social justice (Gholipour, 2015, 127).

In another definition, governance is referred to as the process of decision-making and execution of decisions, according to which the concept of governance will be applied in various areas such as national and local international corporate governance.

Considering this definition, the governance can be examined and analyzed by focusing on the formal and informal actors that have emerged in the process of decision making and implementation of this decision. There is almost a consensus on governance actors. According to experts from the United Nations Industrial Development Organization (UNIDO) (2000), Cumi Naidou (1999), and experts from the Canadian International Development Agency (CIDA) (2000), the actors are as follows (Monavarian, 2010, 20):

1. Government (national and local) consisting of the executive, judiciary and legislature branches, and the public services of the army and police.
2. Civil society including non-governmental organizations, local organizations, etc.
3. The private sector including small, medium, and large-sized companies.

In the wake of the sharp rise in poverty and inequality, and inflation in the late 1980s and 1990s, which were of the consequences of the pattern of minimal government interference, the World Bank found that governance, the way the country is governed or the relationship between the citizens and the rulers, is key to development (Meidari, 2014, 259). A broad consensus was formed from international institutions and economists on the redefinition of government sovereignty over a lengthy but satisfying process. These efforts resulted in the conclusion that a particular government must have several characteristics that are defined as "good governance" so that it can fulfill its core tasks of reforming the market and eliminating its failures, increasing competitiveness, institutional reforms, accessing free markets and improving social capital. In good governance with a normative and value-oriented approach in the right way, a new concept of government is introduced that refers to the new process of managing community affairs. It makes a difference in the role of government and offers a

new way of governing society. Finally, good governance is a model for reforming the public sector, strengthening civil society and accelerating private sector participation. In 2002, UNESCO further defined good governance as: the mechanisms, processes and institutions through which citizens, groups and institutions pursue their civil interests, enforce their legal rights and fulfill their obligations (Meidari, 2014, 259).

According to the definitions of good governance, the main issue of good governance is the achievement of a government that can provide the basis for democratic and equitable economic development. According to the above, the components of good governance include participation, rule of law, transparency, accountability, equal rights, justice and effectiveness.

The rule of law in the judiciary.

The rights of individuals in the constitution.

Constitutional legislator in Chapter III of the Constitution as the "people's rights", also considered individual rights and freedoms and enacted articles that the Iranian Parliament should must prove the necessity of limitations and exceptions to them in when imposing restrictions on them by the criminalization.

A) Individual immunity.

In the Article 22, the constitution focuses on guaranteeing the dignity and honor of individuals, and states: "The dignity, life, property, rights, housing and occupation of persons shall be inviolable except as prescribed by law".

Moreover, in many articles, the Constitution refers to and affirms the right to life. For example, in the Section 6 of the Article II, the dignity and high value of human beings are referred to as the foundations of the faith system, the dignity that is necessarily achieved through respect for human life and also setting up the conditions to create a healthy life without material poverty and intellectual

ignorance for the general public. Additionally, in Article 22, it has been expressly stated that the lives of individuals are immune against any aggression, except as provided by law. The article prohibits the killing and respect and care for the lives of persons, except where the criminal commits such a crime that deserves execution and death under the Penal Code.

The constitution also recognizes the security of housing as one of the most important citizen rights that not only private and public individuals are not entitled to attack, but also the provision of housing to people is among the social duty of the State, in accordance with Article 31 and Section I of Article 43.

In accordance with Article 22, the housing is inviolable except in cases where Islamic law prescribes entering the individuals' privacy.

In Article 32 of the Constitution of the Islamic Republic of Iran, the legality of punishments has been considered as follows: No one shall be arrested except as provided by law. In case of arrestment, the subject of the charge should be immediately forwarded to the competent judicial authorities, together with a written statement of the reasons and the arrangements for the trial should be provided as soon as possible. The violator will be punishable by law. In Article 36, it is also stated: "The sentence to punishment and its execution must be only by a competent court and by law".

Article 34 of the Constitution also provides that: Litigation is an inalienable right of every individual and every one can refer to a competent court for litigation. All peoples have the right of access to such courts and no one can be barred from a court where all persons have the right to access by law (Shokri, 2013, 248).

Article 34 of the Constitution of the Islamic Republic of Iran obliges the government to establish competent courts on the basis of Islamic standards so that the practical possibility of accessing them is provided. It is the right of the people to have no concerns about unlawful harassments by taking advantages of competent courts and deserved judges. In addition, regarding the immunity of

correspondence, communications and personal secrets, Article 25 of the Constitution stipulates: Inspection and failure to deliver letters, recording and disclosing telephone conversations, disclosure of telegraph and telex communications, censorship, failure to transfer them, eavesdropping and any kind of investigation are prohibited except by law.

B) Equality.

Everywhere in the Constitution of the Islamic Republic of Iran, ideals and values of equality are supported. The use of terms such as "all people of the nation", "every Iranian person and family", "all Iranian people" and so on in the various articles of the Constitution expresses this fact. However, Articles 19 and 20 confirm this more explicitly.

With regard to equality and non-discrimination between members of the nation, Article 19 of the Constitution provides: Iranian people of all ethnic and tribal groups, have equal rights, and race, language, etc. will create no privilege.

According to Article 20: All people of the nation, both men and women, are equally protected by the law and enjoy all human, political, economic, social and cultural rights in accordance with Islamic standards.

Apart from these two articles, other particles of the Constitution, such as Article 3 emphasizes the unconditional support for the ideals and values of equality in the territories of ethnic groups and tribes, religion, gender, rights, duties, law enforcement, etc. in the Constitution of the Islamic Republic of Iran in Sections 3, 8, 9, 14, 15 (Ashuri, 2014, 220).

Moreover, Article 21 of the Constitution stipulates: The government must guarantee women's rights in all respects in accordance with Islamic standards and do the following:

1. Creating suitable conditions for nurturing the personality of women and restoring their material and spiritual rights.

2. Protection of mothers, especially during pregnancy and child custody, and support for orphans.
3. Establishment of a competent court to preserve family's foundation and survival.
4. Provision of special insurance for widows and elderly and headless women.
5. Provision of guardianship of children to worthy mothers, in order to protect them in the absence of a legal guardian.

According to the Constitution, there is no doubt that equality between men and women is human rights and so on. However, when setting up the rights and responsibilities of men and women, ignoring the real and objective differences between them will bring irreparable damage that the Western world is still facing, despite the solutions and restorations it has provided using various facilities and entertainments.

C) Freedom.

The Constitution of the Islamic Republic obliges the government to ensure the legitimate and legal freedoms of the Iranian people. Section 7 of Article 3 states: The Government of the Islamic Republic of Iran is obliged to use all its facilities to secure political and social freedoms under the law.

In Article 9, freedom is considered as one of the main axes of the political system of the country, which is manifested in various ways, and in the third chapter, it strongly emphasizes the freedom of individuals to the extent that it does not harm the rights and freedoms of others, public order and Islamic principles. In addition, in the Constitution of the Islamic Republic of Iran, the occupation of each individual has been considered by the legislator in three respects: First, the freedom to choose the type and quality of the occupation. According to Article 28 of the Constitution, anyone can choose any job they wish, provided that it is not contrary to the orders of Islam and the public interest. For example, no one has the right to establish centers of corruption and produce drug by citing the principle of freedom to choose an occupation in Islamic society.

Second, the right to have a suitable job is commensurate with the talent and ability of individuals. According to Article 28 of the Constitution, as an indivisible right of every Iranian, it has been entrusted to the government and has obliged it to provide everyone with the opportunity to work and to enjoy equal conditions of employment taking into account the need of society for different jobs.

Third, ensuring the occupational safety of individuals, which is taken into account in Article 22 of the Constitution. Under this article, the occupation of persons shall be immune from any assault except in cases specified by law.

The Constitution of the Islamic Republic of Iran, in Article 31, obliges the government to provide free education to all the people until the end of secondary education and to extend the higher education facilities free until the country reaches self-sufficiency.

Additionally, the Constitution of the Islamic Republic of Iran has placed a great emphasis on freedom of opinion and considered it one of the rights of the nation. Article 23 of the Constitution has been explicitly stated: Inquisition is forbidden and no one can be reprimanded solely for having an opinion. Article 24 of the Constitution states: The press and are free to express their content unless they are contrary to the principles of Islam or public rights the details of which are set by the law.

As can be seen, the Constitution considers "freedom of opinion and expression" as one of the most important rights of the nation and extends it to the publications and press.

After acknowledging the freedom of opinion and expression, the issue of using the media needed to propagate naturally comes up. The press, as a propagator of various political and intellectual views and positions, is in a high position.

According to Article 26 of the Constitution of the Islamic Republic of Iran: Recognized parties, populations, political and trade associations, Islamic associations and religious minorities are free provided that they do not violate the principles of independence, freedom, national unity, Islamic standards, and the basis of the Islamic Republic of Iran.

Article 33 of the Constitution provides: No one may be deported, prohibited from living in his or her favorite place, or forced to reside in a place, except in cases where the law requires.

General judicial criteria in the Constitution.

General criteria are the criteria governing all rights and freedoms by the constitutional legislator. These criteria are referred to in Articles 9 and 41.

A) The criterion specified in Article 40.

After mentioning the rights of the nation in Chapter Four of the Constitution, the constitutional legislator states in Article 41: "No one can make the exercise of his or her rights a means of harming others or violating the public interest".

In fact, another general criterion can be extracted from Article 40 of the Constitution. According to the above article, the ordinary legislator may also impose restrictions on individual rights and freedoms in the following two cases: 1. Prevention of harm to others, 2. Prevention of violating public interest. Thus, the Iranian Parliament can impose restrictions through criminalization by proving each of the two cases.

1. Prevention of harm to others.

In relation to the above criterion, the question that arises is what does the harm mean and the criminal law intervention is justified by preventing what harm? Does it mean harm that come directly to the individual, society and other persons, or it also include harm arising directly from a behavior? Is nudity in public harmful to others? Does pornography cause women to be harmed as a class? Are unpleasant emotions a kind of harm? Is there a criterion for defining the harm? Is there any harm capable of justifying the criminalization of a behavior? These are questions that are raised about the prevention of harm to others.

One of the best attempts to accurately explain the concept of harm is to explain the concept of "harm" by Joel Feinberg. In his outstanding book, *The Moral Limits of the Criminal Law*, Joel Feinberg argues that criminalization of a behavior can only be justified when it is effective in preventing or reducing harm to others or when it seems to be necessary to prevent severe unpleasantness to others (Feinberg, 2006, 58). In fact, for Feinberg, it causing a severe unpleasantness to others is as a harm. He states that protecting and upholding a proposed criminal prohibition is always necessary to prevent severe harm to persons other than the subject of action and, if properly approved, would be a good way to end it.

According to Feinberg, if the unpleasantness is considered to be severe due to its quantity, quality and severity, the criminalization of a behavior to prevent severe unpleasantness will be justifiable. The criteria used to evaluate the severity of unpleasantness are: 1. has it been possible to avoid unpleasantness conventionally? 2. Has the victim accepted the risk of creating unpleasantness for him / herself? 3. Aren't these factors moderated by the unconventionality of personal behavior that has caused unpleasantness? Unconventionality of behaviors here is determined by its personal importance to the subject, the social value, the availability of other times or places in which the behavior may cause less unpleasantness, the presence or absence of annoying motivation to create unpleasantness, etc. (Clarkson, 2006, 65).

Another attempt to explain the concept of harm was made by Basil Mitchell. He argues that society must protect citizens from anything that is harmful. However, any distress is not harmful or, if it is, so slight that it cannot justify the humiliation resulting from punishment (Mitchell, 1994, 34). This means that the harm that the legislator wants to prevent by criminalizing a behavior must be important enough to justify the humiliation resulting from the punishment of a behavior.

Moreover, the word "harm" used in the "Harm Principle" can be interpreted as direct and indirect harm. Many behaviors indirectly harm society and others rather than directly. For example, drug abuse and addiction seem to directly harm the abuser him / herself rather than others. However, the enormous indirect harm caused by drug abuse to society and others are revealed with a little contemplation. If the legislator criminalizes on the basis of these indirect harms, we can say that he / she has acted according to the Harm Principle. If the legislator criminalizes on the basis of the support and welfare of the drug addict rather than on the basis of indirect harm, it can be said that his / her intervention is paternalistic. Given the above, it should be said that the word harm in Harm Principle means both direct and indirect harms caused by behavior. In addition, the harm can be visible or invisible.

2. Prevention of violating public interest.

In this respect, the question is what is meant by public interest? The public interest is not necessarily the total interest of all members of society but, ideally, it is an interest that many people in society benefit from. It should be noted that the calculation of the public interest is not a numerical one, but rather a geometrical and ethical calculation, and in fact the public interest must be interpreted as a superior interest. However, determining the benchmark of superiority of interest and superior interest is itself ambiguous (Katouzian, 2004, 133).

In our legal system, the constitutional legislator has not provided a definition of the public interest and its components. However, given the ambiguity of this concept and to prevent its misuse, the constitutional legislator has to consider it. The French legislature has mentioned independence, territorial integrity, security, the structure of the republic and its institutions, defense and diplomatic tools, protection of people at home and abroad, the balance of the natural and environmental

environment, and key elements of scientific and economic potential and cultural heritage as the main components of public interest (Article 411 of the French Penal Code).

Explaining the accountability index.

The general idea behind accountability is that public authorities or bodies should provide various explanations (as required by law) to people and relevant public authorities and bodies regarding their decisions and actions in accordance with predetermined rules and norms. The purpose of the accountability of public authorities and institutions is to ensure the responsibility of power over society.

Accountability in the judiciary.

Judicial accountability can be examined at two levels: (a) (personal) accountability of judges for their judicial decisions, and (b) accountability of the judiciary regarding its performance. The necessity and importance of judicial accountability (involving judges and the judiciary) in delegated tasks and the management of judicial affairs have been emphasized along with emphasizing the strengthening of strategies for ensuring the independence of judges and increasing demands for the institutional independence of the judiciary from the executive branch. It is noteworthy that in terms of personal independence, there are various mechanisms for ensuring the impartiality and accountability of judges among which the following can be noted: Direct mechanisms (such as the disciplinary responsibility of judges, the possibility of their dismissal and regular evaluation of their performance), and indirect mechanisms (such as public proceeding, hearing the parties to dispute, requirement to provide documentation and the ability to criticize and evaluate judicial decisions).

In the institutional dimension, how the judiciary should be accountable for its performance? Today, accountability is considered as one of the requirements for public authorities and bodies to have public power in a democratic system. Judicial authorities, like other public service providers, should be

adequately accountable for their performance. Given the importance and sensitivity of judicial independence, it is clear that judges, officials and managers of the judiciary cannot and should not be held accountable for their performance as much as other public officials and agents. Mechanisms tailored to their specific situation and characteristics must be designed. The most important question here is what part of the judiciary should be accountable, by which mechanisms, for what, to what persons and entities, and with what sanctions?

As an institution, the judiciary must be accountable to society for its management and organization. This institution should hear the cases in a way that is not only fair, equitable, and consistent with the law, but also efficient, effective and with a high degree of expertise and professionalism. Judicial independence requires that judges cannot be held accountable to the relevant ministry in the same way as public servants.

Judiciary accountability mechanisms.

Since the dominant model of justice management in current legal systems is the model of executives based on which the Ministry of Justice is responsible for managing the administrative, employment and financial affairs and generally supporting the judiciary, accountability in such systems is the same as that of other ministries, and the Minister of Justice is responsible to the heads of the Executive Branch or Parliament for providing the necessary human resources and budgeting services and is therefore responsible for his decisions and actions, where appropriate. According to this model, the accountability of the Ministry of Justice faces no particular problem, since the Minister of Justice has no judicial function and receives his office as a result of the confidence from Head of the Executive Branch and as per case, confidence from Parliament. So, he is accountable to them.

The growing tendency for more management options to be given to the institutions within the judiciary and a reduction in the jurisdiction of the Ministry of Justice (Fergun, 1998, 57) will consequently have implications for the need for accountability within the judiciary.

In a brief review, the councils within the judiciary alongside the Ministry of Justice are authorized to provide consultations on the management of the institution. Although the gradual acquisition of jurisdiction by the Ministry of Justice and the administration of the judiciary is visible in the evolution of the role and position of the councils and institutions within the judiciary, at present, there is apparently no instance in which the executive branch has no role in the administration of justice, as this can be achieved in a gradual process that, for example, requires the necessary management capacity in such institutions to ensure efficiency in the Ministry of Justice. Consequently, in the existing comparative models, there is no mention of the accountability of these institutions. It should be acknowledged that, given the type of duties and powers of the judicial bodies within the judiciary, which are mainly of a consultative nature and under the overall management of the Ministry of Justice, logically, due to the lack of specific responsibilities for decision-making regarding the administration of the judiciary, they will not be directly accountable, because accountability depends on having the necessary powers and competencies.

Responsibility of the judiciary in dealing with claims, petitions and abuses.

Consideration and passing judgment on petitions are under the first part of the Section 1 of Article 156 of the Constitution. In summary, it can be said that dealing with complaints and appeals, and resolving disputes and hostilities in the legal realm of rights can mean the right to file a lawsuit, claim against another and for the benefit of oneself and litigation (Shams, 2005, 298). In various words, this part of the constitution seeks to explain the responsibility of the judiciary in contentious jurisdiction. There is a three-way relationship in traffic litigation.

The initiator of the relationship claims that he / she asks the judge to consider his / her claim in his / her adversarial proceedings against the defendant. The investigation of the veracity of the claim (or subject of dispute) and the issuance of the appropriate verdict is the inherent duty of the judge (and the judicial system), and springing to the mind first of the judgement is the season of disputes between persons. Some jurists have defined the judgment as: It is the judgment of the people in the conflict and the resolution of the dispute between them (Tabatabai Yazdi, 2004).

Responsibility of the judiciary in crime prevention.

Crime prevention is one of the essentials of social life and has existed in various societies differently since ancient times. Since crime is as old as human life and human beings do not remember the moments of history in which they witness a crime-free society, preventive measures are also as old as crimes. However, preventive measures have also evolved with the evolution of criminal phenomena and their characteristics in dealing with the cultural, social, economic, and political conditions of society. This is evident especially in the post-industrial revolution period, with the expansion of urbanization and fundamental changes in human social life, and in particular, the increase in the rate of delinquency as one of the unintended consequences of the aforementioned developments and the effect of increasing delinquency rates on increasing sense of insecurity.

Crime prevention is used in two general and specific senses. In the specific sense, preventive measures refer to measures that have no criminal record and are used in the collective proactive prevention of delinquency. However, in the general sense, it also includes measures with criminal record to prevent crimes from being repeated. In its criminal and non-criminal senses, prevention has various types and instances. Criminal prevention can be achieved through general and specific deterrence, disabling, correcting, and repairing damages to victim. Non-criminal prevention, which includes both social and situational types, encompasses a wide range of preventive measures.

The task of governments to create a safe society for their citizens, especially in societies that rely on people's votes, and the impact of crimes and their reflection the mass media on the acceptability of governments and, consequently, on elections, require taking coherent preventive measures by governments. In recent decades, with the spread of organized, transnational and terrorist crimes, governments' approach to crime prevention has increased. Governments have, therefore, decided to take preventive measures and to make policies and oversee the performance of entities related to prevention, with the creation of specific institutions.

The diversity of preventive measures, which include measures in various social, cultural, economic and social dimensions, on the one hand, relate prevention to a wide range of social institutions, and, on the other hand, creates ambiguities in the boundaries of the preventive measures of institutions with their other duties and responsibilities. As a result, many institutions are responsible for preventive measures; those whose sole responsibility may not be crime prevention but part of their responsibility may be. Moreover, some institutions may be solely responsible for the prevention of certain crime or crimes, or their measures may be aimed at preventing the crimes of a particular group of people.

The ten axes of judicial development that are outlined in the guidelines currently considered by the Head of the Judiciary as indicators of a desirable judicial system are:

1. Restoration of public rights and the promotion of justice.
2. Speed, accuracy, impartiality, and fairness in resolving conflict.
3. Accessibility of proceedings for all natural and legal persons and its convenience for everyone.
4. Protection of human dignity and the right of every defendant to defend himself / herself.
5. Public proceedings.
6. Building trust and confidence in the public and providing a platform for people to seek refuge in the judiciary.

7. Certainty of sentences and their speed of execution.
8. Capability, competence and unimpressibility of the Judicial Staff.
9. Correcting criminals and purging society from crime.
10. Creating public, national and religious security.

Legislature supervision over the judiciary.

The right to investigate is one of the rights reserved for parliament in modern legal systems so that representatives can oversee the enforcement of laws enacted on behalf of their constituents and use it as a lever against law violators. So, the constitutional legislator assigned the Article 76 of the Constitution of the Islamic Republic of Iran to it at the time of drafting the Constitution so that the Iranian Parliament have a prominent and important role in overseeing the law enforcement. The right of the Iranian Parliament to investigate under Article 2 of the Constitution has long been a subject of controversy.

Regardless of political disputes, such debates seem to have to be based on legal principles and at the same time concerned with protecting citizens' rights, so as not to lead to an unfortunate end.

Supervision over the judiciary through a parliamentary investigation.

Nowadays, the principle of parliament supervision over the sound enforcement of laws and Non-violations by public officials of their jurisdiction have been accepted. The basis of this right is to exert pressure on the legislature and the people's representatives to prevent other powers from violating the law. In all modern constitutional systems, in addition to the legislation, the legislature is also responsible for supervision, which is political because it will not lead to legal sanctions. However, it is sometimes of a judicial nature in the process of investigation. For example, the Parliamentary Commission of Inquiry sometimes requests testimony and explanations from witnesses and experts,

and in fact, judges the matter referred to in some way. Even in some countries, following the publication of the inquiry report, the judiciary can prosecute the matter.

GIO supervision of the judiciary.

In this section, the competence of the GIO, as one of the subsidiary bodies of the judiciary, in the exercise of judicial supervision and the possibility of its oversight over the regulations approved by the Judiciary were discussed. Although the organization is one of the subordinate bodies of the Judiciary and constituted under the supervision of the Head of the Judiciary, it can be argued that it has jurisdiction to supervise the regulations approved by the Judiciary. This argument is supported by the articles of the Constitution, the interpretive opinion of the Guardian Council, and the Law on the Establishment of the GIO (approved by the Iranian Parliament with the latest amendments and extensions in 2014).

According to Section 3 of Article 156 and Article 174 of the Constitution, which is the founder of the GIO, the existential philosophy of the GIO in the judiciary is the right of the judiciary to supervise the proper enforcement of laws in administrative agencies. Accordingly, some have argued that the main purpose of the judiciary is to ensure the proper law enforcement (Hashemi, 2012, 370).

What is inferred from these articles is that the legislator has generally considered supervising the proper conduct of affairs in all organizations of the country and made no exceptions to it. This argument is supported by some evidence, including some of the speeches made by some of the speakers in the Iranian Parliament's negotiations when the law on the establishment of the GIO was adopted.

Additionally, at the end of Article 174, it is stipulated that the limits of the authority and duties of the organization are determined by law. According to the law on the establishment of the GIO, which was approved by the legislator on the basis of the same article, the authority and jurisdiction of the

organization over the judiciary and its adopted regulations has been defined and considered by the legislator among its supervisory duties.

In accordance with Note 2, Article 2 of the Law on the Establishment of the GIO, inspection reports on issued regulations, decrees, circulars and instructions and complaints of non-governmental natural and legal persons indicating the detection of violations for investigation and passing sentence must be submitted to the Administrative Justice Court. So, the organization is required to submit its reports, which are extraordinarily out of turn cases indicating the regulations contrary to the law, Sharia or outside the jurisdiction, to the reference for review by law and within the supervisory jurisdiction framework of the Administrative Justice Court. This duty is subject to regulations issued by all institutions under the supervision of the organization. Thus, the GIO can supervise the judiciary's approved regulations, detect violations, and refer them to the Administrative Justice Court. In other words, the regulatory gap in the regulations of the Judiciary will not exist in the Constitution with this existing rational mechanism. The Guardian Council, in its commentary on Article 174 of the Constitution, also uses the term "warning to the authorities".

According to Section 3 of Article 156 of the Constitution, the judiciary is responsible for supervising the proper enforcement of laws, so the article can warn the authorities in cases of violation of law. The authorities are obliged to heed the Judiciary's warnings in accordance with Article 174 of the Constitution and, if they do not, violate the Constitution. The order and extent of these duties are also stipulated in ordinary law. In general, it has addressed all the responsible authorities.

There is no doubt that the literal and terminological scope of the responsible authorities can also include the judicial authorities. Violations of law enforcement, for example, adoption of regulations contrary to the law by the Judiciary in the form of regulations, circulars, administrative orders, etc. that alter the scope of the law and widen or narrow it, and generally, cause violations of the rule of law, which is among the accepted legal principles in the world of law, can be supervised by the GIO.

According to the law, if any of the aforementioned cases are found to be violated, they are submitted to the Administrative Justice Court for consideration (Kelsen, 1994, 23).

CONCLUSIONS.

As a body responsible for enforcing law, maintaining order and security in the community, and restoring the rights of individuals seeking judicial justice, the judicial system may place individuals' spiritual and material lives at risk, in whole or in part. For this purpose, the Constitution of the Islamic Republic of Iran has drafted important articles in which the judicial independence been secured in a way that avoids the interference of other powers, so that, irrespective of political fluctuations and coercion, the Judiciary can separate right and wrong and guarantee individual and social justice. On the other hand, solutions and sanctions are envisaged to fulfill the Principle of Rule of Law in the country's judicial system and to control the exercise of judges in order to safeguard the rights of individuals and realize the justice.

The law determines the general criteria that create rights and duties for everyone based on which individuals and communities regulate their relationships. Sanctions are at the discretion of the judge who identifies and punishes law violators using the necessary tools and facilities and provides the ground for law enforcement and security and freedom while consoling the victims. It is worth pointing out that power without supervision can be the cause of corruption. In other words, power without law is the same tyranny and oppression and can provide the basis for the violation of the rights and freedoms of individuals in society.

The judiciary, and in particular, judges, in the absence of supervision and restrictions on their powers, can be the source of corruption and violations of citizens' rights while at the same time promoting the freedom and security of individuals in society. For this purpose, the Constitution of Iran provides solutions for the realization of the rule of law in the judicial system of the country and for the control

of the exercise of judges to safeguard the rights of individuals in the community and the fulfillment of justice.

The realization of good governance and the rule of law in the Judiciary requires the supervision over the Constitution, which is not very clear in the Iranian Constitution. Better to say, the mechanisms for good governance and supervision over the Judiciary have not been clearly and effectively spelled out in the Constitution of the Islamic Republic of Iran. According to various interpretations of the Guardian Council, the executive and legislative powers are not in a position to supervise the Judiciary. The result is that in accordance with the Article 76 of the Constitution of the Islamic Republic of Iran, the Iranian Parliament has the right to examine all affairs of the country. At the same time, this article should not be in conflict with the guiding principles of the law and the legal system.

The principle of separation of powers is one of the principles upon which the articles of the Constitution of the Islamic Republic of Iran must be interpreted. As mentioned, this limitation on the right to parliamentary investigation has been emphasized in all legal systems. In short, the legislature's supervision over the judiciary based on the Guardian Council's interpretation of constitutional articles is not in the inclusion of a parliamentary investigation.

It should be noted that although the responsibility for the enforcement of the Constitution by the president has been cited in general, and its scope and nature have not been specified in Article 113, examination of the other articles of the Constitution and its amendments in 1989 indicate that the broad interpretation of the responsibility for enforcement is incompatible with the spirit of the Constitution and that the responsibility for enforcement means is limited state and ascertained quantity.

The Supreme Leader is responsible for the enforcement of the Constitution, because, first, he is the highest official in the country, and in religious rule, he is the main and just responsible, since he has absolute guardianship. Second, according to Article 57, he supervises all three branches is superior

to the President, for he validates the Presidential Decree and is the competent authority in his dismissal by ensuring conditions (under Article 111). Third, he determines the overall policies and supervises the proper implementation of these policies in the three branches and other institutions. In addition, delegating responsibility for the enforcement of the Constitution to the second highest official is fundamentally controversial, especially in the religious government where the islamologist Jurisprudent is at the top of the power and the main responsible of the government, and the other powers and institutions, each as his arm, are responsible for enforcing the Constitution within their jurisdiction.

As the foremost and most important entity of the Islamic Republic of Iran, the Supreme Leader plays a crucial role in the direct and indirect exercise of political power under the Constitution. The main functions of the Supreme Leader in the Islamic Republic of Iran are to have excellent supervision over all the elements of the system, including the three powers, and coordinating and regulating the relationships between them and resolving their differences in different ways.

Within the Judiciary, only its Head is competent to legislate and other agencies, bodies, and subsidiaries are not authorized to do so, and they can only issue administrative orders in the form of regulations, circulars, and instructions to manage their inter-organizational affairs. They should be supervised in such a way that their issuance does not violate the law or regulation, as if it would be so, they would be void by the law itself even if they carry the title of the circular or instruction. In other words, these administrative orders are just administrative decisions whose scope of operation and influence is limited to the relevant organization and do not extend to the public, even if issued in the form of any regulation, and they are often justified on the basis of administrative necessity. However, to ensure that the content of these orders does not fall within the scope of law and that they do not violate civil rights and freedoms, continuous and careful supervision is needed.

According to this study, it can be argued that the legislator and its supervisors have paid attention to this issue and chosen general and specific judicial supervision.

The subject of general judicial supervision is the proper enforcement of laws and the detection of violations beyond the scope of the law, which is assigned to the GIO. Specific judicial supervision seeks to investigate the accuracy or inaccuracy of the claims and complaints made by natural and legal persons regarding violations of the law and private and public rights, and has defined this task within the jurisdiction of the Administrative Justice Court.

According to the results, due to the scope of powers and duties of the GIO, its general supervision is a comprehensive one and encompasses all financial and administrative measures that are applicable to all governmental institutions, including judicial authorities, organizations, and subsidiaries.

Based on the articles of the Constitution, interpretative opinions of the Guardian Council, and the Law on the Establishment of the GIO cited in this study, the supervision of the organization should be regarded as a "general government" supervision thematically and institutionally, and the organization must be recognized as a public prosecutor in the supervision of all parts of the country.

BIBLIOGRAPHIC REFERENCES.

1. Abtahi, Seyyed Hossein; Mehrujan, Armen (1993). *Methods Engineering*, first edition, Tehran: Qomes Publication.
2. Etedal, Mohammad (1990). *The Criminal Procedure Code in the New Judicial System*, first edition, Navid Shiraz Publications.
3. Amin, Seyed Hassan (2009). *History of Law in Iran*, Tehran: Encyclopedia of Iranian Studies.
4. Shoori, Mohammad et al. (2012). *Human Rights and the Principles of Equality, Fairness and Justice*. Tehran: University of Tehran Press.

5. Anonymous (1989). Detailed record of the negotiations of the Constitutional Review Council of the Islamic Republic of Iran, Vol. I, first edition, Tehran: The Propaganda Department of the Islamic Consultative Assembly.
6. Peyman, Seyyed Hossein. Productivity and Examples, first edition, Tehran: Kosar Economic Organization.
7. Tamadon, Reza (2014). Ways of Revising Criminal Sentences, PhD thesis, University of Tehran.
8. Rasekh, Mohammad (2009). Supervision and Balance the Constitutional System, Tehran: Derak Publications.
9. Rahami, Mohsen (2008). Preventive and Education Measures, first edition, Tehran: Mizan Publications.
10. Sayyid Rezi, Mohammad bin Hussein (2000). Nahj al-Balagha, translated by Mohammad Dashti, Qom.
11. Seyed Javadin, Reza (2003). Management Theories and Principles, Tehran: Negar Danesh Publication.
12. Shokri, Reza (2003). Islamic Penal Code in the Current Legal Order, second edition, Tehran: Golshan.
13. Shams, Abdullah (2002). Code of Civil Procedure, Vol. 2, first edition, Tehran: Mizan Publications.
14. Shams, Abdullah. Code of Civil Procedure, Vol. 3, first edition, Tehran: Derak Publications.
15. Tabatabai Motameni, Manouchehr (1992). Public Liberties and Human Rights, First Edition, Tehran: University of Tehran Press.
16. Tabatabai Motameni, Manouchehr (2009). Administrative Law, Issue 14, Tehran: The Organization for Researching and Composing University Textbooks in the Humanities (SAMT).
17. Ali Abadi, Hussein (1982). Criminal Law, Vol. 5, Tehran: Rudaki Publications.

18. Amid Zanjani, Abbas Ali (1994). Political Jurisprudence (Constitutional Law and Foundations of the Islamic Republic of Iran Constitution), Vol. 1, Issue 3, Tehran: Amirkabir Amirkabir.
19. Amid, Hassan (1996). Amid Persian Dictionary, Vol. 1, Sixth Edition.
20. Ghazi, Abolfazl (1993). Constitutional Law and Political Institutions, Vol. 1, Fourth Edition, Tehran: University of Tehran Press.
21. Katouzian, Naser (1998). Introduction to Law and Study in the Legal System of Iran, Tehran: Enteshar Publication Co.
22. Kashani, Abdul Rasoul (1999). Risalah-i insafiyah, first edition, Kashan: Morsal Publications.
23. Katouzian, Naser (1999). Principles of Public Law, 2nd edition, Tehran: Mizan Publications.
24. Hashemi, Mohammad (2012). Constitutional Law of the Islamic Republic of Iran, Vol. 2 (Governance and Political Institutions), Issue 2, Tehran: Mizan Publications.
25. Bell, J. Boyron, S. & Whittaker, S. (1998), Principles of French Law, Oxford: Oxford.
26. Boudahran (A). Elements de droit public marocain, Paris, L, Hama ttan, 1994,p;117.
27. Camby J.P. et Servent P. Letravail parlementaire sous I CINQUIEME Republi que, 4ed, Paris, Montchrestien, 2004, p;124.
28. Contini, Francesco; and Richard Mohr, "Reconciling Independence and Accountability In Judicial Systems", Utrecht Law Review, Vol. 3, December 2007, p. 31.

DATA OF THE AUTHORS.

- 1. Mahsa Majdzangeneh.** Ph.D. student, Department of Law, Islamic Azad University, Sirjan, Iran.
- 2. Abolfazl Jafargholikhani.** Ph.D. and Assistant Professor, Department of Law, Islamic Azad University, Sirjan, Iran. (Corresponding Author)*
- 3. Mohammadreza Yosefi.** Ph.D. and Assistant Professor, Department of Law, Islamic Azad University, Sirjan, Iran.

RECIBIDO: 16 de enero del 2020.

APROBADO: 25 de enero del 2020.