

Individual Rights and Freedoms in the Constitution from the Perspective of the Constitutionalization of Criminal Law

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Abstract

Individual rights and freedoms within the framework of criminal law constitute a critical issue that requires extensive discussion and analysis. From a theoretical perspective, this issue holds significance due to the intersection of public law and criminal law, while from a practical standpoint, it is influenced by the increasing importance of human rights. Accordingly, the present article seeks to examine the question of how the constitutionalization of individual rights and freedoms has been realized in criminal law and what position it holds in Iranian law. This study adopts a descriptive-analytical approach and employs a library research method to investigate the aforementioned question. The findings indicate that the significance of individual rights and freedoms is such that their observance within the context of criminal law has been emphasized and upheld in constitutional law, which serves as the fundamental and supreme legal framework in every country. In the Iranian legal system, certain fundamental principles related to individual rights and freedoms, such as the presumption of innocence, the principle of prompt adjudication, and the prohibition of torture in evidence collection, have been explicitly enshrined in the Constitution of the Islamic Republic of Iran. However, some of these principles, explicitly stated in the Constitution, such as the principle of public trials, have been subject to restrictions in ordinary laws and, under certain conditions, have faced exceptions that necessitate broad judicial interpretation. At the same time, principles such as the legality of crime and punishment have been subjected to a degree of ambiguity under Articles 36 and 169 of the Constitution, despite their explicit acceptance in ordinary criminal laws.

Keywords: Constitutionalization, Criminal Law, Individual Rights and Freedoms, Constitution, Presumption of Innocence, Public Trial

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1. Introduction

Constitutionalization is considered the most prominent achievement of the constitutional movement and is defined as the elevation of the validity of sub-constitutional laws, regulations, norms, and legal rules to the level of supreme normative principles (constitutional law). This transformative phenomenon has emerged in both objective (related to the existence of social realities) and subjective (associated with the formulation of various ideas and opinions) contexts, significantly influencing the evolution of constitutional law and the development of constitutional justice. Furthermore, the foundations of constitutionalization can be understood as the protection of fundamental rights and freedoms of citizens and the prevention of the arbitrariness of power. In this regard, the significance of this process is particularly evident in relation to the strategic principles of criminal law, which essentially form the foundations of criminal law itself. Each of the fundamental bases of constitutionalization is closely linked to the strategic principles of criminal law. In this context, it is essential to uphold the high status of fundamental rights and freedoms of citizens, which the strategic principles of criminal law are designed to guarantee, and to adhere to the two fundamental principles of the rule of law and the preservation of the supremacy of constitutional norms (Heydarpour, 2011).

Constitutionalization reaches its highest level of significance concerning the strategic principles of criminal law. To clarify this assertion, two rational premises can be considered. On the one hand, criminal law has foundations that are referred to as strategic principles, the most important of which are the "principle of legality" and the "presumption of innocence." These principles explicitly outline policies and guide activities within the criminal justice system. Their denial would fundamentally challenge the very existence of criminal law. The primary function of these principles is to prevent the encroachment of state power on individual privacy and freedoms and, in a broader sense, to restrain the government's extralegal conduct towards its subjects. On the other hand, constitutionalization, as the most valuable achievement of the constitutional movement in the modern era, serves as the primary mechanism for ensuring fundamental human rights and freedoms against governmental authority. The logical conclusion from these premises suggests that the constitutionalization of the strategic principles of criminal law is the most fundamental approach to safeguarding citizens' rights and freedoms in the domain of criminal law. This conclusion alone highlights the undeniable importance of constitutionalization (implementation of constitutional justice) in relation to the foundations of criminal law. This process can be based on two key principles: the defense of fundamental individual rights and freedoms and the prevention of the arbitrary exercise of power. These two principles, while theoretically distinct, are practically interdependent, as limiting power equates to expanding freedom.

Moreover, a significant portion of the process of securing and guaranteeing public rights and freedoms of citizens has been entrusted to criminal law. This branch of law, by imposing criminal sanctions on violators of public rights and freedoms, regardless of their status or position, plays a crucial role in ensuring these protections. At the same time, one of the most important mechanisms for enhancing the effectiveness of criminal law in securing and guaranteeing public rights and freedoms is the practical implementation of the constitutionalization process concerning the fundamental principles, norms, and rules of criminal law. Constitutionalization is a phenomenon that historically originated in public law but has not remained confined to this domain; rather, it has extended to various other branches of law, with criminal law being one of the most prominent among them. By applying the constitutionalization process to the principles and norms of criminal law, better and more effective protection of public rights and freedoms of citizens can be achieved.

Based on the foregoing, the research question of this article can be formulated as follows: How can the constitutionalization of criminal law be evaluated in Iranian law? More precisely, to what extent have individual rights and freedoms been realized through the constitutionalization of criminal law? To address this question, the article first examines the constitutionalization of criminal law, followed by an analysis of the relationship between the constitutionalization of criminal law and individual and social freedoms. Finally, the article discusses the role of the constitutionalization of criminal law in the protection of citizens' rights and freedoms in Iranian law.

2. Constitutionalization of Criminal Law

The constitution and its governing principles, particularly in the realm of criminal law, fundamentally serve to guarantee the rights of citizens who are constantly subject to the commands and prohibitions imposed by state authorities. On the one hand, the determination and establishment of individuals' rights and freedoms within a society are carried out through constitutional law, while on the other hand, the protection of fundamental rights is entrusted to criminal law. In this reciprocal relationship,

criminal law encompasses strategic principles, and the constitutionalization of criminal law seeks to elevate the status of these strategic principles to the rank of constitutional principles. Therefore, in discussing the constitutionalization process of strategic principles in criminal law, the nature of the constitutionalization process and the nature of strategic principles in criminal law must be examined simultaneously.

Constitutionalization is a gradual process, and countries do not experience it at an identical pace. Despite its significant importance, this phenomenon remains relatively unknown in certain legal systems, including the Iranian legal system. One of the key characteristics of modern constitutional law is that, unlike in the past, it now includes judicial enforcement mechanisms. As a result, the concept of constitutional rights without judicial enforcement mechanisms has become increasingly difficult for constitutional scholars to accept (Gorji Azandariani, 2009; Parvin & Aslani, 2012). This development represents a novel approach to constitutional law and a new form of political thought aimed at preventing authoritarian rule and ensuring citizens' rights and freedoms (Blez, 2007).

In this progressive perspective, complete alignment between lower and higher norms is the most crucial component. From this standpoint, criminal law and its strategic principles are at the forefront of constitutionalization studies (Najafi Abrandabadi, 2008–2007). Constitutionalization, which entails the elevation of lower legal norms in the hierarchy of norms to the level of constitutional principles, regards its primary mission as safeguarding fundamental citizen rights and freedoms and perceives the protection of citizens against state authority as its highest objective. This emphasis is rooted in the supreme status of fundamental rights and freedoms, which inherently affirm the inalienable dignity of human beings. Within this framework, "power" gradually transforms into "authority," and the legitimacy of governance becomes increasingly manifest. This favorable context facilitates the evolution of constitutional law towards a more competent and effective legal framework, which, over time, leads to the development of constitutional justice.

In constitutional justice, a well-structured and efficient constitution serves as the benchmark for assessing the relationship between power structures and individual rights. The greater the alignment between fundamental citizen rights and the constitutional framework, and the more effectively the constitution safeguards human rights against governmental authority, the closer constitutional justice moves toward its objectives. Through the constitutionalization process, the legal order is cleansed of non-democratic norms, and the introduction of new non-democratic norms into the existing legal system is prevented. This process is achieved through a democratic interpretation of the constitution, which functions as a post-legislative oversight mechanism to ensure that the legal order avoids norms that contradict democratic values (Taqizadeh, 2007).

This function, which is the primary practical outcome of constitutionalization, manifests most prominently in the field of criminal law. Criminal law, which enforces the most severe sanctions in response to legal violations and deviant behavior, is particularly susceptible to misuse by authorities under the pretext of combating disorder. Such misuse can result in the violation of fundamental citizen rights and freedoms. Consequently, the constitutionalization of criminal law is a process whereby fundamental principles, norms, and foundations of criminal law—particularly the principles of "legality" and "presumption of innocence"—are explicitly recognized in constitutional law and, thus, acquire the same authoritative status as other constitutional principles that form the foundation of the legal system. Alternatively, if these principles are not explicitly stated in the constitution, they can still attain constitutional legitimacy through interpretation by the constitutional court, which is the competent body for enforcing constitutionalization mechanisms in modern legal systems. This ensures both the inviolability of these principles and their full and unconditional implementation by government officials.

3. Constitutionalization of Criminal Law and Individual and Social Freedoms

The supremacy of the constitution over ordinary laws is an established concept, but what is more significant is the mechanism for ensuring this supremacy. The mechanism for this assurance lies in the establishment and implementation of oversight strategies. In this regard, constitutional oversight bodies, under various designations, have paid particular attention to criminal law and its fundamental principles. The outcome of such oversight has been the strengthening of guarantees in criminal law, which has gradually led to the formation of a "qualitative criminal law." The "quality" of criminal mechanisms begins at the initial levels of criminal policy implementation, such as criminalization, and extends to other areas. The strategic principles governing criminal law have been enshrined in the European Convention on Human Rights and Fundamental Freedoms, adopted in 1950. According to the enforcement annex of this convention, all citizens of member states have the right

to file complaints against their own governments before the European Court of Human Rights. This development represents a significant advancement in the protection of citizens' rights and freedoms against state power and, as a result, extends the scope of criminal law into the realm of criminal policy (Delmas-Marty, 1997).

However, contemporary human rights encompass suprallegal concepts and standards that are rooted in human nature and inherent disposition, thereby rendering the intervention of elements such as time, place, and specific circumstances inadmissible. Human rights standards are so closely aligned with the principles of justice and fairness that any traditional legal system, philosophical school, or modern worldview claiming to uphold justice is inevitably compelled to conform to them. This is because the objective of the human rights system is the materialization of values and ideals that can be traced back to the essence of humanity and its inherent truth-seeking and freedom-loving nature (Omid, 2000).

Natural human rights have no meaning other than enabling a more humane and rational life, fostering greater security, well-being, prosperity, and personal growth. These rational objectives are the product of humanity's long historical experience and are widely accepted by reasonable people (Soroush, 1999, p. 33). In human rights discourse, as the very title suggests, the ultimate goal is the human being, who serves as the benchmark for all legal rules and regulations and stands above them all. The philosophy of the international human rights system is based on global consensus regarding human dignity and the maintenance of international peace and security. States are obligated, under international customary law, including the international commitments of governments to the international community and peremptory norms (*jus cogens*), to uphold international human rights standards (Sharifian, 2000). Former United Nations Secretary-General Kofi Annan has stated: "... It is the universality of human rights that gives them their authority; they are universal not only because they have roots in all cultures but also because they have been endorsed by all member states of the United Nations" (Annan, 1997).

Law, as one of the fundamental aspects of human social life, has not been exempt from globalization. The necessity of universalizing certain norms has a relatively long history in political and legal philosophy, particularly influencing modern law after World War II (the idea of the universality of human rights). If contemporary legal thought, influenced by postmodernism, discusses fundamental changes in modern law and the necessity of such changes in legal concepts and classifications, then the globalization of law may be considered one of the defining characteristics of postmodern law. In a sense, globalization has helped contemporary humanity realize that human existence encompasses a reality that transcends national societies (Minayi, 2016).

The fundamental principles of criminal law, in connection with the process of constitutionalization, continue to transform criminal law. Modern human rights-oriented criminal law cannot be properly understood without a correct appreciation of its key components and focal points, nor can it be expected to effectively safeguard fundamental rights and freedoms. There is no doubt that security and liberty are two invaluable assets that humanity has sought throughout history. Today, in an appropriate legal environment, the discipline of law, through human-centered rationality, has developed mechanisms to protect these two essential values from the encroachment of violators and to pave the way for human progress (Ardabili, 2008). Citizens are universally protected by the presumption of innocence, and their security and freedom cannot be undermined arbitrarily. The rule of law, at a minimum, ensures that rulers and subjects alike are aware of their rights and obligations in advance, preventing uncertainty in their relationships. Thus, there is a logical connection between law and the security of those subject to it.

4. The Role of Constitutionalization of Criminal Law in Protecting Citizens' Rights and Freedoms in Iranian Law

As the supreme legal framework, the constitution plays a crucial role in shaping a country's criminal and criminal justice policies. The foundational aspects of criminal policy, including substantive and procedural criminal law, are embedded in the constitution in countries with codified legal systems. Many substantive and procedural legal provisions are incorporated into various constitutional principles.

4.1. The Principle of Legality of Crime

The principle of the legality of crimes and punishments is explicitly stated in the Constitution of the Islamic Republic of Iran. Article 36 stipulates: "The ruling of punishment and its enforcement must be carried out only through a competent court and in accordance with the law." However, another article in the Constitution has been interpreted by some legal scholars and

judges as an exception to this principle. Article 167 states: "The judge is required to make every effort to find the ruling for each case in codified laws, and if he does not find it, he must issue the ruling based on valid Islamic legal sources or credible fatwas. He cannot refrain from adjudicating a case or issuing a ruling on the grounds of silence, deficiency, ambiguity, or conflict in the codified laws."

Based on Article 36 of the Constitution, Article 2 of the Islamic Penal Code stipulates that a crime is an act or omission for which the law prescribes punishment. As derived from the content of this article, the criminalization of an act requires explicit legal codification, which falls within the jurisdiction of legislative authorities. Therefore, as long as the legislature has not defined a particular behavior as a crime, individuals cannot be punished for committing it. In the Iranian legal system, which is based on Islamic jurisprudence, this principle originates from the doctrine of "*Qubh Uqubah Bila Bayan*" (the impermissibility of punishment without prior notice). This principle is of great significance because individuals should only be punished for acts that have been explicitly defined as crimes; punishing someone before informing them that an act is criminal is contrary to criminal justice. The constitutional legislator, inspired by the Quran and Hadith, such as verse 15 of Surah Al-Isra ("We do not punish a people until We send them a messenger") and verse 7 of Surah At-Talaq ("Allah does not burden a soul except according to what He has given it"), as well as the *Hadith of Raf'*, incorporated this principle into the Constitution (Ghorbani & Mohahedi, 2001) to ensure that criminalization in ordinary laws follows this fundamental doctrine.

According to Article 2 of the Code of Criminal Procedure, "Criminal proceedings must be based on law." In this regard, Article 166 of the Constitution further states: "Court rulings must be reasoned and based on legal provisions and principles upon which the ruling is issued." Article 12 of the Islamic Penal Code also addresses "the principle of legality of crimes, punishments, and criminal proceedings," treating the legality of "criminal proceedings" as equivalent to "the legality of crimes and punishments" (Abbaszadeh, 2013). Furthermore, Article 2 of the 2013 Code of Criminal Procedure states that criminal proceedings must "... guarantee the rights of the parties to the case." In the same context, Article 7 of this law outlines the consequences of failing to respect these rights, stating that throughout all stages of criminal proceedings, the rights of citizens, as stipulated in the "Law on Respect for Legitimate Freedoms and the Protection of Citizens' Rights" enacted on April 30, 2004, must be upheld by all judicial authorities, law enforcement officers, and other relevant officials.

The principle of the legality of criminal procedure entails the intervention of a competent authority with appropriate jurisdiction to determine punishments, in accordance with the principle of individualized sentencing. The judicial principle, in some cases, even takes precedence over the principle of legality of crimes and punishments (Delmas-Marty, 2010). Granting extensive discretionary powers to judges for individualizing punishments may position judicial discretion as a complementary principle to the legality of punishments (Delmas-Marty, 2010). In general, judicial discretion in determining the nature and extent of punishments is recognized across various schools of criminal law and legal systems. The classical school of criminal law, however, is often considered opposed to this approach because it emphasizes fixed penalties to ensure criminal justice. In classical criminal law doctrine, based on the principle of equality before the law, a punishable act must always be subject to a fixed penalty. Under this perspective, strict adherence to legal provisions as determined by the legislature should prevent judicial discretion. However, laws influenced by this doctrine were later amended, as fixed punishments failed to achieve criminal justice in practice. In reality, rigid sentencing rules hindered the principle of individualized punishments, which aims to align punishments with the characteristics of offenders (Nobahar, 2010).

Although the Islamic Penal Code upholds the principle of legality of crimes and punishments, certain provisions within its chapters allow for different interpretations of legality. Consequently, these provisions have given rise to interpretative disputes. For instance, Article 167 of the Constitution states: "The judge is required to make every effort to find the ruling for each case in codified laws, and if he does not find it, he must issue the ruling based on valid Islamic legal sources or credible fatwas. He cannot refrain from adjudicating a case or issuing a ruling on the grounds of silence, deficiency, ambiguity, or conflict in the codified laws." Some argue that this principle applies only to civil cases and not to criminal cases. However, Article 216 of the 1999 Code of Criminal Procedure dispels this ambiguity, as it stipulates: "Court rulings must be reasoned, justified, and based on legal provisions and principles upon which they are issued. The court is required to find the ruling for each case in codified laws, and if no law exists for a particular case, it must issue a ruling based on valid Islamic legal sources and credible fatwas. Courts cannot refrain from adjudicating complaints and cases or issuing rulings on the grounds of silence, deficiency, ambiguity, conflict, or vagueness in the codified laws" (Shambayati, 2013).

The reality is that Article 167 has been limited and conditioned by Article 36, meaning that the provision stated in Article 167 serves as a general principle across all legal domains, including civil, probate, commercial, and procedural matters, except where Article 36 applies to the ruling and enforcement of punishments (Mohbi, 2004, pp. 95–96). In the Constitution of the Islamic Republic of Iran, only the principle of legality of crimes (Article 37) and the principle of legality of entitlement to punishment (Article 369) are explicitly referenced (Sajjadi Nejad, 2006). The principle of legality of crimes and punishments, which is one of the most significant achievements of human rights over the past two centuries, was recognized from the inception of Islamic legislation as a fundamental doctrine in this religion. The drafters of the Iranian Constitution, inspired by Islamic law, incorporated this progressive principle into Article 36 of the Constitution. Article 36 was approved without opposition, making it one of the least controversial provisions in the Constitution.

The necessity and importance of the principle of legality of crimes and punishments in Iranian constitutional law, combined with the Constitution's emphasis on the supremacy of Islamic law—manifested in Articles 4 and 167—have led to ongoing debates among legal scholars and judges regarding the relationship between these principles (Hashemi & Kousha, 2001, pp. 69–96). The rule of law in criminal justice is defined through adherence to the "principle of legality of crimes and punishments." Given that this principle is explicitly recognized in Article 36 of the Constitution and Article 2 of the Islamic Penal Code, no interpretation should contradict these explicit provisions. Nevertheless, to resolve ambiguities and prevent conflicting interpretations, any future constitutional amendments should address Article 167 explicitly, ensuring that it aligns with the principle of legality of crimes and punishments and putting an end to these legal debates.

Article 167 of the Constitution explicitly states that a judge must "make every effort to find the ruling for each case in codified laws, and if he does not find it, he must issue the ruling based on valid Islamic legal sources or credible fatwas. He cannot refrain from adjudicating a case or issuing a ruling on the grounds of silence, deficiency, ambiguity, or conflict in the codified laws." This principle imposes an obligation on all judges, as it mandates that they must find a ruling for every case. The constitutional legislator's objective in drafting Article 167 was to ensure adherence to Islamic legal principles as an entrenched and recognized norm in Iranian society, allowing judges to "discover" legal rules from Islamic sources and apply them to relevant cases. This principle establishes that judges, in their judicial capacity, cannot refuse to issue a ruling—even in cases where laws are silent, ambiguous, or deficient—unless they lack the qualifications for independent legal reasoning (*ijtihad*).

4.2. *The Principle of Public Trials*

The principle of public trials serves as a form of public oversight to ensure the proper administration of justice and guarantees both the defendant's right to defense and society's interest in prosecuting offenders. The right of the public to be informed about the functioning of the justice system is enshrined in the Constitution under the principle of public trials, with the objective of allowing citizens to freely attend court proceedings and gain confidence in the judicial system's administration of justice. According to the note in Article 352 of the Code of Criminal Procedure, "The public nature of a trial means that no obstacles should be created to prevent individuals from attending court sessions." "Public hearings are a fundamental guarantee for the fairness and independence of judicial proceedings and serve as a protective tool for public trust in the judicial system. A public hearing requires that sessions be conducted orally on the substantive aspects of the case, allowing the general public, including the media and press, to attend. The court must make information about the time and location of hearings accessible to the public and provide reasonable facilities for interested individuals to attend, while implementing necessary restrictions" (Ashrafi & Taha, 2011).

"The belief in this principle—that justice must be seen to be done—is fundamental to legal systems. People have the right to attend court sessions. One of the essential guarantees of judicial security is the public nature of court proceedings. The purpose of public hearings is to allow members of society to freely attend court sessions, observe the trial process firsthand, and gain confidence in the proper enforcement of laws, the impartiality of judges, and the existence of true judicial justice. Some governments prosecute their political opponents under the guise of trials to suppress dissent" (Akhoondi, 2013). "In some cases, however, the outcome of a trial may be detrimental to the government, and secrecy in judicial proceedings may be used to suppress the truth. Such secrecy can lead to public distrust in the government and contribute to the state's deviation from justice. The public nature of trials can also have an instructive function. By witnessing or being informed of decisive and

exemplary rulings, individuals are deterred from violating the law and infringing on the rights of others. In fact, public trials, particularly in criminal matters, serve as a means of public oversight of courts and ensure the protection of individuals' rights. Conducting trials in secret or behind closed doors raises concerns about the fair application of the law and the enforcement of necessary safeguards for the rights of litigants and defendants. Therefore, non-public trials should be considered an exception" (Hashemi, 2009), which may only be permitted in specific cases at the court's discretion.

The principle of public trials is also enshrined in the Constitution. Article 165 of the Constitution states: "Trials shall be conducted in public, and there shall be no restriction on attendance, except when the court determines that a public hearing would be contrary to public morality or public order, or in private disputes where the parties request a non-public hearing." While the Iranian constitutional legislator has embraced this principle, exceptions have been established in accordance with the legal maxim "*Ma min 'ammin illa wa qad khuss*" (there is no general rule without exception).

The note in Article 352 of the 2013 Code of Criminal Procedure explicitly states that "the public nature of a trial means that no obstacles should be created to prevent individuals from attending court sessions." The opposite implication of this provision is that public trials do not necessarily mean that announcements or invitations must be made to encourage public attendance. Article 353 of the Code of Criminal Procedure further allows the media to be present in court and report on proceedings without disclosing names, personal identities, or social positions. However, Article 355 of the same law, despite the general principle of public trials, prohibits individuals under 18 years of age from attending hearings as spectators unless permitted by the court. This restriction may stem from concerns that exposure to distressing details of criminal trials could cause psychological harm to minors and potentially contribute to future criminal behavior (Nikoui, 2006).

In the inquisitorial system, the default principle is non-public trials, whereas in the adversarial system, the principle is public trials. Iran's criminal justice system is a mixed system. In court proceedings, which follow an adversarial model, the default principle is public trials, as previously mentioned. However, in the preliminary investigation stage, which follows an inquisitorial model, the principle is non-public proceedings (Ashouri, 2012). Article 91 of the Code of Criminal Procedure affirms this by stating: "Preliminary investigations shall be conducted confidentially, except in cases where the law explicitly provides otherwise," reinforcing the principle of non-public investigations at the prosecutorial stage.

The Japanese Constitution also establishes the principle of public trials: "Trials and judgments shall be conducted publicly. However, if a court unanimously determines that a public trial would be contrary to morality or public order, the trial shall be conducted in private." The Japanese constitutional legislator, similar to Iran, has adopted the principle of public trials while granting courts the authority to decide on non-public proceedings based on a general criterion—morality or public order. However, unlike the Iranian Constitution, the Japanese Constitution provides a broader and more generalized framework for non-public trials. The definition of morality or public order in Japan is contingent on the country's cultural foundations, which undoubtedly differ from those of Iran.

Article 282 of Japan's Code of Criminal Procedure further states: "The interrogation of the accused during the trial proceedings in court must be conducted publicly." Given that Japan's legal system is modeled after the German legal system and is, in other words, a mixed legal system, the general principle is that preliminary investigations at the prosecutorial stage should be conducted confidentially.

4.3. The Principle of Presumption of Innocence

The presumption of innocence in law means that an accused person must be considered innocent until their guilt is proven through a fair trial in a competent legal authority (Asgari & Vakil, 2008). Article 37 of the Constitution establishes the presumption of innocence, stating that every individual is presumed innocent until their guilt is established in a competent legal court. This indicates that the Iranian Constitution has accepted this principle unconditionally. Article 37, which upholds the rights of citizens and the nation, stands as a safeguard against the power of the state and influential institutions, reinforcing citizens' trust in these entities and strengthening the reciprocal human relationship between the government and the people. This principle emphasizes that only upon the recognition and proof of a crime in a competent legal court can an accused person be deemed guilty and subject to punishment (Lotfi Khajaki, 2000).

The manifestations of the presumption of innocence in the 2013 Code of Criminal Procedure (in addition to Article 4, which explicitly endorses this principle) include the following provisions:

According to Article 5 of the Code of Criminal Procedure (2013): "The accused must be informed of the charges against them and the evidence as soon as possible and must be granted access to legal counsel and other defense rights provided in this law." Article 6 states: "The accused, victim, witnesses, and other relevant individuals must be informed of their rights in the trial process, and mechanisms must be established to uphold and guarantee these rights." Additionally, Article 7 requires that "throughout all stages of criminal proceedings, the observance of citizens' rights, as stipulated in the Law on Respect for Legitimate Freedoms and the Protection of Citizens' Rights enacted on May 4, 2004, is mandatory for all judicial authorities, law enforcement officers, and other individuals involved in the trial process" (Heshmati, 2014).

According to Article 48 of the 2013 Code of Criminal Procedure: "Upon being placed under custody, the accused may request the presence of a lawyer. The lawyer must meet with the accused while maintaining the confidentiality of investigations and discussions. The lawyer may submit written observations at the end of the meeting, which should not exceed one hour, to be recorded in the case file."

Unlike Article 128 of the previous Code of Criminal Procedure, Article 190 of the 2013 Code states: "The accused has the right to be accompanied by a lawyer during the preliminary investigation stage. This right must be communicated and explained to the accused before the start of the investigation by the examining magistrate. If the accused is summoned, this right must be mentioned in the summons and communicated to them. The accused's lawyer may obtain information about the charges and evidence and present any arguments necessary for uncovering the truth and defending the accused in accordance with the law. The lawyer's statements must be recorded in the hearing report."

According to Article 346 of the 2013 Code of Criminal Procedure: "In all criminal cases, the parties may introduce their lawyer or defense counsel. If multiple lawyers are appointed, the presence of one of them is sufficient for the formation of the court and the proceedings. The exception stated in the article's note specifies that in cases outside the jurisdiction of the Criminal Court I, each party may introduce a maximum of two lawyers to the court."

Several provisions in the 2013 Islamic Penal Code reflect the acceptance of the presumption of innocence, including the following:

1. One method of proving a crime is witness testimony, which, under certain conditions, can be used as evidence. Since the burden of proof is on the claimant, who must present witnesses to substantiate their claim of the accused's guilt, this requirement itself affirms the presumption of innocence.
2. According to Article 199 of the Islamic Penal Code: "The required number of witnesses for all crimes is two male witnesses, except for adultery, sodomy, *tafkhez* (non-penetrative same-sex acts), and *mosaheqeh* (lesbianism), which require four male witnesses. Adultery that entails flogging, shaving, or exile as punishment may be proven with the testimony of two male and four female just witnesses. For other punishable sexual offenses, a minimum of three male and two female just witnesses is required. If two male and four female just witnesses testify, only the flogging punishment is established. Crimes that require blood money (*diyah*) may be proven with the testimony of one male and two female witnesses." Additionally, Article 200 states: "Regarding testimony on adultery or sodomy, the witness must have personally observed the act. If the testimony is not based on direct observation, or if the required number of witnesses is not met, the testimony on adultery or sodomy is considered slander (*qadhf*) and is punishable by *hadd*."

This provision further illustrates the application of the presumption of innocence in the Islamic Penal Code.

Article 785 of the 2013 Islamic Penal Code states: "Any judicial or non-judicial government official who, in order to compel an accused person to confess, subjects them to physical harm shall be sentenced to imprisonment ranging from six months to three years in addition to *qisas* (retribution in kind) or the payment of *diyah* (blood money), as applicable. If someone has issued the order for such mistreatment, only the person who gave the order shall be subject to the aforementioned imprisonment. If the accused dies as a result of the mistreatment, the perpetrator shall be punished as a murderer, and the one who ordered it shall be sentenced accordingly as the instigator of murder." This article strongly upholds the presumption of innocence, as it implies that if the principle of presumed guilt were accepted, forced confessions would not be necessary, and confessions would no longer be considered valid evidence. Under the presumption of innocence, a confession is only valid if made voluntarily by the accused. In the absence of other evidence, the accused remains protected by the presumption of innocence.

According to Article 572 of the Islamic Penal Code (under the section on the misconduct of public officials): "If a person is unlawfully detained and files a complaint with law enforcement authorities, but they fail to hear the complaint and cannot prove

that they reported the grievance to competent authorities and took necessary measures, they shall be permanently dismissed from their position and banned from holding governmental positions for three to five years."

As is well established, the burden of proof lies with the claimant. In this context, the claimant is the unlawfully detained individual, while law enforcement officers deny the claim. Upholding the presumption of innocence requires the claimant to substantiate their case with conclusive evidence. However, since detainees are often unable to do so due to their vulnerable position compared to law enforcement officials, the legislator has rightly reversed the burden of proof in this situation by replacing the presumption of innocence with a presumption of guilt, requiring law enforcement officials to prove that they acted lawfully.

4.4. *The Principle of Individual Criminal Responsibility*

This principle, which serves as a cornerstone of criminal justice in determining punishment, is not explicitly stated in the Constitution. Instead, it is derived from verse 164 of Surah Al-An'am: "*No bearer of burdens shall bear the burden of another.*" This principle is also evident in substantive criminal laws such as the Islamic Penal Code and other specific statutes, as these laws consistently assign punishments individually to perpetrators, accomplices, and accessories.

The essence of this principle is that justice and fairness dictate that only the perpetrator of a crime should be punished, and such punishment should not extend to their relatives, even though the negative impact of criminal punishment on the offender's family and associates is undeniable (Minaei, 2016, pp. 44–98). However, exceptions to this principle exist in certain cases, such as the liability of *aqilah* (a group of male relatives responsible for paying *diyah* under Islamic law) or the vicarious liability of newspaper editors for offenses committed by their employees. These exceptions, however, remain limited and exceptional in scope.

4.5. *The Prohibition of Torture*

In the process of obtaining evidence, not only must the evidence itself be legitimate, but the method by which it is obtained must also be lawful. Failure to adhere to this requirement may result in the invalidity of the evidence or downgrade its evidentiary value to that of a mere presumption (Heshmati, 2014). One of the unlawful methods of obtaining evidence is the use of torture, which has historically been employed to force a confession from an accused person or compel a witness to testify. Islamic criminal law, based on the necessity of respecting human dignity, condemns the infliction of harm on individuals. The Iranian criminal justice system, which is influenced by Islamic jurisprudence, has criminalized torture and unequivocally prohibited it (Izadi Fard et al., 2013).

According to Article 38 of the Constitution, any form of torture used to extract a confession or obtain information is prohibited. Coercing a person into testifying, confessing, or swearing an oath is impermissible, and such testimony, confession, or oath is devoid of any legal value. This constitutional principle categorically and unequivocally prohibits torture, as the prohibition of torture is one of the fundamental human rights. The use of torture may stem from the authorities' inability to obtain evidence lawfully; thus, this principle declares confessions, testimonies, and oaths obtained through torture to be null and void to deter law enforcement and other criminal justice institutions from engaging in such practices. Iranian criminal law regards torture as an inhumane act that is contrary to ethics, human dignity, and honor, and thus prohibits it.

As is well known, one of the primary means of proving claims in both civil and criminal cases is confession. Historically, confession was considered the most important form of evidence, but its absolute evidentiary weight has diminished over time, and like other forms of evidence, it may now be challenged. One of the circumstances under which confession is legally invalid is when the confessor lacks the necessary legal qualifications, including maturity, sanity, free will, and intent. Therefore, if an individual is coerced, threatened, or tortured into confessing, their confession is legally and evidentially invalid due to the absence of free will and voluntary intent. As previously stated, for a confession to be valid, the confessor must be of sound mind and act voluntarily. The majority of legal scholars and Islamic jurists agree that confessions obtained through coercion or duress are void and lack any evidentiary weight.

Article 578 of the Islamic Penal Code establishes penalties for torture used to extract confessions, stating: "Any judicial or non-judicial government employee who subjects an accused person to physical harm in order to force a confession shall be sentenced to retribution (*qisas*) or payment of blood money (*diyah*), as applicable, in addition to imprisonment for a term

ranging from six months to three years." The fundamental conclusion is that confessions obtained through torture lack any legal and evidentiary validity and may be dismissed by the accused or their attorney in either the prosecution or trial stages.

In Iranian criminal law, not only is any form of torture for obtaining evidence strictly prohibited, but it is also criminalized under Article 578 of the Discretionary Punishments Law. However, some legal scholars argue that if the information obtained from an accused person pertains to an external and objective matter—such as the location of a buried body—it is not necessarily invalid. However, narrative-based evidence, such as confessions, testimonies, and oaths, remains inadmissible (Heshmati, 2014). Nonetheless, this perspective risks creating conditions that encourage the use of torture for gathering evidence.

4.6. *The Principle of Expediency in Criminal Proceedings*

Expedited proceedings serve the interests of society, as swift prosecution of offenders, rapid issuance of judgments, and prompt enforcement of punishments help deter crime. The prospect of immediate punishment discourages individuals from engaging in criminal activity. This approach enhances the effectiveness of penalties through deterrence and serves as a warning to others. Conversely, delays and prolonged criminal proceedings undermine public trust in the justice system and may contribute to an increase in crime rates.

International criminal policy emphasizes expedited criminal proceedings as a key aspect of protecting the rights of criminal justice actors, while also recognizing its role in crime prevention. Iranian criminal policymakers have similarly emphasized this principle (Niazpour, 2010). Article 32 of the Iranian Constitution affirms this principle, stating: "... In the event of an arrest ... the preliminary case file must be submitted to the competent authorities within a maximum of twenty-four hours, and the necessary preparations for trial must be made as soon as possible."

In Iran, the acceleration of criminal proceedings has been prioritized in specialized courts more than in general courts, as expediting criminal trials was one of the primary justifications for establishing these courts (Goldoust Juybari, 2007, p. 134). While the Iranian legislator has recognized this principle, Article 5 of the Code of Criminal Procedure stipulates that respect for the defendant's right to defense serves as a limitation on the principle of expediency.

5. Conclusion

This article examined the extent to which individual rights and freedoms have been incorporated into the constitutionalization of criminal law. The findings indicate that, given the constitutional law's supreme status within legal systems, constitutionalism in criminal procedure serves as a safeguard for fundamental individual rights and prevents the arbitrary exercise of power by criminal justice authorities. Judicial independence, legislative independence, and constitutional adjudication can be considered mechanisms that uphold constitutionalism in criminal proceedings.

In the Iranian legal system, certain provisions of the 2013 Code of Criminal Procedure conflict with the principles of fair trial enshrined in the Constitution. Therefore, analyzing these conflicts and assessing the extent to which judges can rely on the Constitution while disregarding statutory provisions that contradict constitutional principles is a necessary undertaking.

Although the 2013 Code of Criminal Procedure represents significant progress in ensuring fair trial standards as stipulated in the Constitution, it contains provisions that contravene the Constitution's fundamental principles. Notably, the provisions concerning the right to legal counsel, the public nature of trials for political and press-related offenses, the principle of separation of powers, and other related matters contradict the spirit and explicit provisions of the Constitution. In other words, certain statutory provisions in this law are inconsistent with constitutional mandates.

Full support for the Constitution, particularly for public rights and freedoms, necessitates that citizens be allowed to invoke constitutional provisions in their legal disputes. Consequently, if a party to a legal dispute bases their claim on the Constitution rather than on statutory law, judges are faced with two conflicting legal sources. Under established legal principles, the Constitution should take precedence over ordinary laws, even though judges lack the authority to annul statutes. It appears that judicial interpretation, particularly in cases involving defendants whose cases are pending trial, may be the most effective means of resolving these inconsistencies. Furthermore, amending existing laws and regulations, including the internal regulations of the Guardian Council, could facilitate access for judicial bodies, such as the Supreme Court, to constitutional adjudication mechanisms, thereby resolving jurisdictional conflicts.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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