

The responsibility due to the freedom restraint for the people of a society & deprivation of their legal rights

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Abstract: The deprivation of the accused and suspects of freedom, because of its importance in criminal procedure, entails some dos and don'ts which necessitate special rules and regulations, even before and after it. The development of a culture about the nature of deprivation of freedom and the involvement of the legislator in some situations which have remained disregarded so far, especially in the current Iranian regulations, can definitely contribute to the improvement of the criminal procedure. In the Iranian rules and regulations, citizens are not recognized by law to be able to deprive one of freedom, though in the new bill of criminal procedure it has been predicted. The advantage of the Iranina law system over is that the duration of the deprivation of freedom by the police is limited at most 24 hours. Limitation on the number of authorities who are legally allowed to deprive one of freedom, the acceptance and institutionalization of the possibility of the supervision of the authorities not involved in the investigation over the process of deprivation of freedom, collective decision-making about the detention of individuals, the necessity of the supervision of high-ranking police or judicial authorities, and the specialization in enforcing the related regulations are among the important rules that are formulated and explicated more carefully in the other countries law system. Also some objections can be raised to this legal system because the cases of detention and accusation are not separated, the process of objection to deprivation of freedom is not adversarial and also the accused and his solicitor are limited in expressing their ideas about the judicial detention or detention by police. However, the legislators of Iranian should remove subjects or accusations with a little or even fair degree of importance from the list of crimes they might give rise to the deprivation of freedom, predict an independent defensive institution which can provide the detainees with defensive facilities and also put emphasis on the principle of freedom. In the Iranian law system, the special and vulnerable suspects generally enjoy no special privileges.

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Introduction

Undoubtedly, the best word played in the human ear for a few centuries is the word "freedom" At the same time the most controversial and the most elegant discussions is devoted to the word such as justice, equality, and so on. dignity and respecting for freedom and human rights have long been considered, Human always strive for human rights as we know arrest as one of harsh legal procedures that will lead to personal liberty, Unlawful arrest and detention are crimes against freedom of individuals that with regard to the importance of freedom the individuals go under legislator's attention. There are different kinds of freedom, including freedom of speech, conscience, religion, freedom of movement, freedom of assembly which foreclosing each of them can be devoted the special study. Freedom of body is as an effective action and sometimes inevitable in the process of criminal procedure, it is a general term that from the beginning to the end is subject to certain terms and necessitate. the issue of freedom that has positive and negative effect on the spirit and character of the banned person thus has special place in the discussion of the Criminal Procedure Code.

Restraining of justice with regard to powers that the legislator give them to arrest people, they should be caution and avoid illegal arrest persons, Nevertheless, because the base of legislation is based on prohibiting the arrest and detention, and respecting for people's right and freedom. On the other hand, one of the main tasks of the police is to maintain order and security in society, Necessary of attaining the great objectives is ensuring the safety of human society, and no doubt judicial security is one of the most pillars of it. It isn't covered to expert especially criminal lawyers that this security requires rules that are measured in terms of its content, and it has merit the maintenance of order in society.

Statement of problem

Freedom is one of the inherent values that will find meaning in the service and along the other noble intrinsic values and the human will pace perfection way freely, the goal of human is perfection and freedom is a background to achieve perfection. The first and most common sense of freedom that comes to mind is physical freedom, This right in addition to the international dimension, in national laws of our country is also taken into consideration. Thus

divestment of physical freedom is synonymous with arrest, detention, imprisonment of persons who are authorized by law to do it. When this practice is permitted that according to law done by the competent persons. Attacking on physical freedom of the people by the people and officials has the two states: One category consists of those who directly commit the divested act of freedom and the other is those who indirectly commit to the deprived act of liberty, Nevertheless, the legislator lies the principle based on loss of arrest and detention and respect for the rights and freedoms of individuals, and arrest is accepted as an exception to the constrained condition. the constitution in the third chapter that consists of the nineteenth Act to forty-two, entitled "Rights of the People 'requires freedoms and rights for people like justice, the right to a nationality, the right to employment, the right to freedom of opinion and expression, and, authorities are obliged to respect to the rights and freedoms of the people. The sanction of deprivation of rights under Article 570 and 575 prescribes the Penal Code (Mir Mohammad Sadeghi, H., crimes against persons, PG, 1387). hq freedom and personal security is one of the manifestations of civil rights, It generally contains no arbitrary arrest and denial of Freedom and merely in accordance with the law and the right to be informed of the reasons for detention and the right for compensation arising from unlawful detention. Restraining of justice with regard to powers that the legislators give them to arrest people they have to be careful in order to prevent the illegal arrest and deprivation of liberty, In Article 3 of the Universal Declaration of Human Rights is stated: No one shall be subjected to arbitrary arrest, detention, exile, except in accordance with law. (Mohammad Zadeh, S., Tehran Appeals Court judges, the teaching message C-30, 1386) illegal arrest is a criminal action and prosecutable. Judicial authorities should use the legal leverage of and prevent to attack to the legitimate rights of persons and protect the rights of individuals.

The importance and necessity of research

The necessity of such a study would be mentioned as following.

1-Doing basic research on the criminalization so that that important issue to be examined is aggression against the freedom and security of the person, and it has a scientific orientation and it is conducted to and evaluated by using the findings of research which unfortunately we have seen less.

2 - The necessity of dealing systematically to the crime and the accusers requires that the rules of criminal procedure perform task of a balance between the need to respect for human rights and the public security.

3- The need to assist the legislator in order to understand better the do's and don'ts in the area that now is approving the new law Justice

4- The need to explain the unknown aspects of the case and providing appropriate solutions and pleasant, and the need for legal clarification and detailed collation of rules with an internal known legal system reveals the necessary of the present study.

Objectives

The main objective: To assess liability arising by deprivation of physical liberty of individuals and their legal rights.

The partial objectives:

1) Checking criminal liability against divestment of freedom of people

2) The criminalization of attacking on physical freedom.

3) Checking of legal protections of violating to the rights, freedom and personal security of individuals in Iran Criminal Justice

4) Checking the task of judicial officers against illegal instructions

Research questions:

1. What is the mechanism of legal protections for victims of violating to their freedom?

2. What are the guidelines for the prevention of violations to individual liberty?

3. What are the ways and means of redressing of individual freedom?

hypothesis:

1. There are two methods of criminal law: aggressive way in the criminalization mentions to violate to physical freedom. (B) Preventing way in the criminalization is a method that indirectly provides background of aggression to individual freedom.

2. There are clear rules and sanctions with effective legal guarantees in connection with official duties and authorities that provide the most important guarantees of the freedom of the individual.

3. In the penal provisions of Iran, guarantees are unforeseen in this relationship, but in proposed bills of legislation is expected new and effective principles. (Criminal Procedure Act).

review of literature

About the subject of the study written several articles and books and dissertations in recent years has briefly discussed. Parvizi Fard, Dr. Ayatollah, liberty divestment of the accuser, The Forest, in 1391- Mir Mohammad Sadeghi, H., crimes against persons, publication Mizan, third edition, 1387- A comparative study of divesting of the physical liberty of the accuser's rights in Iran, France, England, thesis MA of Sajjad Mohammedan in martyr Beheshti University 1381-Safari Ali, penology, development,

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Method

research method like most social science researches is Library and documentation Therefore, in the relationship, the internal and external books and articles, websites and all related documents have been collected and the fault or error of the judge from the perspective of those who suggest that the government has their responsibility, Tehran General Court ruled that hundred and Seventy-first principle relates to the constitution and penal matters, In addition to the claim for damages in the case of the examples mentioned accessories are also proving fault in the relevant references and none of the meanings is realized in the implications of this place, Evaluation and documentation of the expressed reasons and understood in order to justify or deny claim' according to regulations and case law is based on judicial predicate and sometimes it is supposed that all judges in assessing the value of the warrant of judgment for the relevant legal regulations must necessarily have the same approach and withdrawal. On the same basis, when the judge of the court finishes its investigation he announces the results of investigation of the contents of the file comment and vote on legislation, He may not be necessary to compensate innocent prisoners, Experience has proved that a large number of defendants were arrested at the preliminary stage or during the trial would be not guilty, it is no hide for people that imprisoning people not only it causes financial losses for imprisoned person and his family but also it causes psychological and spiritual damages for his family member.

Compensation in the new Criminal Procedure Code

Legislator in Article 255 of the new Act prescribes that persons detained for any reason during the preliminary investigation and when they by the

judicial authorities pursued or banned they can claim their damages from the government

No need for compensation

In accordance with Article 256 of the new Act .d.k in the following cases arrested person isn't entitled to compensation

(A) detaining person arising from refusing to provide documents and evidence of their innocence.

(B) in order to escape the crime, he places himself as suspect

(C) in any direction, he unjustly accuses himself.

(D) at the same time due to other legal he is held

Compensation for moral and material losses of prisoner

Individuals arrested after a term of imprisonment were guilty, they not only cause financial losses and families of their dependents but also cause mental and spiritual damage to members of these families, which sometimes cannot be compensated by any measure, when the imprisonment was injustice and this amount of pains will be more. Experience has shown that many of the defendants held during the preliminary investigation or the proceedings were guilty, And later some time they acquitted, In many countries consider appropriate solutions for compensation of detained people not proven crimes in terms of the investigation and they anticipate financial and moral compensation.

Conclusion

Divestment of freedom of suspects and defendants in legal process with regard to the importance and works in the field of public procurement on the one hand and protect the rights and freedoms of the individuals on the other is subject to unspeakable importance in the realm of issues related to the Code of Criminal Procedure. The importance of this issue causes the legislator not only provides specified starting point to the end of the freedom, But also thinks to the worthy and deserving mechanisms, at intervals before and after the end of the deprivation of liberty. For example, the authority shall be obliged to take away the freedom of action in this matter, in accordance with legal requirements such as summon or the primary check for the objection appointed charges (Non summoned without reason) Or after the end of freedom, the right of access of individuals to the documentation file into the specified time Or compensation have recognized, the limits of that should be unknown. In any system, including the judiciary and the executive governing powers see themselves as the legal limits for the freedom of citizens, they cause that the two most important result of this culture posed ; First, the

depriver of liberty don't have to cover weaknesses and vacuums by the rules without legal proceedings. And thus they commit the unauthorized prohibition. second, the government's efforts for normalization in this sphere will not be due to pressure from human rights or promotion of social expectations, But increase the supply of public goods (i.e. creating Order and Security administered by the necessary measures) legislator inevitably makes up the legislation for reaching this purpose. Thus point of developments in these areas (even broader look at the scope of the Code of Criminal Procedure) can be trying to change the culture and views over the fields. Divestment of liberty in the criminal justice process in terms of its natural limits, thereby causes to disarm of the criminal case (the defendant) And on this basis in order to balance in the criminal trial firstly this action is exceptional, that with the requirements of process should be the subject of legislative legislator, so that resorting to this exception in a special legal process is possible, no in the normal criminal procedure. Secondly, in case the use of this exception should be provided the defense equipment and facilities, supplies of the Such as the right to maintain contact with the outside world, the defendant must know the answer to some requests, For example, local research or research of particular witnesses, to provide t lawyers for the accuser who detained without being required to pay cost. Importance of divestment of freedom is the extent that many assessments of existing criminal justice system is orbited around it. What probably makes more negative result of assessments isn't difficulty or tolerance of the behavior of the individual legislator in the process. But the silence of the legislator in different situations is different that persons deprived of liberty face with it. So the legislator s comment in this position shall prevent many flaws and many violations. In many countries, procedures and rules relating to divestment of freedom have the extent and significant volume. In every state legislator should give special attention to the determination of the authorized persons in divestment of freedom. Arrest of authority's divestment of freedom is significant issues. Given divestment of freedom by all members of a force (eg police), regardless of their position and expertise, lack of attention to educational precedent of authorities and even no separating cases that officials denied the freedom is executor of judicial orders or it takes decisions to freedom independently, all can be the measures of the legal system of divestment of liberty of suspects and accusers. to predict and to teach the allowed forces to divestment of freedom by law under the supervision of a legal entity and as a precondition for improving the organization of these forces can be one of the

specialized requirements for these forces. Collective decision-making stage about deprivation of liberty, whether in action or in the process of monitoring or reviewing a protest, Including ways increase the accuracy of the decision and avoid the bias or partiality. This action both in non-judicial freedom (police) and judicial freedom is predictable is. number of decision-makers are Significant on both sides; The first aspect is the instantaneous frequency with the explanation that as example for supervising the accuser, is necessary preliminary approval of the Chief Officer and a captain with the minimum rate, The second way is the gradually frequency with the explanation that, for example, by increasing seized time more than 24 hours, need to agree three officers, and for more than thirty hours need to agree three officers and a judicial authority so by increasing the length of detention, increases the authorities in this. . Insignificant issues or allegations should have been removed, included measures depriving liberty and it is the legislator s duty that provides a specific list of these issues, prohibits judicial or non-judicial authorities who perform the action in these cases. time constraints or limitations relating to the minimum penalty of charged operation, are current requirement but inadequate This issue shows off particularly in the important crime and the judicial authorities, Because time of detective freedom is limited and determined and by ending of the legal limit, there is no possibility of extension But freedom often ends with a judicial sentence. The judicial authorities shall be responsible for a specific period of time by issuing acquittal or conviction, and they exit the person of divestment of freedom limbo. However changing the judicial officer may cause to withdraw from the primary responsibility of the authorities, But by projecting time roof or need of special licenses of the highest judicial authority in direction of continuing to the process of deprivation of liberty, can be helped to mitigate these weaknesses. In the case serious charges such as intentional murder, precedent prolongs the proceedings, there is no require for the issuance or renewal of temporary detention and deliver it, Adhere to the above requirements will not be without avail. Rules and procedures and regulations relating to deprivation of liberty require forecasting guarantees that have different aspects. Sometimes it has direct impact on the outcome of researches or part of it and it will result in a cancellation. And sometimes it makes a right of compensation for damaged person, some cases, non-compliance of the rules, will be faced with a criminal sanction. The most important weakness and failure of the criminal justice system in the area of freedom can be summarized this way: in terms of structural elements in the criminal justice

system, failure is evident. The importance of its resolving is undeniable that the lack of organ or defend organ of divestment of freedom and above all, lack of commitment to attend the institution of prosecution proceedings are inconsistent with the requirement of the principle of presumption of innocence.... In reviewing to protest of person in custody, with the assumption that his freedom will be done in accordance with the standards, Unless a reference to the object handler (eg the court) to independently verify its non-compliance and violate the issue, Such decisions about divestment of freedom of the presumption of innocence is inconsistent with the premises and equipment. Direction related to the prosecution office provides the presence or absence of the need to reasons, and prove that the person is entitled to freedom on account of the passage and the second Denial of the opportunity to presence of person in the custody and it is due to deprivation of liberty.

Suggestions

1. Organ or independent organization with the authority to specify requirements is formed for protection of suspects arrested or detained person. Of course it doesn't require the establishment of the institutions with high costs to the criminal justice system, it is more possible to hear and answer some reasonable requests and support logically of the detained person.

2. The file of the arrest must be separate and distinct the accuser's case.

3. The task of proving entitlement to divestment of his freedom with representing reasons in the investigating reference, and the reference is clearly to be appointed to handle the protests.

4. The task of supervising the deprivation of liberty is recognized as a task, independent of the proceedings to protest the freedom, in case the increase in the duration of deprivation of liberty, regardless of whether the person is in custody, opposition or not, increases the number of times of the task of those who commented and monitoring of freedom.

5. Any comment on the deprivation of liberty, whether as a confirmation of view (eg magistrate upheld the decision by the prosecutor) or regulation (eg police or judicial authorities) or appeal proceedings (eg court proceedings to protest the detention) that requires the presence of a person in custody or his legal representative be granted the opportunity to comment.

6. The issue of persons in custody and summoned lawyers is distinguished from the decision about freedom, Explaining the decision-making organization for the oversight, approval or objection

is required that persons in custody or their lawyers summon at the certain time, because in many cases, even though there is legally possible their presence, unaware of them cause to lose the chance of extinction and defense.

7. It is essential documentation of all actions of the institutions of divestment of freedom at the possible highest level, it can be useful to record audio or video of interrogations of suspects in custody in the promotion of this documentation.

8. It is necessary to pay special attention to vulnerable people such as low-adult custody, aliens, visual, verbal, auditory disability and Handicap.

9 certain level of sanctions with certain criteria from the least to the most egregious violations of the rights to privacy and freedom under cover, and all of them have been provided and regulated in a separate chapter of the Code of Criminal Procedure,

10 levels, types, principles and compensation of persons in custody have been clearly defined and adopted in the legislation. State responsibility and individual freedom is determined within the limits of accuracy and precision. To predict a specific fund or specific percentage of public expenditure or revenue to redress the criminal justice system, regardless of whether it facilitates supply, causes that the relevant authorities makes the decisions with more courage and comfort,

11. It offers that the legislator predicts two types of action to ban freedom: One issue with this explanation of the issues and the prohibition of certain areas of the charges that can be charged via divestment of the freedom and the other is measure ban. Regarding to the amount of the alleged act of punishment, criminal charges with a certain degree of charges are excluded from the list of offenses.

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