

Tasks of the Bailiffs of Justice in the crimes that is evident in Iran's criminal system

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Abstract

In this descriptive-analytical study, the duties of the bailiffs of justice in the evolving crimes and the challenges in this field have been investigated. The defenders of the bailiffs of justice throughout the history of Iran, under various titles, have enjoyed a special status in the system of government and justice, in light of the works left to help preserve and enforce the law, to discover the crime and prosecute the accused. In relation to the duties of the offenders in relation to the evident crimes, we must say: The bailiffs of justice shall inform the competent judicial authority of the outcome of their actions, if the referendum does not adequately cover the actions taken, it can be completed in this case, the agents are obliged, on the instructions of the judicial authority, to investigate and take legal action to detect the crime and arrest the offender, but they cannot keep the defendant back and if the defendant's detention is necessary for the completion of investigations in the evident crimes, the charge must be communicated to the defendant immediately in writing with reasons and for a maximum period of 24 hours, they can keep the defendant under surveillance, and at the earliest opportunity they should be informed to the judicial authority to make a legal decision. The judicial authority is responsible for providing arrest or release of the accused. Also, the inspection of homes, places and objects and the prosecution of persons in non-obvious cases should be subject to judicial authorization, although the conduct of investigations has generally been referred to the police by the judicial authority.

Keywords: Duties, Authority, Bailiffs of Justice, Police, Evident crime, Criminal Court

1) Introduction

In view of the role of the judiciary as the executive body of the judiciary, the use of tried-and-tested judges in different stages of the criminal court and observance of the fundamental rights of the accused in order to secure Article 32 of the Constitution, the selection and examination of a subject related to the administration of justice in the criminal court process will be a good step towards the implementation of the most powerful laws (Assyrian, 2012: 56). According to Article 29 of the Code of Criminal Procedure, the Criminal Investigation Service has been introduced as a judicial authority, and the description of the duties of the Custodian is also set out in Article 28, on the other hand, according to Article 2 of the Law on the Establishment of a Police Force, an Armed Police Force is under the jurisdiction of the Ministry of Interior. In other words, the judiciary lacks any role in installing, disposing, promoting a degree, degrading the degree, encouraging and punishing the bailiffs of justice. This means that

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the responsibility lies with the judiciary, without having an active role in its existence (Akhundi, 2011: 23). This research merely looks at the bailiffs of justice and their duties in the framework of the law, the Code of Criminal Procedure, and other relevant laws, and deals with the shortcomings of the ruling rules that the legislator has taken into account without any specific procedural determination. In some ways, in order to revive appropriate methods in the tasking of the judiciary, the comparative issues have also been used to legislator, with a new look, in line with the new methods of crime in terms of scientific and social developments, and taking into account the time requirements, to put in place appropriate laws.

2) The concept and types of the bailiffs of justice

In this section, the concept of the bailiffs of justice and the various types of them are discussed first.

2-1) The Concept of the bailiffs of justice

A proper definition of the bailiffs of justice is inevitable for the better understanding of the range of agents involved therefore, in the first and second words of this section, the concept of the lexical and terminological terms are clearly defined, then, in the third speech, we will examine the necessity of the existence of the judiciary.

"Bailiffs words in the word mean the preserving, the preserving, the ruler, the guyed, the strong, the strong and the intelligent man." (Amid, 2013: 675) "It also means the owner of the property, the broker, and the head of the city's security, the ruler, the steward, and the taxpayer" (Ansafpour, 2005: 675). "The judiciary also refers to the ministry or department dealing with legal and criminal matters in the word" (Same source: 580).

In the terminology of the law, the following definitions are defined: "Divided the block into several districts, and it was called" governor "for each administrative district as the headquarters of the district and the head of that office, which represented the interior ministry in that area, which was approved by the undersecretary of the bloc and the signatures of the ruling governor of the province, That the gods of the countryside were subordinate to him, and protecting the security and prosperity of the districts was the responsibility of the bailiffs" (Jafari Langroudi, 2017: 413). In the terminology, the law of the judiciary is also defined: The other definitions given by the law scholars include:

"The bailiffs or judicial police are officers acting under the supervision and supervision of the public prosecutor or other judicial authorities in detecting and investigating the crime, preserving its works and the reasons for it, and preventing the escape and concealment of the accused, in accordance with the law" (Akhundi, 2010: 13).

The bailiffs are the executive arm of the authorities and the criminal authorities, are engaged in prosecuting, investigating and prosecuting offenders. According to Article 28 of the Criminal Procedure Code; the bailiffs are: "Officers are acting in accordance with the law acting under the supervision and supervision of the prosecutor in detecting crime, preserving works and collecting evidence of the crime, detecting, finding and preventing escape and hiding the defendant, conducting preliminary investigations, issuing bills and executing judicial decisions". Thus, the judiciary is one of the activists involved in the criminal proceedings, who are charged from the beginning of this process and the discovery of the crime to the end and execution of criminal sentences under the supervision of the judicial authority (generally prosecutor).

What follows from the definitions is that: There is no explicit definition of the bailiffs, but their duties are counted in the law, of course, in this census, there are judicial and administrative tasks, such as the issuance of judicial documents, which is merely administrative. Another point about the note under Article 15 of the former law was that it was virtually problematic and ambiguous, and it was basically a condition for the credibility of the credentials of the reports received from their area on the face of the assignment and in fact (our duty is obligatory) to the judges and if it is guided, it is practically impossible or at least to say that it is difficult.

How can a judge who deals with hundreds of reports from different areas (both public and specific) during each month, expect to be able to validate each of them, so that they will also be affected by their reports. Of course, this is not a problem in a small city with a limited number of judicial officers and their personalities for judges. In any case, according to the principle of exclusion, it is assumed that all judicial agents act in their own right. This issue has been addressed in the new law, and the wording of article 15 of AD 135 has been corrected in this way: Article 36 AHD; "The report is valid only if it is not in accordance with the circumstances and verifiable evidence and is subject to legal regulation and regulation."

It has been proven that the Bailiffs of Justice have been found guilty of discovering crime as evidence that: What prompts community reform and intimidation of criminals is not severely punitive, but judicial police and expert judges have discovered any kind of crime and punished the subject. No crime has been committed without penalty, and no guilty person will be punished, which is the ultimate goal and ultimate goal of the criminal law "(Hedayati, 2003: 64).

2-2) Types of the Bailiffs of Justice

They are divided into two categories based on their range of authority.

2-2-1) General Bailiff

Bailiff refers to the general Bailiff that competent to investigate and prosecute all crimes except those that the law expressly excludes from their jurisdiction. Public officials, in accordance with Article A, Article 29 of the Criminal Procedure Code, include commanders, officers and law enforcers of the police who have seen relevant training. In this law, there are innovations in the general rules of the judiciary that did not exist in the previous laws. In the Criminal Procedure Code, duty soldiers are not considered as obligations and they can only be overseen by the relevant authorities in this regard, and they are responsible for the actions taken in this regard in addition to themselves with their employers. In addition, all the qualifications and personnel of the cadre are not considered valid but, in accordance with Article 30 of the Code of Conduct, they are considered to be trustworthy, in addition to being trusted, it is necessary to learn the necessary skills by passing the training courses under the jurisdiction of the relevant judicial authority and studying the special card of the judiciary. Investigations and actions taken by persons without this card are prohibited and legally unreliable.

Therefore, the Bailiffs of Justice are considered to be judges who are, firstly, commanders, officers or officers and are not soldiers of duty secondly, you have to be trusted and trusted; thirdly, you have completed training courses under the jurisdiction of the prosecutor and have acquired the necessary skills and finally, they have received special cards.

2-2-2) Special Bailiff

Special bailiff is said to bailiff who; In accordance with the law of eligibility for their intervention, they are limited to specific and predetermined offenses and do not have the right to interfere in activities and other activities as legal entities. Special agents, in accordance with paragraph (b) of Article 29 of the Criminal Code, include officials and officers who, in accordance with specific laws, are bound by the obligations assigned to them by the courts; Such as chiefs, deputies, and prison officers regarding prisoners' affairs, agents of the Ministry of Information and the IRGC information and the Basij Resistance Force of the Revolutionary

Guard Corps. Also, other armed forces are considered to be in breach in cases where all or some of their duties are assigned to them under the law. There are a few points to note about the specifics;

First, the cases mentioned in paragraph (b) of Article 29 of the Criminal Code have an allegorical aspect, and there are also many other officials and officials who, according to the various laws in the affairs and crimes related to their field of activity, the special rules of the judiciary have been considered, such as the commander of the aircraft, the captain of the ship, the officers of the Environmental Protection Agency, the agents of the forest and rangeland organization, and....

Second, the director, deputy and prison officers, is a subsidiary of the Prisons Organization and the entire country's education and training activities, which is part of the judiciary.

These persons in detention in the event of a crime occurring within the scope of their activities (The scope of the prison, or possibly during the transfer of a prisoner from city to city or from prison to prosecutor's office) are obliged to perform all the duties that the legislator has laid down for its agents. These agents, if the prisoner out of prison and in leave days makes crime, don't have the title bailiff of Justice.

Third, although the legislator referred to Section 29 of the Criminal Procedure Code of the Ministry of Information as special rules of the judiciary, but by referring to the Law on the Establishment of the Ministry of Information of 1984, the duties of the Ministry of Information were not granted to these agents. According to Article 4 of the Law on the Establishment of the Ministry of Information, "all internal security affairs are the responsibility of judicial authorities." According to the explicit passage of this article, all internal affairs of the country are under the jurisdiction of the judiciary, and the Ministry of Information will not be entitled to any interference, including summons, arrests, investigations, etc. But in Article B of Article 124 of the Law of the Fourth Economic, Social and Cultural Development Plan of the Islamic Republic of Iran, adopted in 2004, it was foreseen that "the Ministry of Information took the necessary measures in detecting macroeconomic mischief and theft of cultural heritage in the capacity of the judiciary" » Also, Article 205 (b) of the Law on the 5th Economic, Social and Cultural Development Program of the Islamic Republic of Iran, approved in 2010, provides for the officers of the Ministry of Information in certain crimes, the duty of the judiciary; "Preventing and combating corruption and disruptions to economic security, organized anti-security crimes, terrorist acts and soft security threats as a judiciary". With the adoption of this article, the legislator has severely expanded the powers of the Ministry of Information officials by

mentioning some general titles such as organized security, terrorist acts and soft security threats. Another regulation, which provides for the obligation for officers of the Ministry of Information to foresee Article 39 of the Anti-Smuggling and Counterfeiting Currency Act of 2014, "The Ministry of Information and the law enforcement force are required, in coordination with the competent judicial authority, to identify themselves, or according to the discoverer, the main networks, the organized groups of smuggling currency and their assets, and to file and complete the investigation." In addition, according to Note 1 of Article 602 of the Code of Civil Procedure, the Ministry of Information and Information Services of the Ministry of Information is considered a military offense concerning the crimes committed by the staff of the Ministry, which is within the jurisdiction of the Armed Forces Judicial Organization.

Fourth, in relation to the existence of members of the Revolutionary Guard Corps, In accordance with Article 1 of the Statute of the Revolutionary Guards Islamic Revolutionary Committee approved by the Islamic Consultative Assembly in 1982; "The Islamic Revolutionary Guards Corps is an institution under the command of the Supreme Leader whose goal is to safeguard the Islamic Revolution of Iran and its achievements and continuous efforts to achieve divine aspirations and promote the rule of law of God in accordance with the laws of the Islamic Republic of Iran and to fully strengthen the Islamic Republic of Iran through cooperation With other armed forces and military training and organization of popular forces. " Also in the next article of this Statute, "A legal struggle with the agents and currents that seek to sabotage, overthrow the Islamic Republic, or act against the Islamic Revolution of Iran", "A legal struggle with factors that, by resorting to the rule of law, seeks to reject the rule of law of the Islamic Republic", "Co-operation with law enforcement forces, where necessary, to restore order and security and the rule of law in the country", "Acting like other law enforcement agencies to disarm those who carry and hold arms and ammunition without a legal license, The Revolutionary Guards have the authority. It is clear, therefore, that the staff of the Revolutionary Guards is widely regarded as a bailiff of justice.

Fifth, In the case of members of the Basij, According to Article 1 of the Judicial Protection Act of the Basij, adopted in 1992, as well as Article 1 of the Code of Conduct of this Law, if there is a situation, the Basij Resistance Forces can act as a judiciary. This material emphasizes that 1) If the crime is evident in the type of crime and 2) The other defendants are not present at the site or, if they do not act or require notice, 3) Persons with special permission from the Basij Resistance Force will take legal action to prevent the eviction of the crime and escape of the accused and to prepare and submit reports to the judicial authorities. In the case of "non-compliance of other agents" or "declaration of their needs", Articles 3 and 4 of the Code of

Conduct provide explanations and state that failure to act promptly is in accordance with the conditions established by the relevant parties later on the scene or, if present, Do not deal with the crime. One point that should be noted is that nobody can act as a judiciary for the sole purpose of being a member of the Basij, but that he must have the conditions. The conditions for the recognition of Basij forces are set out in the wording of Article 1 of the Code; A) hold the necessary training course to identify the relevant Basij category. B) Having physical health in the execution of the mission and having mental health. (C) Special permission.

Sixth, the existence of armed forces such as the Islamic Republic of Iran's army is in a special condition that the police cannot cope with the perpetrators and perform their duties. Obtaining these conditions and delegating the duties of the judiciary to the armed forces is subject to the adoption of the law or the adoption of the decision of the Supreme National Security Council. The forces in question are only interfered with in the limits permitted by the law because the principle is that they are not interfered.

It should be noted that the most important authority of the discoverer along with the above mentioned defendants is the prosecutor's office itself, which, according to Article 22 of the Code of Civil Procedure, is one of the main duties assigned to this reference is the detection of a crime. Similarly, in some other crimes such as smuggling of goods in accordance with the Anti-Smuggling Act and the Foreign Exchange Act of 2014, other organizations, such as the State Secretariat or Customs, are active in detecting crime. In the case of military crimes that are within the competence of the Judiciary Organization of the armed forces, Article 603 of the Criminal Code also specifies military bailiff. It should be noted that the chairman and supervisor of the judiciary are charged with the prosecutor in respect of the duties they are liable for. Other judicial authorities have the right to oversee in matters of referral. The prosecutor has the duty to provide him with the necessary training in relation to the powers and responsibilities of his agents and, finally, in accordance with Article 33 of the Code of Conduct, the Prosecutor is obliged to inspect the relevant units at least every two months in order to monitor the proper performance of the duties of the agents.

3) Evident crime

Detecting evident crimes is important in detecting and justifying crimes. A word in the word means something that is visible and can be seen "It is evident from the meaning that has been witnessed, and it has been taken on the day of Friday and the resurrection" (Amid, 2013: 961)

"Meaning of evident crimes is in fact crimes committed in the face of the people" (Razavi, 2001: 75). In the legislature's view, as it will come, no definition of the crimes shown in the Criminal Procedure Code is provided, the condition for the use of such crimes is the realization of certain cases which include its implications.

In accordance with Article 45 of the Criminal Procedure Code, "Crime is evident in the following cases:

A - At the sight and point of view of the judiciary, the agents should immediately be present at the site of the offense or see the effects of the crime immediately after the occurrence.

B. Victims or two or more persons who have been involved in the commission of a crime, identify a certain person as a perpetrator in the course of an offense or immediately thereafter.

C. Immediately after the occurrence of the crime, the obvious signs and effects, or the reasons for the crime, have been found in the accused's possession, or the belonging of the proceeding and evidence to the accused is established.

D - The accused immediately intends to flee after the crime, or is fleeing or arrested immediately after the crime.

E - The crime has occurred or is taking place at the home or the place of residence of the people, and the resident, at the same time or immediately after the crime, requests the arrival of the officers at his or her place of residence.

C. The defendant immediately introduces the crime and informs the occurrence of the crime.

Q - The tramp is accused and in that place too badly known. "

As evidenced by the crime, as its name implies, it is a crime that the occurrence or effect of it is to be observed by the judiciary. This feature is seen in all the provisions of Article 45 of the Law except for the final part of clauses (e) and (c) which does not have such characteristic. According to the provisions of the article, the evident crimes can be divided into two parts: (Muzzenzadegan, 1993: 272).

First - the true mass of crime: The apparent crime is a crime that occurs at the site of sighting or prosecution of the crime detection officers, or immediately after the offense, the crime itself, or the effects of the offense being observed. In this case, the literal meaning of the apparent crime corresponds to its terminological meaning. For example, in front of the bailiff's eyes, the person firing on another person and killing him, or that the police officers of the Kiev police officer saw a motorbike himself, these are cases of obvious evident crime.

Second - evident virtual crime

Although it is not obvious in the strict sense of the word, the legislator places it in a "real crime" on the basis of reasons that convey strong suspicion of committing a crime, for example, when police officers or law enforcers arrest a person with a bloody knife over the victim's head.

It is necessary to note carefully in the definition of real and virtual evident crime. Here are some points: First, the cases of virtual crime are in the Criminal Procedure Code because the legislator did not mention the expressions of the allegory of the cases in terms of statistics of virtual crime.

In the second paragraph of Article 21 of the Criminal Procedure Code, Article 45 of the Law does not have a specific justification for committing a crime by two or more persons, rather, if a person is also an offender and the perpetrator is indicative, it is evident from the criminal case that the crime was announced by the perpetrator of a crime that was not foreseen in Article 21. Of the cases referred to in article 45, paragraph 4 of the law, it was stated that it was necessary, because this is far more than the other examples, it can be stronger. These people should be in a state of apparent suspicion of their speech.

The other thing about the stray person is that defined in paragraph 2 of article 45 of the stray: "A person who does not have definite housing and fixed income and does not have a certain occupation or profession." According to the criterion of virtual evidences, the accused's tramp cannot be classified as a virtual crime, because the tramp depends on the state of the person and is a component of addiction; it is a condition for its realization, continuity of operation, and how many times it is carried out. The state and condition of the person without any evidence cannot give rise to strong suspicion of committing a crime. In addition, detection of strain is typically possible at the preliminary investigation stage of the defendant. Therefore, in order to prevent the violation of the right of the accused, the implementation of justice and judicial justice seems to be desirable. Another point is that the landlord's permission to enter the agents referred to in article 45 in paragraph 5 is sufficient to realize the apparent crime. If the sentence is ambiguous, but in Clause C of Article 45 of the law, and instead of the landlord, the resident has indicated that the dweller of the house or the owner is allowed to do so, because the mere authorization of the landlord does not imply sufficient reasons for committing the crime.

The legislature has announced the escape of the perpetrator as one of the obvious signs of crime, but there is no justification for it. Because the escape attempt that comes after committing a crime has no effect on the apparent and non-conspicuousness. Perhaps the objective of the legislature is to increase the powers of the bailiffs of justice in order to prevent the accused from arresting him.

As a result, our criminal procedure law has expanded the powers of the bailiffs of justice, as well as the laws of other countries regarding evident crimes.

In my opinion, the extent of the scope of the powers of the law enforcement officers in the evident crimes is exceptional in the principle of non-intervention of the agents in the preparatory phase of the investigation, in the absence of preliminary judicial and without their permission.

4) the bailiffs of justice and evident crime

According to Article 44 of the Criminal Procedure Code: "bailiffs of justice shall, upon notification of the crime, declare to the prosecutor inadmissible orders in order to obtain the duties and instructions of the non-interlocutors and the prosecutor, after examining the necessary, orders the continuation of the investigation or adopts the appropriate judicial decision, the bailiffs of justice in charge of evident offenses shall take all necessary measures to preserve the machinery, equipment, works, indications and evidence of the crime and prevent the escape or concealment of the accused or the victim, Carry out the necessary research, And immediately they will get the prosecution's findings and evidence. Also, if there is evidence or witness in the crime scene; enter the name, address, telephone number and other details of your case in the file. The bailiffs of justice in the enforcement of this article and Article 46 of this law can only arrest the accused if they have strong evidence of the crime committed by him. " By reviewing the provisions of this article and materials, such as Articles 44, 46 and 47 of the same law and other regulations, it is determined that the defendants in the handling of evident offenses have duties and powers that are beyond the control of non-obvious crimes. Although, in general, the main duty of the defendants after informing the crime is to immediately notify the matter to the competent judicial authority, But in some cases due to the absence of an actual crime or is discovered legislator to enforcers authorized to without the orders of the judicial authority, the necessary steps usual, and we can even say crimes evident, restraining the representative of the judiciary and that is the successor to the judicial. Measures are different in relation to evident crime, depending on the importance of the crime and other circumstances, but in any case are allowed to do the following:

4-1) Maintaining tools, devices, effects and causes of crime

According to Article 44 of the Criminal Procedure Code, bailiffs of justice are required, upon notification of the crime, to seize all instruments and equipment for the commission of

crime and property and objects arising from the crime and all that are effective in detecting crime and verifying the truth and immediately inform the judicial authority. . The legislator's assumption is that there are mechanisms and instruments on the scene, and the first duty is to preserve these reasons and to prevent the exodus from the crime scene or eliminate them (Qasemi, 2016, 54).

Therefore, after the presence of the crime scene, the offenders must identify the range of crime with special stamping scanners and prevent people from moving in the scene of crime to avoid distorting or eliminating the causes and effects of crime. As Article 133 of the Criminal Procedure Code of 2013 stipulates: "The bailiffs of justice is obligated to enclose the crime scene and the location of the body with the appropriate means in the crimes that lead to the deprivation of life and, until the presence of the investigator or the issuance of the order for the inspection of the site, prevent the arrival of people and, if necessary, prevent them from leaving."

4-2) Arrest and catch the defendants

Catching and arresting an act by which the suspect is placed temporarily and in a position to investigate the defendants and then the judicial authority (Assyria, 2013, 155). Catching and arrest have a single meaning, but they are commonly used in judicial correspondence for arrest in cases where the accused or guilty is fugitive or hides himself from the point of view of the agents. The term "arrest" is also used in cases where there is obvious evidence of offenses involving the defendant with ANF and for him to be investigated. The term "recruitment" is commonly used in cases where the defendant or guilty is not escaped or hiding however, due to the lack of presence in the judicial or police authorities, or in terms of the importance of the crime, or inaccuracy of the place of residence, according to the order of the judicial authority, the defendants take it for the purpose of conducting investigations or execution of the sentence" (Unit for the preparation and editing of educational texts; 2003: 64). Catching perpetrators of perceived crimes is one of the most important powers of the bailiffs of justice, which should be distinguished from arresting perpetrators. In fact, the defendants, although in order to prevent the escape of the perpetrators, can bring him, but they are not entitled to arrest him. Unless, under Article 46 of the Code of Conduct, the accused is required to complete the necessary investigations to which he has committed the maintenance, also referred to as "under observation". Bailiffs of justice authorities should observe some very important criteria when supervising the perpetrator; first, keeping and supervising the perpetrator is an exceptional and contradictory one so you have to limit it to essential things. According to the principles, as soon

as he commits the offense, he has to take him to the judicial authority and act according to his orders, and should not take this action except in cases where the defendant is ineligible to hold the accused. Secondly, under Article 46 of the Code of Conduct, if the prosecutor is to monitor the defendant, the bailiffs of justice must immediately inform and explain the charge and the evidence to the contrary notify the prosecutor immediately to make a decision to make a decision. Third, according to the last part of Article 46, the period of observation of the accused cannot exceed twenty-four hours. Otherwise, the prosecutor may be prosecuted for illegal arrest (Article 575 of the Criminal Code). Of course, this is a 24-hour period, maximum retention period, and the bailiffs of justice are obliged to immediately bring the defendant to the Prosecutor's Office. Fourthly, according to Article 48 of the accused, even at the stage under review, the bailiffs of justice have the right to have a lawyer's services. The attorney must meet with the person with due observance of the confidentiality of the investigations and negotiations and attorney can at the end of the meeting with the accused, who should not be more than an hour, present his written comments to be included in the case.

Fifth, the bailiffs of justice are obliged, in accordance with Article 49 (A) of the Criminal Code, as soon as the accused has been observed, within a maximum of one hour, the prosecutor may inform the prosecutor, in any case, of the details of his employment, the address and the reason for his being observed. Sixth, the person under observation may, by telephone or by any means possible, inform the family or relatives of the oversight and those responsible are required to provide the necessary assistance in this regard, unless it is necessary to recognize that the person under observation should not use such a right. Of course, in article 5 of the single article of the law on respect for legitimate freedoms and the preservation of citizenship rights approved in 2004, it is considered that the family of the detained person is aware of the duties of the bailiffs of justice. In this case, you must inform the judicial authority of the extent to indicate the appropriate instructions. Ultimately, one of the innovations of the ADC, adopted in 2013, contains a different assignment for the bailiffs of justice in the event of the perpetrator being monitored, "If the prosecution is prosecuted, the defendants of the judiciary are obliged to inform the bailiffs of justice of the rights set forth in this law in respect of the person under observation and give him written permission and receive the application and file it." This assignment can provide the beneficiaries of the perpetrator's rights under the law, even in cases where the lawyer does not have access or is not familiar with the law.

4-3) Local examination

Adopting appropriate measures and taking necessary measures to issue and conduct a site inspection and reflection is evident in the case of the parliament. The place examination is issued exclusively by the judge of the court or the investigating judge according to the law. The bailiffs of justice cannot conduct a local examination without an order from a judge of the court or an investigating judge, and this is inferred from the logic of Article 125 of the Criminal Procedure Code, and in the phrase "... on the orders of the judiciary". In other words, the preservation of the works and the evidences of crime is an introduction to the collection of the causes of crime and, in fact, two independent stages. However, there is a matter of urgency in crimes. But the urgency of the matter is not a reason for ignoring legal provisions. In addition, performing a local examination in some cases requires technical and specialized knowledge and, in the event that the judiciary's authorities are able to issue and execute a local examination, is in contravention of legal requirements and is not acceptable at all in the judiciary" (Ghasempour, 2016: 194).

1) **Inspection**

Article 55 of the Criminal Procedure Code stipulates: "Entering houses, closed and closed places, and inspection, as well as inspection of persons and objects in non-interrupted crimes with judicial authorization, although he's conduct investigations in general, be referred to the bailiff." From the notion of opposing this article it can be deduced that in clear cases of criminality can be ratified and searched and inspected without the need for permission from the bailiffs of justice; even if it is one of the crimes that are offensive to chastity.

The bailiffs of justice should also note that, in accordance with article 43 of the said law, if the evidence and the emirate regarding the occurrence of a crime are doubtful or the information of the judicial authorities is not reliable sources, before proceeding to the Prosecutor's Office, they must carry out investigations without having the right to search, inspect, summon, and attract individuals, and report them to the prosecutor. According to this report, the prosecutor will issue an order to complete the investigation or take the appropriate judicial decision. According to Article 139 of the Criminal Procedure Code: "If the inspection and inspection interferes with the rights of individuals, it is permissible to be more important than their rights."

4-4) **Initial investigation on evident crimes**

The Code of Conduct for Public and Revolutionary Courts of Law, adopted in 1999, considered the preliminary investigation as a set of measures by special judicial authorities to detect a crime, to collect evidence and to prevent the accused from escaping or hiding, and commenting on whether or not he could be prosecuted.

This article has some shortcomings:

1. According to this article, preliminary investigations into evidences of crimes are considered by law enforcement officials and have not referred to a judicial authority, which is contrary to principles. Because since the defendants of the bailiffs of justice have no right to comment on the prosecution or non-prosecution of the defendant, they will not have any right in the preliminary investigation.
2. The legislator cited the prosecution from prosecution to submission to the judicial authority as part of the preliminary elements of the preliminary investigation, but according to Article 92 of the Criminal Procedure Code, 2014, preliminary investigations were ordered to the investigator: "The preliminary investigation of all crimes is the responsibility of the investigator. In non-offenses under article 302 of this law, in the absence of an interrogator, the prosecutor also has all the duties and powers that are set for the prosecutor. In this case, if the prosecutor refers the preliminary investigations to the prosecutor, the final appointments of the prosecutor as well as the provision of the prosecution to the detainee must be filed on the same day by the prosecutor, and the prosecutor is also required to do so within twenty four hours on this matter Comment ". On this basis, we conclude that the prosecution of the defendant is the responsibility of the bailiffs of justice. While the prosecution is prosecuted in the third stage of the criminal proceedings, the prosecutor or head of the judicial branch is prosecuting the crimes committed on behalf of the community. On the other hand, this duty is entrusted to the Judiciary by virtue of Section 4 of Article 150 of the Constitution.
3. The legislator considers all cases referred to in Article 91 to be preliminary investigations. If this stage is over, what is the title of the re-ordering of the court to the judiciary and to reopen investigations and remedy the defects of the cases and complete the various judicial investigations that are necessary for the proceedings? All of these actions are an introduction to legal proceedings and, in fact, to be part of preliminary investigations.
4. The legislator referred to "the necessary steps to prosecute the accused", but he did not mention any measures necessary to prevent escape or hiding. Which seems to need to be corrected? Therefore, Article 44 of the Criminal Procedure Code explicitly provides: "The bailiffs of justice, as soon as it is informed of the crime, declares to the prosecutor inadvertently committed crimes

against the charge and instructions and the prosecutor, after a review, is instructed to proceed with the investigation or adopt the appropriate judicial decision. The bailiffs of justice, in charge of evident offenses, takes all necessary steps to maintain the instruments, devices, works, signs and evidences of crime and prevent the escape or concealment of the accused or collusion, conduct the necessary investigations and immediately receive the results and documents Obtained information to the prosecutor. Also, if there is witness or absolute presence in the crime scene; enter the name, address, telephone number and other details of the case. The bailiffs of justice in executing this article and the article (46) of this law can only arrest a defendant if there is strong evidence and strong emirate on the perpetration of his crime. "

The question is how long the defendant can remain under the supervision of the bailiffs of justice without a statutory provision that, according to the recent part of Article 46 of the Code of Civil Procedure, the general and revolutionary courts in criminal matters: "... if the defendant's arrest is necessary for the completion of investigations in apparent crimes, the subject of the charge must be communicated to the accused immediately in writing with reasons, they can keep the accused at least 24 hours in maximum, and at the earliest opportunity they should be informed to the judiciary to make a decision. " But it should be noted that, although it is not possible to monitor the defendant indefinitely, but regarding the steps necessary to detect the crime and collect the reasons, the judicial authority can indefinitely request the investigation from the bailiffs of justice.

The bailiffs of justice cannot provide him with a guarantee of the presence of the accused. Since the issuance of these treaties restricts individual rights and freedoms, it is the exclusive jurisdiction of the bailiffs of justice, and accordingly the last part of Article 41 of the Criminal Procedure Code is stipulated. "The bailiffs of justice do not have the power to provide the defendant, and the judiciary cannot provide them with the source of funding. According to the Tsensim news agency, the article reads: However, whenever provision is required for the provision of the accused, it shall be applied only by the judicial authority in accordance with the provisions of this law.

Evidently, in accordance with Articles 44 and 46 of the Criminal Procedure Code, a preliminary investigation is required without the authority of a judicial authority, but the legislator made two exceptions in this regard:

1. Offenses of Chastity
2. Juvenile offenses

Documentary on Article 102 of the Criminal Procedure Code: "It is prohibited to prosecute and prosecute the crime of adultery, sodomy, and other crimes against religion and the question of no one in this regard is not allowed except in cases where the offense is in the public view and / or in the plaintiff, in which case, prosecution and investigation only in the scope of the complaint or circumstances evident by the judge of the court Gets ". It is the opposite of the judicial authorities in investigating crimes against chastity cannot be referred to the bailiffs of justice. And in the note below, this law of the legislator initially prohibits investigations into offenses that are in violation of chastity, except in two cases:

A) Cases where the crime is evident.

B) Has a private plaintiff, which is done by the judge of the court in the latter case.

According to the above description, in the offenses of chastity, there are three modes:

1. When the offense has a private plaintiff, all proceedings, including preliminary investigations and proceedings, are the responsibility of the judicial authority, and the referral of the investigation to the bailiffs of justice is not legally justified.
2. When the offense is non-obvious, the bailiffs of justice have no right to take any action.
3. When an offense is found to be evident that, by explicitly referring to article 43 of the abovementioned law, the bailiffs of justice shall be allowed preliminary investigations. As a result, the investigation of alleged crimes does not seem to be correct, and this should only be done by the judicial authority.

Exception to other legislators conducting preliminary investigations by offenders is the commission of crimes in the area of children. The legislator in Note 1 of Article 285 of the Code of Civil Procedure of the General and Revolutionary Courts on Criminal Matters has explicitly given all judges responsible for the offenses committed by children under the jurisdiction of the judiciary. Therefore, all actions and ... on child offenses are prohibited by law enforcers. Of course, the summoning and enrolling of children documented by Article 42 of the same law is not prohibited by the court.

Therefore, the social expediency is based on the fact that any kind of charge against children will be handled by the children's court and preliminary investigation is with the judge and not referred to the officers.

The bailiff of justice, as well as others, is liable in the event of a crime, and the judiciary's immunity does not exempt them from punishment, and everyone is the same with the law.

Whenever the bailiff of justice commits a verb or a criminal act, it is rational and logical that there is a point of reference for the commission of crimes to enforce justice and prevent chaos

and restore public rights and create security. But the question is what kind of authority is there to deal with criminal offenses?

Authorities competent to investigate crimes committed by the bailiff of justice include: Public Courts and Military Courts. But which of these courts is right at the right time to deal with the dispute created a lot of differences, because the crimes committed by the judiciary are different in terms of the particular circumstances of the crime, the time and place of the crime and the person's situation. Sometimes the bailiffs of justice commit general crimes and sometimes commit specific military offenses. For example, they are on vacation and commit a crime of theft, fraud, or assault. These crimes are not related to their legal duty and are a general crime (such as crimes committed by other members of the community), and sometimes offenses committed in the form of bailiffs of the judiciary is done, Such as a violation of the execution of a judicial order, a failure to hear a complaint, a violation of a sentence, and sometimes a crime as a specific military offense; In fact, special military offenses, in accordance with Note 2 of Article 597 of the Criminal Procedure Code, refer to crimes pertaining to specific military and disciplinary functions, "Crimes committed by members of the armed forces in relation to the duties and responsibilities of the military and the law enforcement agencies that are under their law and regulations".

It is thought that the bailiff of justice should be prosecuted in public trials because the defendants violate public law by committing crimes and violating the law. The laws of Iran are based on the principle that judges should be prosecuted in public courts. Article 172 of the Constitution stipulates the Constitution "For the investigation of crimes pertaining to the special military or police functions of members of the army, gendarmerie and the Islamic Revolutionary Guards Corps, military courts are formed in accordance with the law, But their general offenses or the crimes that are compounded by the bailiff of justice are being investigated in public trials.

4-5) Privacy and secrets

The bailiffs of justice must be careful not to violate privacy and privacy illegally, and not to disclose the secrets and privacy of the accused or the victim unless otherwise decided by the law and the judicial authorities, they should also pay special attention to this matter in criminal proceedings.

In accordance with article 17 of the International Covenant on Civil and Political Rights:

1. No one shall be subjected to arbitrary interference (unlicensed) or in violation of law in private life, family and home or correspondence, nor shall his honor and dignity be violated.

2. Everyone has the right to be protected against such interference or violations of law "(Parizifard, 2011, 69).

Also, according to paragraph 8 of the single article of the law of respect for legitimate freedoms and the preservation of citizenship rights: "Local inspections to arrest fugitive defendants or detect crime machinery and equipment shall be carried out in accordance with the law and without interference and with due care and from assaulting documents and objects that are not related to a crime or do not belong to the accused and the disclosure of the contents of letters and family photographs and family films and the recording of them should be avoided.

5) The effects of evident crime against judicial authorities

The prosecutor's or prosecutor's commencement proceedings are routinely referred to as "referral". However, the prosecutor or his deputy may file a complaint to the prosecutor or prosecutor directly to address the matter.

The judicial authorities of the prosecutor may, after referral, order the plaintiff to investigate or prosecute investigators.

According to article 64 (c) of the Criminal Procedure Code, one of the legal grounds for starting an investigation and prosecution: "The occurrence of evident crime, against the prosecutor or the prosecutor". First of all, what should be seen is the discovery of the crime of the right and duty, and in fact the ambiguity is whether the claims are the founder or the prosecutor?

A review of the history of law-making about the discovery of a crime is considered by the Iranian legislator to be that the discovery of a crime is a matter for the judicial authority. At the time of the existence of the prosecutor's office, the prosecutor's office with this institution and in the absence of it with the judiciary and the general court, and the prosecutor's office or the judicial authority can use the bailiffs of justice - public or specific - to detect a crime. Indeed, the bailiffs of justice does not have the right to act for the purpose of detecting a crime, but must, by instruction and under the guidance of the judicial authority, carry out the task of detecting a crime. Unless the defendants find untrustworthy information about the crime, it is not clear and definite in which case they have the right to disclose the crime before reporting to the judicial authority and without being under direct supervision of the judicial authority after informing the judiciary, once it has been established and assured of the crime.

There are many similarities in the rules governing the criminal offense in many countries of the criminal justice system. What made the legislature develop the powers of the judiciary, the

need for quick clashes with crime, preventing the accused from escaping, and collecting and maintaining instruments and evidence of crime? In order to carry out these actions, justice officials can arrest and supervise the perpetrator and even enter a non-existent home for research purposes.

Legal and juridical sources indicate that the basis of evident crime, which is unusual and extraordinary, is necessity, urgency and speed, and the ritual is incompatible with the nature of the crime. In the evident crime, he has committed more courage and the reasons are stronger than the accused, and the powers of the judiciary are even greater. In most of the legislations, there is no definition of an apparent crime, and legislators have only cited examples of this, but these are not all evidence of real crime, but are evident in a crime.

In the legal system of Iran, the legislator, in order to respond to such phenomena of violent criminals, Considering the evident crime, and with its examples, it is exceptionally that special judicial powers, such as arrest, surveillance, house searches, are carried out by the bailiff of justice, so that the perpetrators are arrested as soon as possible and delivered to a competent judicial authority, in this way, public order is maintained in a desirable manner, and immediate and speedy justice is implemented (Ansari, 2001: 225 quoted by Sharifi Khazarati, 2014).

In the apparent crime, the perpetrator has committed more criminality and the reasons for the accused are more robust and the authorities have more authority. In the case of a crime, the law enforcement officers are directly involved in prosecution and prosecution of the crime, and this duty continues until the intervention of the competent justice authority and lasts for 24 hours unless extended by the competent judicial authority. The Iranian Criminal Procedure Law, in accordance with the rules of the criminal procedure of other countries of the world, has recognized the jurisdiction of the bailiffs of justice in the field of evident crimes.

In the formation of a criminal case, there are several agents and authorities involved in whom the community of these factors together can lead to justice towards a better implementation of justice and of course, these multiple factors have certain duties and powers that one of the most important factors that are important in terms of grabbing their sensitive tasks are those of the bailiffs of justice. The first legal authorities' involvement with crimes committed by the bailiffs of justice will be realized, and the basic foundations of the criminal case will be introduced in this first encounter, and violations of the principles of this early construction are of particular importance. The assignments and tasks of the various officers from the initial stage of the criminal process, which is the discovery of the crime, begin until the end of the process that the execution of the sentence continues.

In order to achieve this goal, it is intended to extend wider powers to the bailiffs of justice in order to allow, without issuing a judicial license, the right to enter homes and residential places for the search and seizure of objects and in general, any action that is appropriate to collecting evidence of crime and maintaining it. For this reason, the judiciary should be well acquainted with cases of evident crimes so that they can take appropriate action. Because the bailiffs of the judiciary are either general relatives or special agents of the executive arm of the judiciary: Article 28 of the Code of Criminal Procedure, approved in 2013, recognizes the bailiffs of the judiciary as Under the supervision and supervision of the prosecutor, they act in accordance with the law in detecting crime, preserving works and collecting evidence of crime, detecting, finding and preventing escape and hiding the accused, preliminary investigations, communicating and executing judgments. It should be noted that judges of the judiciary are determined only by law and should be brought about by the law and under the supervision and training of the bailiffs of justice, and not have the right to act arbitrarily and unlawfully.

The importance of the role and impact of the actions of those responsible in the area of perceived crimes is far more apparent than the crimes committed and the legislator has given them greater powers to prevent the escape of the accused and eliminate the effects of the crime. Therefore, the granting of these powers is a kind of duty, which must be expressed by law in a completely transparent, explicit and systematic manner as long as the bailiffs of justice understands the framework of its powers and duties, and the rights of citizens are not subject to non-judicial and immoral interpretations of the bailiffs of justice.

In this way, it should be noted that the legislator has discretion over evident crimes such as: Summoning, catching and interrogating the accused, examining the place and examining the houses, inviting the expert, and seals and instruments of the crime in the preliminary investigation stage and in the absence of a judicial authority to the officials. Law enforcement officers and the bailiffs of justice officials are sometimes required by law and, in some cases, by law and order of the competent authority, to comply with the actions that the legislator has laid down in the preliminary investigation stage.

More importantly, law enforcement officers should be charged with the defendant's defense rights during the preliminary investigation phase, such as: The right to charge the charge by mentioning its reasons, the absolute freedom of defense during interrogation, the right to defense attorney at the time of conducting investigations, the right to introduce witnesses indicating their innocence, and ... to observe.

In any case, human rights and citizenship should not be ignored by the bailiffs of justice or judicial authorities. The man is the creature of God who has the status of a divine caliph. In

order to secure citizenship, human societies have formulated rules that emphasize and protect human rights in the various constitutions of the Islamic Republic of Iran and ordinary laws. Therefore, the agents of the judiciary and the bailiffs of justice, as they are obliged to prosecute and punish the perpetrators, are required to respect their rights as members of the community, and their legal duty cannot serve as an excuse to violate the rights of citizens.

Conclusion

The historic course of the Iranian bailiffs of justice observers has seen a tremendous transformation in the existential structure of the rule of law and its methods of execution by the powerful arm of the litigation organization and the systematic organization of its administrative and organizational structure in line with the requirements of the time. In the following, with regard to the recognition of the rights of the people and the prevention of conflicts of affairs and meeting the needs of society, various definitions of the bailiffs of justice and their categorization were carried out in order to know more about the scope of work and the scope of their performance. In connection with the definitions observed, mentioning examples and tasks as definitions led to their lack of comprehensiveness and appropriate inclusion. Regarding the various types of judicial officers, referring to Article 29 of the Criminal Procedure Code, which counted off the offenders, they were classified into two general categories (It is necessary to note here that the statistics mentioned in this article are not mandatory because, according to other laws, other officials are considered to be judges). In the following, with the study of the duties of the bailiffs of justice, it became clear that the current role of the judiciary, in keeping with existing laws, was not responsive to the needs of society. The existence of a competent, well-trained and trained police officer under the direct authority of judicial authorities to carry out duties under the title "judicial police", as in many countries, the judicial authorities are in need of assistance. Because, in view of the main function of the judiciary, which is the main body of the judicial system in the continuous and permanent presence of the case, and in particular the preliminary investigation and interrogation of the accused, which is the basis for the formation of a criminal case, According to the law (Articles 44 and 46 of the Criminal Procedure Code), at the outset, with the slightest mistake in not collecting the correct information or making a mistake in the criminal offense title due to lack of adequate education and relevant academic knowledge, Appeal to cases filed in the courts, today, clients are witnessing this great dilemma in the process of prosecution. Thus, the absence of a judicial police in the sense of individuality that acts independently under the supervision of the judiciary and the lack of separation of the judiciary from the law enforcement officers is one of the main challenges facing the judiciary. Therefore,

the existence of the bailiffs of justice under the complete control of the judiciary in the judicial system of the country is necessary. The lack of necessary legal doctrines and the progressive growth of scientific capabilities and, in parallel, the specialization of the commission of crimes and performance based on an outdated method will lead to the retreat of the judiciary in the administration of justice. Failure to regulate conflict of laws and sometimes conflicts and legal vacuum, such as double management of justice and law enforcement, the number of courts dealing with bailiffs of justice; The vagueness of the status of the officers of the Ministry of Intelligence and illicit discrimination in dealing with the commission of a crime by senior military and law enforcement is in contradiction to the twentieth principle of the constitution and the equality of the public against the law, which disrupts the lawsuit of the judiciary and its affiliated organizations, Of course, in the Criminal Procedure Law, the necessary measures are in keeping with the needs of the community, so, in dealing with successful judiciary systems and taking into account expert-oriented and principled laws and amendments and laws, effective steps can be taken to ensure the correct implementation of justice.

Suggestions

- Definition of the bailiffs of justice in the sense that the law does not apply to a judicial authority and, as soon as the judicial authority is fully established
- Judicial Police to facilitate the processing of files for professional purposes and the legality of their performance and mastery of their duties and flawless ability to transfer the case to a judicial position and move within the framework of the law and being under the absolute authority of the judiciary is one of the basic needs of today's society due to the prevention of double management of the judiciary and law enforcement in the same way that causes problems in the performance of tasks.
- Amendment of the law to determine the role of the judiciary in appointing the commander of the police, grant all legal assignments and authority, as well as promotion, encouragement and award of degrees and change the place of service of law enforcement personnel who have the authority to avoid duplication in management.
- Attempts to realize the efficiency of the bailiffs of justice and to enhance the morale of the service and to provide education and equipment to the scientific instruments and technical facilities in line with the new technology.
- Grading the bailiffs of justice in terms of the competence to carry out investigations according to the type and severity of crimes and to specialize in the field of activity and the division of tasks based on their expertise and practical experience.

Tarefas dos oficiais de justiça nos crimes evidentes no sistema criminal do Irã

Resumo

Neste estudo descritivo-analítico, foram investigadas as funções dos oficiais de justiça nos crimes em evolução e os desafios nesse campo. Os defensores dos oficiais de justiça da justiça ao longo da história do Irã, sob vários títulos, desfrutaram de um status especial no sistema de governo e justiça, à luz das obras deixadas para ajudar a preservar e fazer cumprir a lei, descobrir o crime e processar o acusado. Em relação aos deveres dos infratores em relação aos crimes evidentes, devemos dizer: Os oficiais de justiça devem informar a autoridade judicial competente do resultado de suas ações, se o referendo não cobrir adequadamente as ações tomadas, pode ser concluídos neste caso, os agentes são obrigados, sob as instruções da autoridade judicial, a investigar e tomar medidas legais para detectar o crime e prender o infrator, mas eles não podem impedir o réu e, se a detenção for necessária para a conclusão das investigações nos crimes evidentes, a acusação deverá ser comunicada ao réu imediatamente por escrito, com motivos e, por um período máximo de 24 horas, eles poderão manter o réu sob vigilância e, o mais rapidamente possível, deve informar a autoridade judicial para tomar uma decisão legal. A autoridade judicial é responsável por prender ou soltar o acusado. Além disso, a inspeção de residências, locais e objetos e a acusação de pessoas em casos não óbvios devem estar sujeitas a autorização judicial, embora a condução das investigações tenha sido geralmente encaminhada à polícia pela autoridade judicial.

Palavras-chave: Deveres, Autoridade, Oficiais de Justiça, Polícia, Crime evidente, Tribunal Penal

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