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## Guaranteeing the Implementation of the First Generation of Human Rights in Iran with an Emphasis on the Principle of the Rule of Law

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### Abstract

Challenges and distinctions between human rights and individual freedoms in Iran and international law have been one of the controversial topics in the domestic and international fields in recent years. And the inner belief in the fundamental human rights and the high dignity of man has been raised and paid attention to in the most important global and regional organizations; and therefore, promoting and respecting these privileges, in the field of supporting the preservation of these regulations, despite many obstacles, many of which are summarized in the "sovereignty of governments", has traveled a very difficult path. In this article, we are trying to answer this question by using the descriptive-analytical method: can guarantee and legal guarantees for individual freedoms in the first generation of human rights in Iran in the light of the rule of law, can guarantee individual rights? In this regard, we will examine the theories of the declaration of human rights, the legal laws of the first generation of human rights; And we have reached various findings, such as fundamental human freedoms, declarations of the first generation of human rights, human rights and citizenship in Iran, the rule of law in Iran, the rule of law and human freedom, and the executive guarantee of human rights in Iran.

**Key words:** The first generation of human rights, the rule of law, Guaranteeing the implementation of human rights, Fundamental rights, The constitution

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## Introduction

Challenges and distinctions between the rights and individual freedom of human rights in Iran and international law is one of the controversial issues, both at the level of domestic law and at the level of trans-national law, which has been in recent years. The difference is not only related to the theoretical-intellectual foundations, but sometimes the accession and implementation of international obligations is faced with numerous and diverse obstacles. And this issue has caused an impact on international documents and created several challenges for the country's political and economic issues, the main of which is the issue of accession or implementation of obligations arising from accession to international documents, especially in human rights documents.

In Iranian law, although there are justified criticisms in the field of analyzing the nature of human rights documents, legal challenges are not few and it is a fundamental issue. In this article, we are trying to look at the library and document study and comparative perspectives while examining the challenges of the first generation of human rights and its approach to individual freedom in Iranian society based on executive guarantees in generations of human rights. And in order to minimize these challenges, by referring to international conventions and reports of human rights monitoring institutions, we will classify and analyze the existing challenges in Iran from the perspective of international law.

One of the basic challenges is the formulation of legal systems in different societies, which in some countries are regulated based on the principles and religious foundations of these rulings. Iran is part of this group of countries,

and it has the field of conflict and challenge with other legal systems in the world or the establishment of an international model. One of the solutions of the international law system is the maximum participation of countries in international interactions, but the right of legitimate condition has features that should not be neglected from the perspective of the member countries.

These countries, including Iran, are obliged to observe the rules related to the right of condition, not only to maintain the existential philosophy of documents, but also to provide the basis for maintaining international order. On the other hand, the international law system, during the drafting of documents, must take steps in order to provide the environment for localization and the possibility of implementing documents in domestic law. And the lack of necessary recognition of the native and legal structures of countries is recognized as a fundamental challenge at the international level (Rasekh, 2011, p. 37).

With this statement, we can say that the performance guarantee is a direct or indirect means to fulfill the legal requirements (both ordering and prohibiting) or compensating for the lost time, or in other words, it is a tool that guarantees the effective implementation of legal rules; And it is used by public forces in the society. The guarantee of enforcement is a privilege of rights from other social rules and it is an effect that affects a person as a result of disobeying the law. In ancient times, the right of revenge, blood price and compensation were the right of imprisonment (in Roman law) or selling the debtor as a slave.

For law to be able to achieve its goal (regulating relations in society), it is necessary for its

rules to be mandatory and to be accompanied by a guarantee of implementation. Announcements that are not accompanied by obligation and coercion do not have a legal aspect and are only preambles to the legislator's orders. Of course, it should be noted that the guarantee of implementation of some legal rules is still incomplete (especially in public law and international relations) to the extent that some authors inevitably removed the guarantee of implementation from the advantages of legal rules. In this article, we will answer the question that legal guarantees for individual freedoms in the first generation of human rights in Iran in the light of the rule of law, can guarantee individual rights?

### **Theoretical foundations of Research**

Due to its transboundary nature, respect and guarantee of human rights is not limited to the internal structure of governments and has been considered in the relations between them. In such a way that a part of the international treaties is dedicated to the issue of human rights as a document based on the agreement of the governments or organizing their behavioral patterns in the international community.

The first basis and theory used in the international treaty takes into consideration the needs and existing gaps in different ways, and some treaties cover a specific range of human rights and freedoms. Among others, we can mention civil and political rights and freedoms; Under the title of the first generation of human rights in the Covenant of Civil and Political Rights and regional treaties such as the European Convention on Human Rights and the American Convention on Human Rights, it has placed obligations on the governments to

respect and guarantee these rights. and some others support a specific group such as women, children and immigrants; Some also cover a specific issue, including torture, discrimination, enforced disappearance.

Parallel to international treaties, regional treaties also follow the same model, taking into account the potentials and concerns of each geographical region. (Shabani, 2010, p. 110)

The second theory used is the theory of innate natural rights, which from Bentham's point of view, there is a necessary and direct relationship between government, on the one hand, and the basis and concept of right, on the other hand. In fact, both from the point of view of the French Declaration of Rights and Jeremy Bentham, government and law are related to each other, but the type of communication intended by the Declaration is completely different from Bentham's approach. Bentham first points out the importance of government in creating a legal system. His statement is that law is created by the existence of government, right is created by law, and security, freedom and ownership are created by right. Here, government and right are not only prior to security, freedom and ownership, but both right and security, freedom and ownership are existentially prior to government. These three institutions, in turn, are established on the basis of legal rights, that is, the rights defined in a legal system arising from legislation.

And the third basis of views and bases in this article is the global declarations, which are discussed briefly

- a) The first criterion and theoretical basis of the Declaration of Human Rights is recognized as the first and most basic theoretical basis at the

national and transnational level; which is considered one of the global documents today and is accepted by many, in this context, opinions about the limits of freedom are mentioned, such as, the person, the limit of freedom at the level of laws, the law. If one wants to be free, one must be free within the framework of the law. Or the limit of freedom is to the extent that it does not harm the freedom of others.

These are the famous words those Western social philosophers have said and many Muslim writers have imitated them. And without analyzing the opinion of Islam, seeing the verses of the Quran and examining Islamic opinions, they chanted the same slogans. Of course, some words are true, but some words are incorrect, indefensible and illogical (Qorban Ya, 2013, p. 310).

- b) The second theoretical basis of the legal laws of the first generation of human rights is the nature of the relations between people in society. that there is always the possibility of conflict and breach of promise. Therefore, sociologists and jurists have always thought of establishing certain laws to prevent these covenant violations. In the moral and emotional relationships between people, it is usually not possible to consider the guarantee of material performance, so these relationships should be determined by their nature to guarantee certain performances, in which cases they usually make the call of conscience the guarantor of their actions. On the contrary, in economic relations, non-material performance

guarantee cannot be considered a means of securing and guaranteeing the fulfillment of an obligation. Although conscience and morality are acceptable, they do not have a special place in economic relations. Therefore, the jurists have rightly considered the guarantee of normal performances to be prescribed for violation and breach of covenant in such relationships.

In this article, we refer to a part of the definition of concepts such as the first generation of human rights, the rule of law, guaranteeing the implementation of human rights, fundamental rights and the constitution.

#### **A) The concept of the first generation of human rights:**

The meaning of the first generation of human rights is the types of freedoms that are presented today in the form of civil and political rights. And it expresses the point that civil and political rights and liberties have been recognized as one of the most basic and main of these rights, it basically deals with the freedom and political participation of man in the society. The right to life, freedom of speech, equality before the law, freedom, personal security, the right to marry, and the right to participate and form communities, which are mentioned as civil and political rights and emphasized in human rights documents. Like the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, the first and the second optional additional protocols to the Covenant on Civil and Political Rights emphasize the recognition of these

rights and how they are implemented at different national and international levels.

### **B) The concept of rule of law:**

The rule of law is one of the most important principles raised and accepted by the constitutions of all countries in the world, and the theme of this principle is the rule of law existing in a country, as a result of which everyone will be equal before the law. The Constitution of the Islamic Republic of Iran has also recognized the principle of the rule of law by limiting the duties and powers of officials and making them equal with other members of the nation, as well as by predicting multiple supervisions over the statesmen (Rai et al., Islamic Government 2012).

Rule of law in French (État de droit) is a general rule in public law by which government decisions are made based on known legal principles (legal positivism) or (natural law) (Emami, 2011, p. 42).

### **C) The concept of executive guarantee of human rights:**

Criminalization in Iranian law means those crimes that are considered to be violations of human rights. And in the internal laws of the countries, it has been criminalized and punishments have been determined for it. And in fact, the human rights mentioned in the Universal Declaration of Human Rights and other international documents have been given the guarantee of domestic criminal execution.

International regulations and treaties in the field of criminalization of crimes against human rights are declarative in most cases and have been referred to the internal laws of the countries so that the governments can provide

a guarantee of proper criminal execution based on their internal regulations. Full observance of human rights is one of the constant concerns of international organizations. Human rights are a set of international legal rules and regulations that protect the position, dignity, and human dignity of all people or groups in front of all governments, simply because they are human (Saki, pp. 101-129).

### **D) The concept of fundamental rights:**

The fundamental rights are those fields of rights that determine the form of government and political organizations and institutions, the duties and powers of the supreme powers, the relations of said institutions and powers, as well as the general rights of individuals that the government is obliged to respect. The subject of fundamental rights is the examination of accepted and common political phenomena with legal methods (Katouzian, 2008, p. 145). The guarantee of rights is applicable to every citizen.

But based on concepts such as public order, it is inevitable and necessary because collective life is dependent on restricting rights and freedoms, and just as tyranny and absolute erasure of rights and freedoms is an indecent and ugly thing, absolute and unlimited freedom; Firstly, it is not possible and secondly, it is the beginning of tyranny itself. (Jafari, 2009, p. 13)

### **E) The concept of the constitution:**

A) Constitution in the modern sense is at least a combination of two concepts:



The first concept is a set of values and directives in order to maintain the maximum democratic freedoms and the maximum limitation of the government and how the government should be organized.

The second concept is a written and national document to establish the pillars of government and the distribution of political power and predicting legislative and executive procedures (Zarei, 2013, No. 40).

B) In the contemporary world, basic laws, whether written by custom or semi-written, have common missions and functions, such as:

Determining the macro structure and organization of the political system in the form of ruling institutions, high government and country officials.

Determining the rules of the fair game and the effective system of interaction between government forces and institutions in the form of political, parliamentary and judicial monitoring and accountability and control mechanisms.

Declaring individual and social rights and freedoms and determining their effective enforcement guarantees, such as judicial independence and impartiality of courts and judges (Zarei, 2013, No. 40).

### Research Methods

The research method in this article is descriptive-analytical. In the legal description and content analysis based on logical rules and international laws and citations of generations of human rights, relying on the first generation of human rights, we have reached the best

opinions and identified and presented the existing ambiguities and the real position of the issue. We also intend that the way of presenting research materials, while having theoretical aspects, also has practical and practical aspects. In fact, in the preparation, compilation and description, it has been tried to collect international references in any field related to this topic by using analytical methods and library sources, and as much as possible, the subject has been examined by referring to numerous books and articles. Also, let's state the practical procedure of the courts in that regard.

### Research Findings

#### 1- Fundamental human freedoms

The fundamental human rights have freedoms from a set of rights that should be considered as part of new concepts that are mixed with life arising from the renewal and culture of social man; And it is very effective in the way of looking at the talent of a mature person to his abilities and how he participates and contributes to the social-individual situation and destiny. With a little precision, it can be found that citizenship rights are fundamental and primary rights. In the definition of "fundamental rights" they have said that the basic nature of some rights is because the existence of those rights is the basis of their consistency and their absence causes the deterioration of the person or human personality. With this definition, it can be stated that citizenship rights are among the rights that, without them, the personality of a citizen is not formed; Therefore, the rights

that citizens have are part of fundamental rights, and violating them means ignoring the citizen and his rights. By looking at the constitution, especially the 19th to 42nd principle, it is obtained; One of the concerns of the representatives and experts of the Iranian nation has been preserving the dignity and high value of human beings and respecting their legal freedoms, along with respecting their religious principles and foundations (Madani, 2002, p. 58).

Here we are talking about rights that have citizenship, and the "citizen" in this situation is an individual in relation to a government, who has political and civil rights on the one hand, and on the other hand, has duties towards the government. From the point of view of Anthony Giddens, a member of a political community, who has rights and duties related to this membership. Citizenship is a dignity for a person in relation to a government, which is also respected in terms of international law. The rights of the individual and his duties towards the government are called the relationship of citizenship, and the nature of it is determined by the constitution and civil laws of the country. Basically, someone is considered a "citizen" who is not only obedient to the government, but also has innate and natural rights and the government respects and supports these rights. The status of citizenship is determined by the laws of each state and is usually subject to two criteria: one is the place of birth, and the other is the nationality of the parents. Citizenship of a country is obtained by marrying a man or woman who is a citizen of that country. But this kind of citizenship usually does not bring all citizenship rights (including obtaining government jobs) (Hosni Pourfalah, 2017, p. 54).

## 2- The first generation of human rights

The rights of the first generation (civil and political rights): The rights of the first generation emerged during the French Revolution and with the declaration of human and citizen rights in 1789. This declaration is inspired by the principles of individualism and liberalism (individual freedoms). The rights of this generation mainly include civil and political rights. The rights of the first generation have two types of classic rights and freedoms (including the right of people to participate in political life) and new rights and freedoms (supporting the independent spheres of individuals and non-interference by the government). Until the middle of the 19th century, these rights included only individual freedoms such as: freedom of opinion and expression, freedom of movement. But from the middle of this century, in addition to individual freedoms, collective freedoms such as the freedom to form parties and the freedom to march were also added to it. Examples of first-generation rights (civil and political rights) are:

intellectual and political freedoms and rights (freedom of thought); Freedom of assembly (associations); Voting right; the right to freedom from slavery; prohibition of torture and inhumane treatment; prohibition of arbitrary detention; Freedom of movement and choice of residence are civil and political rights that belong to the first generation of human rights.

The Declaration of Human Rights, which today is considered one of the world documents and has been accepted by many countries, is also mentioned. In this context, they have mentioned opinions about the limits of freedom. For example, the limit of freedom is the law. If one wants to be free, one must be free

within the framework of the law. Or the limit of freedom is to the extent that it does not harm the freedom of others. These are the famous words those Western social philosophers have said and many Muslim writers have imitated them. And without analyzing the opinion of Islam, seeing the verses of the Qur'an and examining Islamic opinions, they chanted the same slogans. Of course, some words are true, but some words are incorrect, indefensible and illogical, which we will not discuss in detail (Tabatabaei, 2008: p. 32).

documenting the declaration of human rights, which includes 30 articles and Iran has also signed it; Therefore, the clauses of this declaration, from a legal point of view, are considered part of Iran's laws based on Article 9 of the Civil Code, and all government officials, parliament and people are required to comply with it. Therefore, this right to freedom is one of the freedoms recognized internationally as a natural right; And it plays a fundamental and important role in guaranteeing and revitalizing other human rights and freedoms, especially political freedoms such as the right to self-determination, freedom of speech, freedom of the press, freedom of thought, freedom of organization, freedom of elections, and the right to vote. Based on the declaration of human rights, the following can be considered as some of the fundamental rights of people.

- All human beings are born free and with equal dignity and rights.

- Everyone can enjoy all the freedoms specified in this declaration, without any superiority, including superiority in terms of race, color, gender, language, religion or any other opinion. and be benefited in terms of birth or

social status and in terms of wealth or lineage or any other situation.

- Everyone has the right to enjoy his life, liberty and personal security.

- No one shall be tortured or subjected to cruel, inhuman or degrading treatment.

- Everyone has the right to have his/her legal personality respected everywhere.

- Anyone who is accused of committing a crime is considered innocent until his guilt is proven during a public trial in which any necessary guarantee for defense is legally provided.

- Everyone has the right to participate freely in peaceful parties and congregations. No one can be forced to join a party. (All these cases are specified and emphasized in the Constitution of the Islamic Republic of Iran)

What follows are the differences that exist in the general form of freedom from the point of view of Islam and the freedoms mentioned by Western thinkers. There are fundamental differences and points between the limits and boundaries of freedom in Islam and non-Islam, or in a better expression, between religions and non-Islamic ones, which have led to the non-realization of human rights freedoms in developing countries, including Iran; (The Knight, translated by Malek Mohammadi, 2019: p. 56).

Human laws justify for man as long as his work does not have any relationship with the society, but it does not define duties and obligations. In addition to protecting the rights and freedoms of others, Islam and divine religions say that a person should not threaten and endanger the rights of others under the pretext of



being free. They also say that a person does not have the right to endanger his own interests under the pretext of being free and having authority. He himself should not suffer from his freedom. Therefore, self-harm and suicide are prohibited in Islam. According to Islamic thought, no one can say that I am free, so I destroy my property, harm my health, and destroy my life. As he is obliged, he should not limit or endanger the rights of others and their freedom with his movements, actions, behavior and speech; He is obliged not to endanger his freedom, limits and rights (Hashmi, 2014: p. 12). T

he first issue of individual freedom is the right by which people can use their natural and God-given talents and abilities, provided that they do not harm or harm others. Individual freedom means right and discretion and generally being independent and independent in choosing one's actions and behavior; Such as freedom of movement, freedom of opinion and expression, freedom of pen, freedom of assembly, freedom of work, etc. Individual freedoms include; The powers that are known to a person in order that a person can do everything in his power by using those powers and manifest the forces that nature has put in him. These freedoms are regulated and guaranteed by the law, the judiciary and the government; such as freedom of the press and associations and trade and industry. And individual freedom in the special sense of the word consists of; The physical freedom of every person so that he can travel or move from any part of the country to another part of it, or leave his country and return to it, and be protected and protected from arbitrary detention (Tabatabaei, 2014, p. 212).

### **3- Constitution and human and citizenship rights in Iran**

Respecting human rights and freedoms is one of the goals that has taken a significant part of the concerns of societies. The Charter of the United Nations clearly reflects the widespread attention to this issue; So that encouraging and supporting human rights has become one of the main goals of the United Nations. When a person refers to the United Nations website, he will see in the brief introduction of this organization; that the human rights organization has expressed better living standards and encouraging social progress, along with the two issues of maintaining international peace and security and developing friendly relations between nations (Langroudi, 2010, p. 26).

In the Constitution of the Islamic Republic of Iran, the twenty-seventh principle stipulates that: The formation of gatherings and marches is free, without carrying weapons, as long as it does not disturb the principles of Islam. It is while the commission of Article 10 of the parties has made its implementation subject and conditional to obtain a license that this is the limitation of a progressive principle of the constitution by a normal law, and the normal law cannot limit or violate them at its own discretion while violating the superior law that guarantees individual rights and freedoms.

This principle of the constitution emphasizes that it is free to participate in gatherings without carrying weapons and not disturbing the fundamentals of Islam. In a way that he did not mention public order, which is also the case for human rights claimants in other countries, while the Ministry of Interior is entrusted with the issuance of licenses by the normal law, and he can also apply his own taste. And this is

contrary to the constitution, more importantly, ordinary people cannot apply for protest even as a union or group, which causes gatherings and sit-ins and inappropriate events.

Or, in the third chapter of the constitution, as the rights of the nation, from the nineteenth to the forty-second progressive principles regarding the protection and guarantee of the nation's rights, it has been explicitly emphasized. Therefore, not only should it not be limited or violated by normal laws, but it should be seriously supported and guaranteed that people can freely express their objections in the form of cooperation with the government, following the provisions of the constitution. Like many countries, the role of the police is only to maintain the security of such protests or gatherings.

On the other hand, individual rights and freedoms are rooted in human dignity, which is crystallized in the form of principles such as freedom, equality and brotherhood. And these rights are actually a reflection of these principles, each of which considers a part of the aspects and issues that people are related to in human life. The inherent dignity of man is considered as the basis of human rights, that is, in terms of humanity, man is worthy and entitled to enjoy some rights, such dignity gives him value and credibility above all social phenomena. The universal values that assume the observance and respect of these rights are mandatory, give them an absolute character. And in a sense, observing them makes human life more rational and provides more security, prosperity and prosperity to mankind (Mohtadi, 2015, p. 294).

#### 4- The rule of law

In the legal-political tradition of the West, the rule of law has been understood in opposition to the rule of a person. Based on this, the rulers should act based on the theory of constitutionalism and within the framework of order based on the constitution, in a way that their behavior is compatible with the constitution and limited to the procedures that the public is aware of.

Respect and observance of human rights and freedom is imagined within the framework of a democratic society and under the rule of law, so rights such as the right to self-determination and participation in political destiny can be seen as a reflection of the attention to collective rights. The Covenant of Civil and Political Rights is not limited to this and has identified some of the most important group rights and freedoms separately. It is obvious that the nature of man as a creature that lives in a collective way cannot be ignored when setting rules that aim to pay attention to human dignity. The human collective life requires that part of the efforts to observe and respect basic rights and freedoms as well as guarantee the enjoyment of collective rights and freedoms be taken into consideration; and predict mechanisms to support it (Malmiri, 2015: p. 138).

The existing understanding of the rule of law in a country includes a set of reasons and justifications for government actions that are accepted as the norm in that legal and political system and the basis of the legitimacy of those actions; Both legislation and making organizational decisions are considered. In general, the existing perceptions of the rule of law can be placed in two categories; The first is the

formal impressions and the second is the substantive impressions (Attar, 2018: p. 55).

The right of the people to determine their own destiny, the rule of the people over the people is mentioned in the constitution, and if this principle of people's sovereignty is violated, several principles of democracy will be violated. The principle of the sovereignty of the people, the principle of the rule of law (constitutional law, subject laws), the principle of the sovereignty of the people's dignity, the principle of separation of powers and the principle of transparency.

First: The principle of people's sovereignty is one of the fundamental foundations of democracy. The lack of this principle excludes any political system from being republican and democratic. This claim is confirmed by paragraph 1 of article 21 of the Universal Declaration of Human Rights and paragraph a of article 25 of the International Covenant on Civil and Political Rights. These same articles are specified in the fifty-sixth article of our country's constitution, the subject of the fifth chapter of the constitution, under the title of the nation's right to sovereignty.

Secondly: According to the aforementioned international laws, all people without exception have the right to freely choose their political system and the right to formulate the constitution of their country, these two are the people's rights. Therefore, every citizen has the right to participate directly or indirectly in the administration of the public affairs of their society without any undue discrimination and unreasonable restrictions.

The opposition of freedom and rule of law is the norms of a society as procedures. The supporters of this concept only consider the core

meaning of the rule of law, that is, government through general and pre-established laws. This basic definition, which considers the law as a tool to guide the behavior of its subjects, seems to allow any encroachment on freedom, only on the condition that it is applied through two legal processes. Although the government is required to comply with the laws by which it administers the government, but from a substantive point of view, only a government can be considered subject to the rule of law that respects extra-legal standards and regulates the acts of governance based on it. This group believes that sometimes it is possible for the government to violate the rights and freedoms of citizens by claiming to follow the law and naturally pretends that what it does is within the framework of the law (Emami, 2011: p. 311).

In order to achieve social justice, the principle of "rule of law" is proposed as a basic principle. The rule of law has been described as an extremely important concept that is neither defined nor easily defined. These changes depending on different points of view due to the variety of elements and components that make up freedom and fundamental human rights. Therefore, the idea of rule of law has been and is a controversial idea throughout history.

### **5- The rule of law and human freedom in the Islamic Republic of Iran**

In the Constitution of the Islamic Republic of Iran, in the third chapter, instead of the word "citizen", the rights of the people are mentioned, and the rights of citizens are divided into two categories. Civil-political rights, as human rights of the first generation, which is our goal in this research. And socio-economic rights, civil rights in Iran emphasize individual

freedoms, and political rights are mostly related to the necessary rights for active participation in the democratic processes of government and political power. In these principles and related clauses, the enjoyment of equal rights (principle 19), freedom of opinion, press, language conversations and social political freedoms are mentioned in principles 23, 24, 25, 15, clause 7 of principle 3. Also, principles 26 and 27 and paragraph 8 of principle 3 deal with the freedom of party activities, gatherings, marches, and public participation in determining their own destiny, and principles 23 and 41 are also dedicated to the right to citizenship. A part of civil and political rights is specifically related to judicial rights in the constitution. Principles 22, 32, 34, 35, 36, 37, 38, 39 and paragraph 14 of principle 3 are among them in the form of immunity of life, property, legal prosecution and arrest, litigation, defamation. (Afshar Ahmadi and et al, 2019, p. 45)

Based on international conventions, the governments are committed to respect the human rights and fundamental freedoms recognized in each of these documents and to guarantee the benefit of these rights to the people in the territory or area under their jurisdiction. These fundamental rights are a set of privileges belonging to the people of a society and determined in the relevant rules. which individuals, by virtue of being human and in their relationships with other members of the society and with the ruling power, enjoy it with the necessary guarantees and protections (Tehrani, 2010, p. 47).

As an example of the right to sue, the subject of Article 8 of the Universal Declaration of Human Rights, the 34 constitutions recognize this right for all human beings (all members of

the society) regardless of their political and religious beliefs or social status.

or the prohibition of arbitrary arrest of persons, the subject of Article 9 of the Universal Declaration of Human Rights, in Article 32 of the Constitution, it is clearly stated that: No one can be arrested except by the order and order determined by the law.

In this article, contractual freedom is not explicitly mentioned as a fundamental right, but in the Constitution of the Islamic Republic of Iran, there are clauses that provide the basis for recognizing substantive freedom. As an example, Article 2 paragraph 6 regarding the dignity and high value of human beings, as well as Article 3 paragraph 14 regarding the duties of the government in ensuring the comprehensive rights of men and women and creating fair judicial security for all and equality before the law. Also, the international human rights documents that the government of Iran has joined, including the International Covenant on Civil and Political Rights of 1966, based on Article 9 of the Civil Code, are the law. And as long as the government of Iran has not withdrawn from such conventions, it can be invoked as a law not only against the government, but also in relations between individuals. According to this article, the provisions of the agreements concluded between the government of Iran and other countries according to the constitution are in force (Hashemi, 2014: p. 12).

In the implementation of Clause B of Article 120 of the Law of the Sixth Plan of Economic, Social and Cultural Development of the Islamic Republic of Iran approved in 2015; And in order to achieve the goals of clauses 65, 66 and 67 of the general policies of the law of the



6th National Development Plan approved in 2014, "Judicial Security Document" was promulgated by the head of the judiciary in 37 articles. In Article 24 of the Judicial Security Document, the head of the judiciary has considered the prohibition of illegal and arbitrary detention, the rights of the accused and the prohibition of illegal and arbitrary detention has been emphasized. Therefore, according to the article, every person has the right to enjoy life, liberty and security in the shadow of judicial security. No one can be arrested or forced to exile or stay, except according to the order and procedure determined by the law.

#### **6- Executive guarantees of human rights**

The issue of the right of individuals to enjoy basic human rights and freedoms as an inherent right is one of the challenging issues of public law. Contrary to positivism, which considers the basis of rights to be human will and commands. There is a universally accepted belief that human rights are not granted by governments, but are part of natural rights that are inherent to humans by virtue of being human.

The inherent nature of individual rights has different effects on the role of governments in this regard. First, governments are not the grantors of these rights. This means that there is a standard, beyond the will of governments, that recognizes these rights for humans. As a result, the content of these rights and their limits are not determined by the discretion of the governments (at the individual and collective level and in the form of international treaties).

The second effect that the innateness of individual rights and freedoms brings is that these rights must be respected and guaranteed.

Governments, as providers of security for the people under their authority, are the first and most important responsible for respecting and guaranteeing these rights. Not only should they avoid violating these rights themselves, but they are also required to think of measures that will eliminate the grounds for violating these rights by others (either other private individuals or foreign governments). In other words, governments are obliged to respect and guarantee the rights and individual freedoms of individuals, in the areas under their authority and the possibility of exercising effective sovereign control (Malek Mohammadi, 2019, p. 87).

Therefore, the legislators who provide the basic rights of comprehensiveness to guarantee individual rights and freedoms, have determined its operation and methods; And the mechanisms and types of reactions that determine the violation of these rights, including the punishment of the perpetrators and compensation for the losses and injuries caused to the victims. Due to the importance of individuals in the society system, attention to their rights and freedoms also has a special place, and this means that the protection of these rights should also be reflected in its laws (Malek Mohammadi, 2019, p. 93).

#### **7- Protecting people's rights and freedoms**

Protecting the rights and freedoms of people (minority or majority) is important to the extent that they act in two ways in the basic laws of countries. In some of these constitutions, these rights and freedoms are mentioned in the preamble and introduction of the constitution so that there is no excuse in the hands of the rulers to attack the rights of individuals. In



some other basic laws, these rights and freedoms come in principles and chapters.

All normal laws must comply with people's rights and freedoms. In all the political systems of the world, in order that these rights and freedoms are not violated through normal legislations and regulations, they establish a supervisory body for the constitution. Therefore, political rights, religious and religious minorities, family, education, job, immigration, culture and art are among the issues that are discussed in this declaration. Undoubtedly, guaranteeing peace and security in the world - both within countries and at the international level - is possible with the full implementation of this declaration, which is a kind of common human ideal. On the other hand, in the divine view of humanity, it is a real thing and accessible to everyone, and basically it is a kind of moral perfection, without which, no moral action can be issued by a human being; Therefore, it can be said: both thinkers in the West and the East have tied their theory of justice to a specific theory about the human person rather than the moral person, and this issue has become one of the main points of conflict between some prominent thinkers who defend socialism.

Such as Michael J. Sandel, and Zachary Taylor with liberals such as John Rawls and Allameh Motahari and Allameh Tabatabaei regarding individual rights and freedom in societies. Therefore, the five challenges mentioned above exist either based on legal documents or based on concepts and principles developed and western and eastern theories at the level of different nations. And its solution is to modify the basic theories and concepts of individual rights in the West and the East. And accordingly, changing the doctrine of human

rights based on moral and divine concepts can be a path-breaking version for the current state of individual freedom rights and existing challenges (Emami, 2012, p. 276).

## **8- Legal and legal challenges of human freedom in Iran**

Observance of justice and fairness is the most important principle of human rights and the backbone of procedural rights and guarantees. The principle of fair trial includes principles such as impartiality and independence of the court and equality, which includes some other procedural rights such as the right to have a lawyer. The principle of impartiality and independence of the court is stated in paragraph 1 of Article 14 of the International Covenant on Civil and Political Rights.

The vast majority of countries in the world, including the Islamic Republic of Iran, have officially and within a certain framework of international law committed to establish impartial and independent judicial authorities in order to achieve procedural justice and guarantee a fair trial.

In the Constitution of the Islamic Republic of Iran, the rights of the people are mentioned instead of the word citizen in the third chapter. The Constitution of the Islamic Republic of Iran also refers to the absolute sovereignty of God over the world and man. By placing the criterion of divine permission as the basis of legitimacy, he considers the superior political power to be that of God Almighty and his appointees, which has been entrusted to the supreme jurist of all the conditions in the age of occultation. In other words, the root and basis of power and sovereignty based on it, in the

Islamic Republic system, belongs to "Allah" (Hashemi, 2001: pp. 3-4).

Therefore, the validity of the constitution is based on the supremacy of people's rights over all the rights and affairs of the society. Although the rulers exercise power, they should not weaken the fundamental rights of the people. The duty of the government is to guarantee freedom and non-interference.

Just to create order and security, the rulers create a series of desirable and satisfactory restrictions for the people, the purpose of which is to provide collective satisfaction, but this does not mean that freedom is sacrificed to power. The government is responsible for ensuring order and security, and in this case, freedom should not be sacrificed to authority.

In the same way that the seventy-ninth principle of the Islamic Republic of Iran's constitution defends the freedoms of the people and clearly stipulates that the establishment of military rule is prohibited. In the state of war and emergency situations like that, the government has the right to temporarily establish necessary restrictions with the approval of the Islamic Council. However, its duration cannot be more than thirty days, and if the necessity still remains, the government is obliged to obtain permission from the parliament again.

Since the guarantee of criminal executions is established and approved in order to target all the people of the country. In other words, the purpose of establishing a guarantee for criminal executions is to respect the country's rules and regulations by all citizens. In order to clearly explain the issue, we refer to the legal articles in this regard as an example. Article 3 of the Islamic Penal Code stipulates; The criminal laws of Iran apply to all persons who

commit crimes in the land, sea and air sovereignty of the Islamic Republic of Iran, unless otherwise stipulated by law.

Disciplinary or administrative regulations are only for government employees. Criminal law and punishment and guarantee of criminal executions are imposed regardless of social, occupational, cultural and racial status. While in administrative law, the guarantee of administrative executions is established with regard to the job and professional status of employees and persons, special professions and trades.

There is no difference of legal views in legal systems on the impossibility of presenting the theory of justice without relying on specific philosophical and moral foundations. As John Rawls insists in his late writings, it is possible to present a theory of justice that is purely political without relying on a specific comprehensive philosophical or moral doctrine. According to him, his political understanding of justice and its principles will lack a specific philosophical pillar and foundation (Rawls, 2000: p. 160).

Based on this political conception of justice, a desirable liberal society with pluralism and moral, religious and philosophical pluralism will emerge, and it will be questionable what everyone should do in favor of this just framework that is not based on a specific comprehensive doctrine. Because the principles of political justice do not claim to answer specific moral and philosophical questions and leave these answers to comprehensive moral and philosophical doctrines; So, there is no rival before them to show sensitivity to his acceptance (Harvey, David, translated by Mahmoud Abdullahzadeh, 2007). And these moral issues are more prominent in religions,

especially Islam, and this claim of Western philosophers (Rawls) is very controversial. And many are of the opinion that it is basically impossible to present a theory of justice that does not have a philosophical foundation and a specific value and faces serious challenges.

### **9- Institutions supervising the guarantee of human rights in Iran and international non-governmental organizations:**

The nature of human rights is different from other cases, so there are many institutions in the domestic laws of countries that take actions in a non-judicial way regarding the realization of human rights, but most of our focus is on judicial supervision.

The Administrative Court is one of the masterpieces of the judicial structure of the Islamic Republic of Iran, and most of these cases are handled there. As a court, it guarantees human rights, that is, it guarantees the rights of the nation against the government. and in addition to the Court of Administrative Justice, a) the executive branch as the protector and guardian of the Constitution; b) Legislature - Parliament (Guardian Council), Commission on Article 90 of the Constitution, investigating and investigating the duties and roles of representatives; c) Judiciary regarding the restoration of public rights and expansion of legitimate freedoms; General Inspection Organization, Human Rights Headquarters, International Affairs Prosecutor's Office and Public and Legal Courts, NGOs; The press and civil society activists are people who voluntarily work in the forms of participation and public action based on common interests, goals or values, which should be independent and reliable. In turn, they can play a role in the

restoration of civil-political rights and freedoms.

Also, international non-governmental human rights organizations are institutions that are formed on the initiative of the private sector and outside the agreement between governments, and in them, private or public persons with different nationalities gather. According to their statutes, the purpose of such organizations is to support human rights and monitor the adherence of governments to their human rights obligations and human rights education. These institutions follow their monitoring actions in the field of human rights on three levels. In the first stage, these organizations at the national level collect information, identify and help the victims, find the truth and prepare a report.

At the international level, they have cooperated with the United Nations, the committees overseeing human rights treaties and international judicial authorities and use their findings in the course of activities at the national level to prosecute human rights violators. The third and highest level of monitoring measures that have been the focus of these organizations in the last few decades is participation in the process of standardization for human rights, which are carried out in ways such as negotiating with governments and drafting treaties and are active in the pursuit of compensating the existing gaps in the binding norms of human rights. (Askari, Pouria and et al, Public Law Research Quarterly, 2016)

One of the important characteristics of such organizations at the international level is their neutrality and independence, which according to many experts, in such a situation, they can have the necessary acceptance in their

activities and records while gaining legitimacy. and create a close relationship with maintaining the intellectual and ideological independence of nations.

### Conclusion

Due to its cross-border nature, the respect and guarantee of human rights is not limited to the internal structure of governments, and it has also been considered in the relations between them. In such a way that a part of the international treaties is dedicated to the issue of human rights as a document based on the agreement of the governments or organizing their behavioral patterns in the international community. Civil and political rights and freedoms under the title of the first generation of human rights have been emphasized in the Covenant of Civil and Political Rights and regional treaties such as the European Convention on Human Rights and the American Convention on Human Rights; And it has placed obligations on the governments to respect and guarantee these rights. Therefore, the provision of individual rights and freedoms in the constitution is the first step that governments must take in order to acknowledge the existence of these rights on the one hand and their commitment to adopt policies based on respect for these rights and organize mechanisms to guarantee them. Therefore, the legislative body can provide the foundations of the comprehensive guarantee of individual rights and freedoms. Therefore, the Judiciary, as the guardian of the rights of citizens and other claimants, parties and the press, especially public law thinkers, can examine and scrutinize the following suggestions in support and guarantee of

individual rights and freedoms specified in the Constitution of the Islamic Republic.

1- Fundamental rights, including the right to life, the right to freedom from torture and humiliating and inhumane treatment, prohibition of slavery, freedom of speech, freedom of opinion and other individual rights and freedoms are related. It is necessary to explicitly recognize these rights legally and specify the mechanisms to guarantee them based on the constitution.

2- In relation to other laws and regulations, it is necessary to pay attention to the issue of what effects the laws that contradict or limit the constitution may have on the rights and freedoms of individuals and limit the rule of law, even indirectly. Therefore, it is necessary to evaluate and measure the criteria of guaranteeing people's rights, which is a challenge to guarantee the implementation of human rights.

3- Governments must respect, support and guarantee these rights in return for substantive rights. Such as freedom of speech, assembly, fair trial, social, economic and cultural rights, housing and work and education, insurance, food and health.

4- An independent, self-regulating and democratic judiciary is considered a condition of multinational federalism. And this shows the need to simultaneously pay attention to the desire to establish a constitutional democracy among the majority of the society and to fulfill the identity and national demands of the minorities, which is facing a challenge in the Iranian society.

5- One of the most fundamental issues that is raised today as one of the most important and

challenging issues; Especially, the West abuses all the facilities and mechanisms of international human rights to dominate its secular thinking as a prelude to political domination. And in this way, the sensitivity of the human rights issue is far beyond its objective requirements.

6- Many rights and freedoms are not absolute and have limitations in every society. However, it should not violate or create restrictions for the freedoms of individuals stated in the Constitution and the Declaration of Human Rights on the condition of obtaining a license and examining the content instead of examining the form that can naturally face personal tastes. So that some functions are obstacles and challenges that people face.

7- In fact, one of the other challenges is the lack of recognition of the people of a society about their citizenship rights, encouraging them to accept and perform various civil responsibilities and participate in political and social affairs, including the important challenges facing political systems in developing societies. Certainly, people's organizations, media, radio and television, and the press can play a significant role in increasing the awareness of the people of society about their rights by educating them about citizenship rights.

8- We have the problem of normative, behavioral and functional challenges at the international level, according to the rulings of the Holy Sharia and the teachings of the Islamic religion, that we must respect the rights of individuals. But there are a series of norms that are naturally respected by us and do not read with these norms of documents and international agreements. The human rights committee means all the rights stipulated in the declaration and emphasizes all the rights in the reporting to be included in the periodic reports. At that time, we will find problems in the matter of custody, dowry, testimony, judgment. The request of the human rights committee is that governments should provide the necessary answers regarding all the raised questions, even regarding specific regulations, for example, related to women's jobs at different management levels and even their personal lives and their clothing in public places. In order to comply with his periodical reports to what extent it has acted on the reminders.



## References

- Askari, Pouria and et al, (2016). Public Law Research Quarterly, 18th year, number 53, winter 2016
- Chevalier, Jacques, (2019). Lawful Government, translated by, Hamid Reza Malek Mohammadi, Dadgostar Publishing, Tehran
- Cotterrell, R., (1994). Law's Community, London: Clarendon Press, Oxford
- Dehkhoda, Ali Akbar, (2002). Dictionary of Dehkhoda, Tehran, University of Tehran
- Emami, Mohammad and Koroush, Ostovar Sangari, (2012). Administrative Law, first volume, Tehran
- Ghorban Niya, Nasser, (2014). Various readings of natural law, Islamic law, summer, number 1
- Harvey, David, (2016). "A Brief History of Neoliberalism", translated by Mahmoud Abdollahzadeh, Tehran: Akhtaran Publishing House
- Hashemi, Seyed Mohammad, (2009). Fundamental Rights of the Islamic Republic of Iran, Tehran, Mizan publications
- Hashemi, Seyed Mohammad, (2014). Human rights and fundamental freedoms, third edition, Tehran, Mizan publications
- Hosni Pourfalah, Maliheh, (2017). Principles governing the guarantee of implementation, the first national conference of Islamic humanities.
- Hosseini Tehrani Seyed Mohammad Hossein, (2010). Lomaat Al Hossein, Tehran, Sadra Publishing House, 4th edition
- Jafari Langroudi, Mohammad Jafar, (2010). Legal Terminology, Ganje Danesh Publishing, Tehran
- Katouzian, Nasser, (2008). Basics of public law, Dadgostar Publishing House, Tehran.
- Madani, Seyed Jalaluddin (2002). Fundamental Rights in the Islamic Republic of Iran, Soroush Publications, 7th edition
- Markaz Malmiri, Ahmad and Attar, Saeed, (2017). Pathology of legislation in Iran from the perspective of the legislator's initiative procedure, Majlis and Rahbord, Winter 97, No. 96, p.55
- Markaz Malmiri, Ahmed, (2015). " The Rule of law: Concepts, Foundations and Perceptions ", Tehran, Third Edition of the Islamic Parliament Research Center Publications
- Montesquieu, Charles, (2014). Ruh al-Quwanin, translated by Ali Akbar Mohtadi, Tehran
- Parvin, Kheirollah and et al, (2014). Two quarterly journals of Islamic human rights studies, third year, sixth issue, spring and summer
- Petoft, Arin and Momeni Rad, Ahmed. (2015). "The evolution of government intervention in the economy from the perspective of public law, from the welfare state to the supra-regulatory state", Public Law Research Quarterly, Volume 16, Number 4
- Raei, Masoud and et al, (2012). Rule of Law and Government Orders in the Constitution of the Islamic Republic of Iran, Islamic Government, 7th year, 1st issue, spring 2012, 63
- Rasekh Mohammad, (2012). Theory of International Human Rights, Journal of Legal Research

- Rawls, John, (2000). A Theory of Justice, Oxford University Press
- Saki, Mohammad Reza, (2008). Guarantee of criminal execution of crimes against human rights and humanitarian rights, Legal Perspectives Quarterly, Faculty of Judicial Sciences and Administrative Services, No. 44 and 45 2008, pp. 101-129
- Shabani Qasem, (2008). Fundamental Rights of Tehran, Ettelaat Publishing House
- Sharifi, Mohammad bin Jalaluddin, (2014). Towards Divine Justice, Tehran, Amir Kabir Publishing House
- Tabatabaei Motameni, Manouchehr, (2019). Public Freedoms and Human Rights, Tehran Publications, second edition
- Zarei, Mohammad Hossein, (2010). Legal research, good governance, sovereignty and governance in Iran, Autumn and Winter, 2010, ISC No. 40

