



## A Comparative Study of Principles of Citizenship Law with Criminal Law in Iran and International Conventions with Emphasis on Citizenship Education

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ARTICLE INFO	ABSTRACT
<p>Received: 02 June 2020 Revised: 12 July 2020 Accepted: 12 February 2021 Online: 16 March 2021</p>	<p>The realization of citizenship rights requires training of citizens to be aware of their rights and responsibilities. The proper implementation of judicial law is an essential step in protecting rights of citizens, which requires trained people who can help balance between these two rights. Accordingly, the purpose of this article is to compare principles of civil law with criminal law in Iran and international conventions. The research method is comparative-analytical and method of data collection is documentary. The present article has four sections: The first section contains an introduction and necessity of research. The second part describes research method. In third section, the research results are presented. The article ends with a conclusion. Findings show that there are similarities between many principles of civil law and criminal law in Iran and international conventions. Also, many of the principles contained in the Constitution of the Islamic Republic of Iran emphasize the observance of citizenship rights. Of course, the ambiguity in some principles of criminal law or the lack of practical guarantees for their strict implementation can be considered as one of the major differences between the Iranian legal system and international conventions. Based on these findings, it is suggested that educational policy makers and curriculum planners of Iran devote part of secondary education curricula to civil rights and its relationship with criminal law.</p>
<p><b>KEY WORDS</b></p> <p>Citizenship Education Citizenship Law Criminal Law International Conventions Iran</p>	

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## **1. Introduction**

One of the concerns of contemporary world is the preservation and expansion of citizenship rights. It is clear that the global outlook does not paint a clear and hopeful picture for many countries. For many nations, realization of citizenship rights is an unattainable dream, and for their governments, it is a sign of political and managerial incompetence. This situation has made the lack of citizenship a national challenge (Mcinerney-Lankford, 2009). It is natural that the severity of this crisis is not the same in all countries. In some societies, citizenship rights are largely ignored, while there are governments that have moderately and well succeeded in providing these rights to their citizens. One of the regions of the world - where there is a great difference among countries in terms of civil rights - is the Middle East.

The Middle East region, with 17 countries, is very diverse in terms of respect for civil rights, so that countries such as Afghanistan, Iraq, Yemen and Syria are at war, and of course the conditions of war provide the opportunity to easily and to a large extent violate civil rights. Also, countries such as Saudi Arabia, Egypt, Turkey, and Iran each have "specific definitions and interpretations" of citizenship rights due to their specific political considerations, which sometimes do not meet international standards. This perspective is more balanced with countries such as the United Arab Emirates, Lebanon, Cyprus, Qatar, and Oman (Hicks, 2002). Now the question we face is that "what is the secret of such diversity between countries of the same geographical area?" To answer this question, we must pay attention to the relationship between the people and government.

Citizenship rights are based on a new definition of the government's relationship with the people, traces of which can rarely be found in the past history of many societies. In fact, given the events that took place after the Industrial Revolution - and especially during the twentieth century - citizenship rights can be considered as one of the countless achievements of the new civilization (Elias, 2000). What history says about the government's relationship with the people is the relationship between the dominator and obedient. In the past, governments have sought to establish security, a strong central government, national unity, and maintain geographical, cultural, and economic borders with other countries. Based on these goals, the people of other countries were called foreigners and the people of country were citizens who had to respect power and security. Therefore, government was legislator and people were law-abiding (Olsson & Paik, 2013). The contemporary world has broken this

relationship between the ruler and the condemned. According to the new definition, the citizen is not only responsible before the law and also has rights over the government. Thus, the first answer to the above question is that many governments - including the Middle East - may not yet believe in changing the relationship between the State and nation. For this reason, citizenship rights have not become a real right to be respected by politicians.

There is another answer to this question. This response is based on the fact that many governments, under the influence of international conventions, have been forced to recognize and approve citizenship rights - in reality or in appearance - in their domestic law - and especially in their constitution (Clark, 2000). Naturally, this is a step forward for humankind, especially in the Third World. However, numerous political, economic, cultural and sometimes religious factors can interfere with the actual realization of citizenship rights. The situation in the Middle East shows the presence and full role of these factors in the non-realization of citizenship rights.

Outlining this perspective, we can now mention two other points: The first is that governments are both enforcers of citizenship and protectors of its implementation (United Nations, 2015). For the first task, the situation in the world shows that many governments are not faithful to their commitment, but for the second task, the majority of governments use the enactment of judicial laws - especially criminal law - to show themselves supporter of civil rights. In this situation, we see a kind of conflict between civil rights and criminal law (Cerone, 2006). The second point is that resolving the conflict between civil rights and criminal law depends on educating citizens who can balance these two rights (UNESCO, 2019). Considering what was said in this introduction, the main purpose of this study is to compare the principles of civil rights with criminal law in Iran and international law with emphasis on citizenship education. To achieve this goal, the following sub-goals should be considered:

- Identification and explanation of the principles of civil and criminal laws,
- Identification and explanation of the relationship between citizenship education and the principles of citizenship law and criminal law,
- Comparison of the principles of citizenship law and criminal law in Iran and international criminal law with regard to citizenship education

## **2. Research Background**

One of the main concerns of today's societies is the existence of modern citizens and the education of good citizens. Citizenship education can be defined as the preparation of individuals to participate as an active and responsible citizen in a democratic society (Fathi Vajargah & Vahed Chokdeh, 2009). Numerous studies emphasize citizenship education as one of the most important missions of modern educational systems (Arif, 2017, 2018; Isac, 2015; Roh, 2004; UNESCO, 2014). Citizenship education gives people the knowledge, skills and understanding to play an effective role at the local, national and international levels (Farmahini Farahani, 2010). In the last two decades, a special focus on citizenship education has profoundly changed educational systems and necessitated a comprehensive review of curricula and their elements. In other words, the goals, programs and activities of the education system in the field of citizenship education should include components such as understanding the government and State's role, human rights, political process, and understanding the relationship of people with sources of power (Yavari, Army, & Ahmadi, 2013).

One of the important issues in citizenship education is understanding relation between citizenship rights and criminal law, considering the role of the two important factors of freedom and security. Citizenship is based on the concept of maximum freedom for all people, while maintaining security forms main framework of criminal law (Beitz, 2009). In fact, since citizenship rights are a subset of public law, it is closely related to the political and civil liberties of individuals in society, so that it has become one of the criteria of good governance. While one of the signs of good governance is the use of criminal law in favor of the realization of citizenship rights, many governments use it to suppress citizenship rights. In fact, the question is that how the government can balance protection of citizenship rights with observance of criminal principles so that it does not violate people's rights under the pretext of protecting security. Therefore, regulating and controlling power of government and obliging it to respond to the citizens is the most important issue that should be considered in the process of citizenship education.

Thus, balancing freedom and security is the most important challenge between citizenship and criminal law. According to Renny (1995), the confrontation between security and freedom stems from two realities: First; most citizens value both freedom and security,

and Second; freedom and security are in constant conflict, and the government takes every step to advance one of them may harm another. In a libertarian society, most citizens are not willing to sacrifice security for absolute freedom, nor are willing to give up all freedom for complete security (Donnelly, 2003). Therefore, the government, which can be most important source of security, at the same time has potential to become the main source of insecurity. Therefore, while the government should not act passively in the process of developing society, its intervention in all matters should be limited. Thus, citizenship education is based on understanding that well-informed citizens defend their citizenship rights well and allow minimal government interference (Ferguson, 2009). However, two negative and positive commitments can be considered for the government: A negative commitment means that the government does not act. For example, the government should not ignore the rights of citizens through the abuse of forces such as the army, police, and judiciary or prison guards. In a positive commitment, the government's duty is to protect citizenship rights of all citizens.

### **3. Research Method**

The present study is a qualitative comparative research with Non-Emergent Design. In Non-Emergent Design, the researcher first collects data and then analyzes them (Lincoln and Guba, 1985). Therefore, the required data were collected by documentary method, observing rule of maximum diversity and principle of saturation in the selection of documents related to the research topic (Strauss and Corbin, 2006). Also, the collected data were analyzed using a descriptive-interpretive approach after applying qualitative data adaptation rule.

### **4. Results**

Data analysis includes results that are presented in separate sections. In two stages, dimensions of civil rights and criminal law were considered. Then, the results related to identifying and explaining relation between citizenship education and citizenship rights and criminal law are stated. In the final stage, a comparison is made between citizenship and criminal law in Iran and international criminal law with regard to citizenship education.

#### *A) Identification and explanation principles of citizenship rights*

Experts have considered several characteristics for a desirable citizen. For example, qualities such as a sense of commitment, equality, curiosity, progressiveness, obedience to the law, consideration of public interest, participation, responsibility, and respect for moral

principles (Keynan and Lazar, 2017; Martin, 2008; O'Brien & Smith, 2011; Sherrod, 2003). According to Mehr Mohammadi (1998), the most important components in the field of citizenship include tolerance of opposing ideas, following the law, self-confidence, willingness to compete constructively, disobedience to relationships based on authoritarian power, strengthening the spirit of questioning and curiosity, creativity and ability to express thought. In fact, citizenship rights have a wide range and include civil, social, economic, cultural and judicial rights. Citizenship is a mixture of the duties and responsibilities of citizens towards each other, the city and the government (Donnelly, 2003). The main principles of citizenship rights are:

#### *Principle One: Freedom*

In the mid-nineteenth century, intellectuals extended the idea of freedom to political life and demanded freedom from any misuse of power, especially by the state (Bevir, 2011). However, the meaning of freedom is now a paradoxical issue that forms a combination of individual rights and a wide range of examples of social security. This modern combination must guarantee the freedoms of all; but the truth is that many governments like to oversee all aspects of the political, economic and social life of the people. In any case, today the principle of freedom implies the enjoyment of rights that benefit the holder. This definition has a very modern tone; because it is done with the concept of citizenship, which includes the consolidation of a wide range of civil, political and social rights. Therefore, the growth and expansion of freedom is considered as the growth and expansion of rights (Autovit & Batamor, 2013). One of the most important aspects of the principle of freedom is political freedom. The purpose of political freedom is to create a structure of predictable and stable rights as well as State power's limitation. Other dimensions of political freedom are freedom of speech, free communication with individuals, property rights, religious freedom, the right to enter and leave the country, freedom of parties and participation in elections. These constitute fundamental aspects of civil rights.

#### *Principle Two: Equality*

In a sense, the history of human social life symbolizes the struggle against oppression and inequality. As consciousness grows, people become more aware of the futility of undue discrimination in society and become motivated to break unreasonable and degrading barriers (Ferguson, 2009). Mainly from the eighteenth century onwards, the principle of equality was introduced in the works of Jean-Jacques Rousseau and Emmanuel Kant (Shklar, 1978). The main idea of these works is that equality means that all people are equal based on same characteristics. Recognizing these commonalities requires that people be treated with respect and equality. This idea forms the basis of "equality of rights" and is one of constant requirements of democratic political systems.

### *Principle Three: Human dignity*

Dignity means preserving human magnitude. The term human dignity means that every human being, regardless of internal characteristics or social status, has dignity. This dignity is not destroyed even by committing illegal acts and is inalienable.

### *B) Identification and Explanation of Criminal Law Principles*

Authoritarian governments today, under the pretext of maintaining national security in various forms and through legal, judicial and executive tools, ignore civil rights in such a way that the "pro-law state" becomes the "security and criminal state". The Security State - by enacting laws and maximum criminalization - restricts the freedoms of people (Weinberg & Flinders, 2018). In fact, security-oriented governments ignore public freedoms and civil rights under pretext of prioritizing national security. With the extreme interference of these governments in the individual and public freedoms of citizens, the gap between political system and people widens. To reduce this gap and prioritize civil rights over criminal law, the following principles should be considered:

#### *First Principle: the Principle of Innocence*

In modern judicial systems, the principle of innocence is one of the most fundamental principles because it protects the rights of citizens against power-seeking institutions

(Javanmard, 2014). According to the principle of innocence, detention of individuals is illegal and should be applied in a limited way (Ashouri & Sepehri, 2013). Therefore, the detention of any citizen is possible if there is sufficient reason to prove his/her illegal behavior.

### *Principle 2: Domination of Law*

The domination of law is one of most important principles of public law that obliges all powers and organizations to abide by the rules and regulations in their decisions. Obedience to the law by government agencies and organizations results in the protection of the individual against superior power of the State. Therefore, domination of law, while protecting the rights of citizens, forces authoritarian political systems to act within the framework of law. In practice, however, many political regimes can also interpret the law in their own favor.

### *Principle 3: Legality of Crime and Punishment*

All criminal laws of civilized countries are based on the principle of legality of crime and punishment. This principle is the result of centuries of study and work by philosophers and years of human struggle for justice and law. Any restriction is permissible and justified if it is necessary to maintain freedom and especially when no other method can achieve this goal (Shami, 2013). Another point is that punishments must be fair enough to provide the people with as much freedom as possible. In fact, the inclusion of criminal titles in criminal law sets and the determination of cases and the amount of punishment give citizens the opportunity to regulate their behavior according to legal requirements. Thus, by accurately determining legal and illegal behaviors, governments no longer have the opportunity to ignore citizens' rights under vague reasons (Marty, 2014). In fact, every citizen knows in advance when he is guilty or innocent (Bakaria, 1994).

### *C) Identification and Explanation of Relationship between Citizenship Education, Citizenship Rights and Criminal law*



Citizenship is at the unlimited risk of governments, rather than being attacked by individuals. Despite this fact, it should not be forgotten that political regimes are also the output of society. Thus, the realization of citizenship rights, the emergence of desirable political systems, and existence of a healthy relationship between government and people, and transformation of law into a tool to support citizenship rights all depend on an efficient education system that can familiarize the younger generation with citizenship rights (Martens & Gainous, 2012). For this reason, over the past two decades, many policymakers and educational planners have realized that effective citizenship education is a prerequisite for promoting citizenship and judicial rights. To achieve this goal, one of the topics that should be considered by educational planners is to teach children and young people the relationship between two seemingly conflicting sources - citizenship rights and judicial rights. Based on this idea, the first step is to identify principles of civil rights with regard to judicial and criminal frameworks. According to these points, we can now name the following principles of citizenship rights:

#### *1) Principle of Right to Silence*

The first principle of citizenship rights within the framework of legal norms is observance of right to silence principle, which requires the political system (in its various forms, such as the judiciary or State) to observe the principle of innocence of individuals (Gray, 2013). In the modern legal system, the right to silence of the accused and right to have a lawyer are respected, so that the judicial authority (police) is obliged to declare the right of silence to individuals after summoning, inquiring about their identity and accusation.

#### *2) Principle of Right to be Accompanied by a Lawyer*

Access to a lawyer is one of the basic principles of a fair trial because people cannot defend themselves properly without knowing the legal rules. This right can guarantee individual freedoms. Therefore, the lawyer can accompany the accused in three stages of detention, preliminary investigation and trial (Saqian, 2014).

### *3) Principle of Privacy*

There are different definitions of privacy in the law and custom of societies. Privacy is a part of every person's life that should be protected from the supervision and interference of others. This is a subject that human beings are well acquainted with and have long been afraid of government interference (Banisar, 2011). Naturally, privacy can be considered as one of the most important components of civil rights, so that the judiciary cannot enter the place of residence or work of individuals at any time without legal permission.

### *4) Principle of Prohibition of Torture*

Torture is any intentional act that results in severe physical or mental pain or suffering to obtain information or confessions against oneself or another person. Naturally, torture is one of the most inhumane acts that can be used against others and citizenship rights are completely ignored (Greer, 2015). Therefore, resorting to torture is one of the cases that deprives confessor of his authority and renders his confession ineffective.

After determining the principles of citizenship rights related to judicial framework, the principles of criminal law that can protect or threaten citizenship rights should be considered. Criminal law is a branch of public law that examines government protections for the rights of individuals and values of society. Basically, criminal law does not create rights for individuals in society and only forces people to respect rights and values. Thus, it can be said that criminal law protects the rights of citizens, but as already mentioned, in practice and in many countries, criminal law is a tool in the service of political systems to ignore citizenship rights under the pretext of preserving values or law. For this reason, the principles of criminal law that can protect civil rights are:

#### *1. Principle of Right to Understand Subject of Accusation*

In judicial process and after arrest of the accused, the first thing to do is to inform the accused of the accusation. Therefore, anyone accused of committing a crime has the right to be informed of the type and causes of the accusation as soon as possible (Ashouri, 1999).

Understanding the subject of charge and its reasons has been envisaged and approved by lawmakers in almost all countries and international conventions.

### *2. Principle of Medical Examination of Accused*

Requesting a medical examination prevents the physical and psychological harassment of accused during judicial investigation process. The need to receive health and medical services is also considered a public right, and the accused as a citizen must be able to use these services. Of course, it should not be forgotten that the effects of some physical or psychological abuse are not immediately apparent and can cause harm to a person without the ability to prove it.

### *3. Principle of Right to Inform Family*

One of the examples of standards of the accused's rights is right to inform the family of the arrested. In fact, the detention of individuals, in addition to depriving them of their liberty, also affects lives of their family members with severe psychological damage (Farajeha & Moghaddasi, 2011). When the family of the accused learns about detention process, they should be able to provide necessary defense facilities (such as a lawyer) for him to protect his citizenship rights (Beyravand, Koosha, Hashemi & Ranjbar, 2010).

### *4. Right to Have a Translator*

If the accused does not understand the language of police or court officials, he has the right to assistance of a qualified and free translator. He also has the right to request that his innocence documents be translated. In fact, this principle emphasizes equality of opportunity and the right to a fair trial.

Figure 1 shows that the foundation of citizenship education is based on understanding relationship between principles of citizenship rights and principles of criminal law. In the next section, according to the relations between mentioned principles, an attempt is made to examine citizenship and criminal law in Iran and international law.

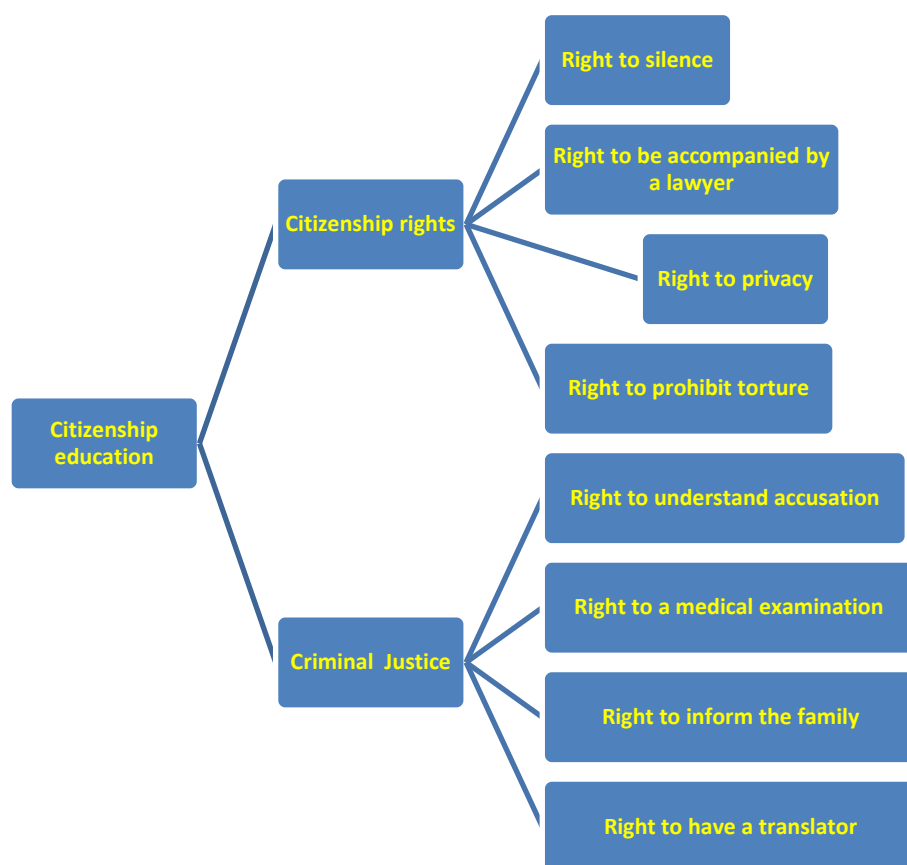


Figure 1. Basis of citizenship education according to principles of citizenship rights and criminal principles

*D) Comparison of citizenship rights and criminal law in Iran and international criminal law with regard to citizenship education*

The goals of citizenship education can be divided into goals related to values, knowledge and understanding, and skills and attitudes. In the meantime, goals based on understanding and skill seeks to compare the situation of human societies with each other. This comparative attitude allows the younger generation to gain a deeper understanding of citizenship rights. Based on this idea, this section examines universal declarations, human rights conventions and other legal systems - according to the data in previous sections of the article.

The first point to note is the role and place of "human rights" idea, which is at the core of international conventions and issues such as citizenship rights. Human rights are a set of principles about obligations that encompass all human beings on the basis of human dignity. These standards are widely accepted as international norms (Mosafa & Ebrahimi 2008). The nature of human rights requires the notion that every individual has rights because of his or her humanity, so that a State cannot use its domestic rules as a cover for violations of international law. Regarding human rights and civil rights, although the scope of human rights seems to be wider than civil rights, by dividing international human rights into micro and macro categories, we can say that macro rights or "fundamental human rights" have a global aspect and according to moral principles, it is obligatory for all nations and governments. Considering this point, it should be said that citizenship rights are an integral part of human rights (Ebrahimi, 2008) and the behavior of governments cannot be contrary to international human rights standards (Nowrozi, 2008; Madani, 2001).

The second point focuses on principle of innocence in international law. The principle of innocence was first stated in the French Declaration of Human Rights in 1789. According to Article 9 of the Declaration, everyone is considered innocent unless proven guilty. The purpose of this principle is to protect the rights of citizens (Omidi, 2003).

The third point regarding the examination of civil rights in international documents is the principle of non-torture. The most important international document on torture is the United Nations Convention against Torture, which deals with cruel, inhuman or degrading treatment or punishment, adopted in 1984. According to paragraph 1 of Article 1 of this convention, acts of physical or mental suffering are considered torture if committed by competent government officials or with their provocation or consent and silence (Mousavi, 2001; Rahmati, 2005).

The fourth point is about the family's right to know about the accused's situation. In order to protect family, the International Covenant on Civil and Political Rights in Article 23 considers family as a fundamental element of society and deserves its protection. Also, according to paragraph 1 of Article 16 of the Principles for the Protection of Detained or Imprisoned Persons, a person who is imprisoned has the right to immediately inform family members or a person who wishes (Shamsai & Razavi, 2013). Regarding the right to visit the family, Article 92 of the International Document "Minimum Standard Rules for the Treatment with Prisoners" supports rules for the accused.

The constitution in the Islamic Republic of Iran, like most countries, is the most important source of law. The constitution has supremacy on all rules and regulations. This law has 177 articles and

more than 141 of them are about civil rights (Kahriz, 2018). The criminal law of Iran also pays attention to the citizenship rights. For example, in terms of historical background, the principle of innocence is mentioned in Article 9 of the Constitution of the constitutional period (late Qajar dynasty). Also, Article 37 of the 1979 Constitution of the Islamic Republic of Iran states: "innocence is principle and no one is found guilty under the law unless approved by a competent court" (Rahmdal, 2008). In addition, Article 4 of the Code of Criminal Procedure adopted in 2013 explicitly acquits the principle and prohibits damage to human dignity and character.

Regarding awareness of the accused family's principle, in paragraph 5 of the "Law on Respect for Legitimate Freedoms and Protection of Civil Rights" and Article 50 of the Criminal Procedure Code of 2013, the legislature has recognized it. It seems that the implementation of these legal provisions requires more precise mechanisms. The right to remain silent is also specified in the Iranian Code of Criminal Procedure. Pursuant to Article 129 of the Code of Judicial Procedure of General and Revolutionary Courts in Criminal Matters, approved in 2008, if the accused refuses to give an answer, his refusal will be registered. Also, Article 13 of the Criminal Procedure Code of 2013, with the statement that the accused can remain silent, has fully recognized this right. According to Article 38 of the Constitution, any torture to obtain a confession or information is prohibited and violators of this principle should be punished according to law (Ashouri & Sepehri, 2013). In Iranian law, Article 35 of the Constitution also provides for the right to a lawyer. Also, the Criminal Procedure Code of 2013 for the first time has accepted the presence of a lawyer not only with the investigator but also during the arrest time (Shamsai & Razavi, 2013). Article 48 of this law states that the accused person can request a lawyer from the beginning of her/his detention (Saqian, 2014; Saber, 2009).

In summary, there are similarities between Iran and international conventions in many of the principles of civil and criminal law. It can also be said that a large part of the principles contained in the Constitution of the Islamic Republic of Iran emphasizes observance of citizenship rights. On the other hand, ambiguity in some principles of criminal law or lack of guarantee of strict implementation of these principles in Iran can be considered as one of the main differences between the Iran's legal system and international conventions.

## **5. Conclusion**

The aim of present research was to compare and determine similarities and differences between principles of civil rights and criminal law in Iran and international conventions with emphasis on

their role in citizenship education. The main mental premise of the present researchers was that the realization of citizenship rights requires existence of a strong and independent educational system that can nurture the young generation aware of their rights and responsibilities. Thus, in this article, an attempt was made to show, first of all, what the important principles of civil rights are; secondly, how the principles of criminal law related to citizenship rights are; and thirdly, how these two form the main foundations of citizenship education.

The research findings showed that citizenship rights are a fixed and unchangeable right for citizens and governments are not the creators of it, but should respect and protect it as a "fundamental human right". States must also protect civil rights through criminal law, and these laws should not be acted in violation of civil rights. Therefore, the important principles of civil rights, namely freedom, equality and human dignity, must be considered by the legislator in the preparation and formulation of criminal law. The research findings also emphasize observance of the principles such as right to silence, to have a lawyer, right of privacy and prohibition of torture in judicial process, and show that in the process of citizenship education, children and young people should be fully educated about these rights.

Another finding showed that there is a lot of similarity between content of citizenship and criminal principles contained in international conventions with the Iranian judiciary, although the impact of environmental and social factors in the adoption of domestic law in Iran cannot be denied. The main suggestion of the present research is to allocate a part of the curriculum of the formal education - especially at secondary education - to education of civil rights and to explain its relationship with criminal law. Curriculum planners are also encouraged to emphasize compliance of Iranian law with the provisions of international conventions on civil rights. This emphasis makes pupils - as the next generation - aware that their citizenship rights are protected at both the national and international levels.

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