

# Investigating the Civil Liability of the Government for Violation of the Right to the Mother Tongue Education in Iranian and Common Law

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## Abstract

The basis of civil liability in Iranian law is mainly based on fault, which is included in the civil law on loss and cause, and in the civil liability law on the fault of both the deed and omission of an act, i.e., negligence, carelessness, and non-compliance with rules. Civil liability has been realized based on the theory of danger in the penal code, particularly in the case of medical liability. This liability has returned to the same fault in the recent penal code. Citizenship rights include privacy and personal security and the right to life, the prohibition of torture, the right to education for all Iranian people, including linguistic minorities, social security so that the life of every Iranian must be subject to the law and education should be guaranteed. Compensation for damages caused by violation of these rights sometimes has spiritual and, ultimately, financial consequences. Violation of the right to liberty leads to financial damages that must be compensated as much as possible. In the case of education, especially for linguistic minorities, violation of the intellectual right to education in mother tongue in early life caused education deprivation, lack of a suitable job, financial loss, and lack of equal opportunities, which the initial payment must compensate. Finally, some measures must be taken to avoid repeating the violation of those rights by passing restrictive laws guaranteeing severe performances. In this way, no person or entity, whether public or private, can violate those rights.

**Keywords:** Civil Liability, Citizenship Rights, Right to Education, Compensation, Fault

**Tob Regul Sci.**™ 2021;7(6-2): 26-38

**DOI:** [doi.org/10.18001/TRS.7.6.2.4](https://doi.org/10.18001/TRS.7.6.2.4)

## Introduction

The concept “citizenship rights” that appeared in the 19<sup>th</sup> century comprised a set of rights and commitments in the relationship between national government and citizens. West has been the origin of citizenship rights, which influenced other communities. Citizenship rights served as civil rights in the 18<sup>th</sup> century that included freedom of speech, freedom of fair trials, and equal access

to the judicial system in those days when the majority did not have such rights due to their social class, sex, race, and other factors<sup>1</sup>.

Citizenship Rights in the judicial system of common law countries: In his valuable book, victims of injustice in the US judiciary system, Dr. Leslie SACHS expressed that the fear of the US media from violations by lawyers and judges has motivated him to write this book. In his opinion, US media hide some facts about judicial violations from people.

According to the association between human and citizenship rights, human has right due to their humanity based on human rights. This concept inspired revolutions among Americans and Pharaohs, reflecting this term in their theoretical documents. There is a difference between citizenship and human rights; human rights provide the ethical framework, not political and international rules, while citizenship rights include specific national specific rights in each country<sup>2</sup>. According to the Declaration of Independence of the USA, people have been created equally, so their creator has endowed them some special immovable rights, such as life, freedom, and happiness pursuit, so the governments were established to bring and follow these rights and used to obtain their authority from people<sup>3</sup>.

There are six categories of citizenship rights, which have been supported precisely by many legal systems<sup>4</sup>. The fifth type encompasses cultural rights that cover the right to education and participation in cultural life<sup>5</sup>. Right to mother tongue education is a subcategory of the right to education.

Global education has identified advantages of mother tongue in education and has obliged itself in many countries to take an increasing approach to elementary education in the mother tongue. However, no specific measure has changed the situation even ten years after this legalization. Most children have to receive their elementary education in a second or third tongue in the current status. Linguistic customs in education are mainly one of the substantial factors affecting the current adverse situation of education. High rate of dropout and rejection, and inability to keep quality or at least a part of these consequences are rooted in improper selections of intermediary structure at the elementary education level. The extant study examines the right to mother tongue language and government civil liability for violation cases.

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<sup>1</sup> t.h, marshall. 'citizenship and social class' (Cambridge university, press, 1950), 4.

<sup>2</sup> G(ebs), rizer, 'encyclopedia of social theory' university of maryland, (college park, sage publication, 2005), 35.

<sup>3</sup> Leo, Strauss. 'Natural rights and history', (Chicago University of Chicago Press, 1953), 12.

<sup>4</sup> Categorization of citizenship rights:

1. Fundamental rights: the right to life, physical integrity, right to self-determination, prohibition of discrimination, prohibition of torture, prohibition of ...punishments, prohibition of slavery, and coercion. Right to nationality, and right to thought

2. Political Rights: the right to liberty and security, freedom of expression, information, and communications, freedom of association and assembly, right to participate in political affairs.

3. Civil rights: the right to marriage, right to support and help family, right to privacy and freedoms in private life, right to freedom of movement.

4. Economic rights: the right to work, right to fair and equal job conditions, right to have standards of an adequate and good life, right to have standard health.

5. Cultural rights: the right to education, right to participate in cultural life.

6. Social rights: the right to compensation in case of legal violations, right to a fair trial, right of defendants and convicts, right of minors

<sup>5</sup> carl, weuman, 'solidarity, the individual and human rights' (zzhrq, 2000), 467.

## 1. Right to Mother Tongue Education

Determination and explanation of the realm of the right to mother tongue education require describing and clarifying its enforcement fields that the government must execute. No right can convey a clear concept if it cannot express and define the relevant urban domain and corresponding tasks. Governments must consider no discrimination between society members, ethnics, and linguistic minorities when providing education materials and instruments, so all people, particularly linguistic minorities, can have equal affordability and access right to education. In this case, governments must design specific programs and teaching techniques for different regions and linguistic minorities. Any fault of governments in the obligations mentioned above can be done as the omission of action cause compensation and civil liability for the government<sup>6</sup>. Right to mother tongue education has two individual and social dimensions. On the one hand, a person is eligible to recognize his/her mother tongue. In other words, it is an individual right to learn and develop the mother tongue in the education system. Holders of this right are from various linguistic and ethnic communities. On the other hand, the linguistic groups' right to ensure their languages and pass it to the next generation, which is the same cultural life of a community, is collective. In the latter case, holders of the right to mother tongue education make a community that governments are responsible for each member of that community, linguistic groups, associations, and minorities<sup>7</sup>.

Some relevant scholars have introduced similarities between linguistic and cultural diversity and biodiversity of species to justify linguistic diversity at both international, national levels. In this way, there is a considerable similarity and convergence between linguistic, social, and biological evolution of species so that these two issues are influenced by any formation, transmission, and distinction process over time. As measures are considered in international and national documents and conventions for the conservation of biological species, any violation of such rules and damage to the environment causes compensation and liability for governments. The same national and international measures have been considered for linguistic species. Like changes in linguistic diversity by destroying the residence place of theologians and the community of linguistic species through a process similar to mass destruction, compromise, and unification in the education system, demographic and media patterns will be altered. Hence, governments must consider liabilities, and a mechanism or organization must be created to prevent governments from doing such actions. In this way, governments have civil liability for holders of such rights and must compensate for any loss caused by their violation.

Regarding the role of language in forming a person's identity and definition of themselves and the importance of language in establishing the collective identity of individuals and keeping coherence and alignment in trust of a linguistic and ethnical group, the government is responsible for supporting, developing, and transferring the language, which is global human heritage. Hence, any fault or violation in issues mentioned above causes liability for the government, so society expects governmental compensation.

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<sup>6</sup> K, Tomasevesky. human rights. Making education available.) acceptable. Stockholm sid. 2001), p 13.

<sup>7</sup> Albert h.r, Chen. the philosophy of language rights. (language sciences, 1998), 51.

### 1.1. Right to Mother Tongue Education in Iranian Law

All people have the right to equal access to educational amenities, so it is not possible to violate this right of any person. Iranian people from all ethnicities and tribes have equal rights, and no factor, e.g., skin color, race, language, and so forth, can affect this justice. In this case, all men and women benefit from far legal support, including their human, political, economic, social, and cultural rights<sup>8</sup>.

The legal system of Islam does not make any difference between individuals in terms of teaching and acquiring required and desired sciences, except for forbidden cases, such as magic. Accordingly, man and woman, black and white, Arab and Persian, can equally acquire different sciences and educations<sup>9</sup>.

Article 15 of Iran's Constitution declares freedom of teaching regional and ethnic languages in schools alongside the Persian language; hence, the adoption of mother tongue education is one lesson issue in public schools.

The Local Councils Act approved in 2006 is the only normal law consistent with Article 15 of the Constitution. According to Articles 11 and 12 expressing authorities of the county council, this council not only has authority to monitor the tasks of its council but also can enact a law on the following cases and issues:

1. Cultural affairs, such as how to use religious and historical monuments, protect and diffuse local, ethnic, and linguistic arts, and ethnic traditions and customs
2. Educational affairs, such as level and quality of teaching local languages and method religious operations, teaching arts and indigenous handcrafts in elementary and high schools, and delegating educational responsibility for political policy on education and funding in the county<sup>10</sup>.

Right to mother tongue language in Iran's legal system can be addressed from two distinctive legal viewpoints; first, this is a fundamental right that is originated from the Constitution, which serves as the national charter of rights and duties of government and citizens, and comprises admission and declaration of rights and procedures that must be observed. Right to mother tongue education is a fundamental right because it is defensible in terms of respect for the rights of individuals and citizens and is justifiable in terms of honoring values, norms, and public goals. Moreover, because these rights have been contained in the Constitution, the most superior legal source in the hierarchy of legal regulations' position and reputation of every existing legal discipline, they provide the highest credit and legal support. Accordingly, these rights are guaranteed and recreational mechanisms enshrined in the respective legal discipline. Second, the right to mother tongue education of the minority is a human right. Hence, if these rights are recognized, in teaching that language to belonged ones, by human rights' international system, it means governments have accepted the liability to prepare and provide fair and non-discriminatory programs and courses of mother tongue education for minorities.

Iranian government joined Convention against Discrimination in Education and The International Covenant on Civil and Political Rights (ICCPR) on 10/17/1968 and 28/8/1976, respectively. The

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<sup>8</sup> Hashemi, S. M. (2013). *Fundamental Rights of Islamic Republic of Iran*, Tehran, Mizan Publications, 272.

<sup>9</sup> Mir Moosavi, S.A. (2009). *Fundamentals of human rights in Islam and other schools*, Research Institute for Islamic Culture and Thought: Tehran, 266.

<sup>10</sup> Alami, A. (2013). *Opposition to mother tongue education is unconstitutional*, Journal of Etemad (Trust), 7.

mentioned documents include the adoption of recognized linguistic human rights and some rules related to regulating these rights in the domestic system of state parties<sup>11</sup>.

Article 27 of ICCPR, which Iran joined in 1976, points to rights of ethnic, religious or linguistic minorities, "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their religion, or to use their language." The legal system of Iran considers international treaties, contracts, and conventions as law with the same reputation as ordinary rules and regulations. Hence, as any loss caused by non-enforcement of tasks and duties contained in domestic rules must be compensated under civil liability rules and cause rule in civil law, non-compliance with rules of the ICCPR also causes civil liability, so it must be compensated<sup>12</sup>.

According to Article 5 paragraph (c) of Convention against Discrimination in Education that Iran also joined t, "It is essential to recognize the right of members of national minorities to carry on their educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their language..." Therefore, it seems that language associations and linguistic groups in Iran are allowed to establish specific schools and do their activities under the linguistic policy of government and disciplines appointed in Article 15 of the Constitution. No measure has been taken to enter the treaties and Article 15 into force despite Iran having joined the relevant international documents, and Article 15 has emphasized the case. Therefore, the Iranian government is obliged to comply with these rules<sup>13</sup>.

## 1.2. Right to Mother Tongue Education in Common Law

The UK consists of three educational elementary (5-11 years old), secondary (11-18), and tertiary courses. In other words, educational courses are compulsory up to 16 years old. Majority of British pupils older than 17 studies in postgraduate education centers or work in the job market. Now, education is essential for adults in the UK, so most universities and tertiary colleges face an increasing number of adult pupils. The age range of 5-16 receives elementary (compulsory) education in UK and Wales. Elementary education is provided within two stages to pupils from ages 5-7 and 8-11. In the local education system of the UK, pupils from the 11-16 age range receive elementary education courses. Most high schools (about 90%) are compact schools that enroll pupils who have different capabilities and provide widespread elementary and secondary education programs. Few numbers primary high schools that are not compact are so-called grammar schools. The present rate of pupils in educational elementary and primary high schools equals 100% in UK and Wales. Followed by completed primary-secondary education courses, most students seek

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<sup>11</sup> Masjedi, M.M. (2014). The European Convention on Human Rights protects the right to respect for private and family life, Tisa Publications, Tehran, 11.

<sup>12</sup> Welsh, T .Mc. Ginn (2004). Decentralization of education, Translated by Zahra Ghanadian, Tehran, Ney Publications, 52.

<sup>13</sup> Shabani, Q. (2017). Fundamental rights and the structure of the government of the Islamic Republic of Iran, Etalaat (Information) Publications, Tehran, 116.

complementary academic education courses. About 42% of postgraduate pupils of secondary education study academic majors, while 58% pass specialized technical and professional courses<sup>14</sup>. Supported by such expensive aspects, the education system of this country could pass across the hard and unknown ways of development successfully and establish the foundation for the 1980s and 1990s with relatively new morale, so this system can be more open to innovations and deal with bottlenecks more patiently to prepare itself and play a vital role in nurturing humans for the modern upcoming society and era<sup>15</sup>.

Subject to law, parents must send their five-year-old children to school in the UK. Of course, some parents consider this age a highly early time for education, but many believe that this is not too early for education, and even 2.5-3 years old children must go to kindergarten. Kindergarten (preschool) and daycare or childcare centers exist in the UK. Daycare center is only for those children whose parents are at work. These are not educational institutions, so they have different working hours than kindergartens<sup>16</sup>.

Seemingly, the right to basic education is distinguished from any possible right to choose an education intermediary. The latter (right to choose education intermediary) mainly considers the case or convenience or preference<sup>17</sup>, which depends on the practical possibility, statistics, and affordability in the best option<sup>18</sup>.

There is no support for mother tongue education as a critical right in many documents and countries. States and educational officials (including churches) in many places (such as countries in North Europe) have had some information about the negative consequences of the dominant education and superiority of transitional bilingual education since the late 1800s. For instance, the Board of Indian Commissioners in the USA wrote in its report 1880, "education of reading and writing in an indigenous language in the first stage allows children to learn English more easily when studying. A child that starts its four-year course in Dakota becomes English advanced at the end of the course compared to those who do not study in Dakota. It is correct that missionaries say those students who start with the Hindi language then learn English studies were better in English speaking after three or four years rather than those who began with completely English speaking<sup>19</sup>."

## 2. Government's Civil Liability for Violation of Right to Mother Tongue Education

This section addresses the civil liability of the government for violation of the right to education. Because some teaching weaknesses (e.g., lack of adequate school atmosphere, lack of happiness, lack of open space in schools, financial issues of teachers, poor public culture, students' distraction,

<sup>14</sup> Department for Education and Skills, "Ethnicity and Education: The Evidence on Minority Ethnic pupils, Office of the Commissioner for Human Rights, Report by Mr. Alvaro Gil Robles, Commissioner for Human Rights, 2006" 6.

<sup>15</sup> J. Beckman & J. Prinsloo, Towards an analytical framework for accountability regarding equal educational opportunities. (Perspectives in Education, 22, 2004). 133-146.

<sup>16</sup> Ghasemieh, M. (2014). A review of education in the UK, Journal of Education, 74, 364.

<sup>17</sup> I.J. Oosthuizen. & J.P. Rossouw. 2001. "Die reg op basiese onderwys in Suid-Afrika". Available from Sabinet Online SAe Publications database(2001), accessed 4 October 2004.

<sup>18</sup> I.J. Oosthuizen. & J.P. Rossouw. 2001. "Die reg op basiese onderwys in Suid-Afrika". Available from Sabinet Online SAe Publications database(2001), accessed 4 October 2004.

<sup>19</sup> Francis, N. & Reyhner, J.: 2002, Language and Literacy Teaching for Indigenous Education. (Clevedon, UK, A Bilingual Approach, Multilingual Matters, 2002), 98.

inappropriate design of educational environments, problematic teaching methods, not allowing female pupils to go to school in rural areas, and insufficient presence of teachers in schools) that disturb education process, the governments must compensate the loss of individuals who are not allowed to educate. Governments do not comply with their obligations considering the education development context in many areas; therefore, many people are deprived of education. This part of the study examines the government's civil liability for violating citizens' right to mother tongue education.

### **2.1. Government's Civil Liability for Violation of Right to Mother Tongue Education in Iranian Law**

In Iranian law's case of the pathology of public education, those causes must be mentioned that their removal can alter the public space of education. Lack of adequate school atmosphere, lack of happiness, lack of open space in schools, financial issues of teachers, poor public culture, students' distraction, inappropriate design of educational environments, problematic teaching methods, not allowing female pupils to go to school in rural areas, and insufficient presence of teachers in schools are some of the shortcomings that destroy education process. Such dilemmas can be removed by choosing fundamental solutions. In this case, the educational system of the UK serves as a role model because all institutions and centers providing social services in the UK have preschool education centers that cover children older than 5. Most preschool education services are provided by social service administrations with local authorities in the UK. It is worth noting that the mentioned centers help specialists and British families based on the need degree of children by providing educational and psychological health services. All preschool educational institutions that work using the supervision of indigenous and local offices of the education organization benefit from educational subsidies<sup>20</sup>.

Article 30 of Iran's Constitution specifies, "The government is responsible for providing the means for public education for everyone up to the end of high school. It must expand free higher education until the point when the nation reaches self-sufficiency." Following paragraph 3 of Article 3 of the Constitution, one of the basic duties of government is providing free academic and physical education, at all levels for everyone, facilitation, and extension of higher education. The term "for everyone" in clause 3 of Article 3 and the term "for the nation" in Article 30 implies that constitutional law believes in the right to education for all citizens without considering any discrimination between their nationalities. Although individuals may benefit from this opportunity differently based on their competencies and talents, some lawyers have explained in accordance with this argument that there is no legal constraint on education in terms of age, sex, beliefs and manner, and religious beliefs<sup>21</sup>. Because Iranian rules have not mentioned the civil liability of the government for violation of the right to education, it seems difficult to obtain the causality relation and prove fault (conviction) of government in such cases.

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<sup>20</sup> de Varennes, F, Tolerance, and Inclusion: The Convergence of Human Rights and the Work of Tove Skutnabb-Kangas, in R. Phillipson (ed.), language rights. Equity, (NJ & London, power and education, Lawrence Erlbaum Associates, Mahwah, 2000). 67-71.

<sup>21</sup> Mehrpour, H. (2008). A concise of the constitutional law of the Islamic Republic of Iran, Dadgostar Publications, Tehran, 73.

## **2.2. Government's Civil Liability for Violation of Right to Mother Tongue Education in Common Law**

The right to mother tongue education mentioned as human for human in international documents is the right to the nations' specific linguistic and cultural education, emphasized in international documents. Because people are born in specific linguistic and cultural societies, governments are not allowed to violate this right, while they are obliged to provide some means and amenities for the growth and excellence of that specific right. Therefore, it seems any fault of governments in fulfillment of these rights leads to their obligation for the revival of these rights and compensation for citizenship rights violated in the past. Nevertheless, no solution has been anticipated in Iran's law, so it is impossible to oblige Iranian governments to comply with mother tongue rights<sup>22</sup>.

According to the right to education in Common law based on the rules of the UK, all students must receive educational programs suitable for their age groups, abilities, and educational talents. The national education plan and specialized research education plan of sciences, techniques, and art were implemented since fall 1989 in the educational system of the UK. Indigenous local education centers, board of directors, and top teachers of private schools are responsible for designing and providing educational programs, including national and religious science education<sup>23</sup>.

This country aimed to evolve the education system and create a new community consistent with the new industrial society considered before the industrial revolution. Therefore, education has played a vital role in the restoration and transformation of the UK society during the past centuries so that this system has transferred as a precious heritage from one generation to another. The generations have also performed responsively to protect and develop this system. Unlike many nations, the education system has been progressed and evolved based on the peace in the UK because British people believe that great memorable things must be done under peaceful and rational conditions free of any illogical ambitiousness.

## **3. Sanction for Violating the Right to Mother Tongue Education**

Refusal of measures mentioned above and not teaching indigenous language and literature in schools are samples of violating rights of the constitution that make the government liable. Adjunction is one of the mechanisms used to guarantee the right in the Islamic Republic of Iran Constitution. The specific mechanism is also a surveillance process used in the legal system of the Islamic Republic of Iran that is applicable to guarantee the right to teach and educate indigenous and regional language and literature. The mechanisms have been appointed in the Constitution, the court of administrative justice, and the jurisdiction of the Supreme Court that investigates presidential violations. Besides the mechanisms that can be performed by individuals belonging to minorities by referring to relevant bodies and filing a lawsuit, Guardian Council's supervision over approvals of Islamic Parliament of Iran and the president's liability for entry the constitution into force are other mechanisms. The procedures and acts related to such supervision include no specific authority for individuals. At the same time, this regulatory mechanism plays a significant

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<sup>22</sup> R, Dunbar, *Minority Language Rights in International Law*, (International and Comparative Law Quarterly, 2001), 120.

<sup>23</sup> Joseph P, Gromacki. *The Protection of Language Rights in International Human Rights Law: A Proposed Draft Declaration of Linguistic Rights*, (Virginia Journal of International Law, 1992). 875.

role in guaranteeing the rights contained in the Constitution so that omission of action and regulatory affairs done by surveillance organizations cause their liability, which is considered in the frame of casualty and non-performance regulatory tasks<sup>24</sup>.

The legal system of Iran has not explained how to complain about the operations of the Assembly, executive, or judicial powers. Then law on how implementing Article 90 of Constitution announces only once, “the commission only considers those complaints about the operation of triple powers, no objection to the policies, and adoption of procedures and acts taken by triple powers to do their tasks<sup>25</sup>.” Hence, individuals belonging to linguistic minorities and associations have the legal authority to object to the educational and linguistic policies of executive powers and their respective bodies due to their negligence of a linguistic policy recognized in political law. Accordingly, these individuals can submit their lawsuits to the Islamic Consultative Assembly. It is assumed that the mechanism in this article does not have the authority to issue binding items to guarantee the right of linguistic minorities. It can be stated that this commission can submit the case to the judicial authorities for compensation for the violated rights of minorities. Accordingly, the announcement of the violation of this right in public cases can serve as a spiritual sanction for the revival of violated rights.

### **3.1. Sanction for Violating the Right to Mother Tongue Education in Iranian law**

Article 15 of the Constitution indicates the rights of individuals belonging to linguistic groups and communities to receive educational amenities and facilities and educational programs to learn the literature of their languages (regional and indigenous languages). The government is obliged to design executive regulations and provide required financial and human resources in the framework of four principles ruling the right to education, including accessibility, availability, adaptability, and acceptability. Acceptance of the government's obligation and duty to teach relevant schoolbooks and employ skilled teachers has been emphasized by enactors of the Constitution of the Islamic Republic of Iran. Therefore, the omission of relevant actions makes governments liable. However, elementary education has been considered compulsory education in law, while the government has been obliged to provide higher education requirements as much as possible because people become specialists and can do complex professions after receiving academic education. Hence, higher education cannot be introduced as an inclusive need like elementary education, so it is not required to take higher education into account compulsory education<sup>26</sup>.

Although Article 15 implies admission of the right to teach regional and ethnic languages in schools, these rights require governments to take positive measures in designing relevant regulations providing financial and human resources, such as schoolbooks and experienced teachers. This case has been originated from the negotiations of the Constitution Assembly.

One of the parliament members asked, “Whether government employ an Arabic language teacher for one who wants to learn the Arabic Language, or whether the government is obliged to employ a teacher of Baluchi language for one who wants to learn this language?” Vice President answered, “Yes! The government is obliged to do this. It means if they had right to teach this language, was

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<sup>24</sup> Javid, M.J. (2017). *The theory of relativity in citizenship rights*, Khorsandi Publications, First Edition, Tehran, 84.

<sup>25</sup> Ghmami, M. (1997). *Governmental tort liability for actions of its employees*, Dadgostar Publications, Tehran, 135.

<sup>26</sup> Ghazi, S.A. (2006). *Requirements of constitutional rights*, Mizan Publications, Tehran, 149.

the government responsibility to provide what they need, including book and teacher?" "Yes!" he answered<sup>27</sup>.

The corresponding government's obligations and duties include positive tasks of providing available means and facilities. Furthermore, educating and teaching ethnic and indigenous languages and literature requires the government's scientific attempts to standardize ethnic and indigenous languages regarding the diversity in relevant accents to provide an appropriate field for educating this language among other educational programs. With the principle of acceptability of educational programs and systems, the government is obliged to present respective services for educational programs and courses based on the productivity, utility, and satisfaction of education service receivers. According to examined parliamentary deliberations on the final review of the constitution considering Article 15, the government is responsible for identifying positive tasks related to teaching indigenous and ethnic language and literature in schools.

Violation of a right contained in the constitution is a nature-related concept with an obligatory and binding concept. If the task comprises some obligations with negative and non-interventional nature, then any interference or practical measure is inconsistent with the purpose of the considered right, so it is taken as the right violation. If the responsible body has obligations with a positive, necessitating, and interventional nature, then any refusal of positive and practical measures and avoiding providing essential requirements of a right will be considered a right violation.

The ethnical and linguistic communities and groups' right to teach and learn their ethnic and indigenous language and literature have been recognized as a right to demand in Article 15 of the Constitution, so the government is obliged to do positive measures to take legal rules and regulations to apply this right and provide required financial and human resources. In other words, arrangement and procurement for teaching indigenous and ethnic language and literature are not possible through individuals' private and independent initiative. However, this issue requires the direct and necessitating intervention of government by creating required legal and practical fields.

### **3.2. Sanction for Violating the Right to Mother Tongue Education in Common Law**

According to the judicial review rule that is considered an important principle in the UK, all votes and verdicts issued by commissions and specific administrative courts are revisable in the last stage in higher judicial courts (court of justice). On the other hand, some judges of judiciary power participate in specific administrative commissions, and administrative trial and hearing are done based on the administrative, procedural law, which is more or less influenced by judicial procedural law<sup>28</sup>.

Subject to the law on permission to file a lawsuit against the government, approved in 1947, administrative courts could hear people's complaints against public administrative organizations. Subject to the law on courts and administrative investigations, approved in 1985, a council called administrative courts council is responsible for monitoring enforcement and coordinating tasks of these courts under the supervision of judiciary power.

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<sup>27</sup> Detailed minutes of the parliamentary deliberations on the final review of the constitution, (1985). Islamic Consultative Assembly, Public Relations, 577.

<sup>28</sup> Tabatabaee Motameni, M. (2006). Public freedoms and human rights, third edition, Tehran University Press, Tehran, 125.

According to the law approved in 19747, permission on filing a lawsuit against the government, the victim or plaintiff refers to these administrative commissions and files a lawsuit against the central government with local government and their agents. In this case, the plaintiff can demand compensation for the loss caused by administrative operations and decisions in accordance with government liability. Under the UK rule, administrative actions and decisions may be violated in various cases, including misfeasance or act without legal authority (*ultra vires*), whether substantively or formally, by public officials that has led to termination or violation of the administrative action or decision in the court so liable officials must compensate for incurred losses. Moreover, the administrative action or decision should have *ultra vires* and must be reasonable. The irrationality of decisions is taken into account by the *ultra vires* making the court issue termination or violation of administrative action or decision.

The right to judicial review and its compliance with subordinate legislation and customary law are under the authority of judicial courts to prevent public officials' *ultra vires*. Moreover, courts and authorities can hear all administrative actions and decisions, whether directly in the case between two parties or directly based on one's claim, and issue vote on termination or violation in case of legal faults<sup>29</sup>.

It is a clear reverse relationship between citizenship rights and judicial corruption, i.e., judicial corruption implies the absence or poor presence of citizenship rights. Like other anti-corruption requirements, judicial corruption must be combatted based on its nature<sup>30</sup>.

On the other hand, it is difficult to prove the civil liability of the government, and despite the government's violation in doing some action, it is not possible to oblige it for compensation. In terms of attaining causality relation for government fault-proof, if the government does not comply with tasks and duties contained in different laws, especially Constitution, it will be considered the case of omission of an act that causes fault forms and civil liability. However, there is no sanction on many fault cases, so many violated citizenship rights remain uncompensated by the government.

### **Conclusion and Recommendations**

Subject to Article 120 of Iran's Constitution, the president is responsible for enforcing the constitution. Articles 13-16 of the law on authorities and liabilities of the president of the Islamic Republic of Iran approved in 1986 include some regulations about the president's task. Article 15 of the Constitution (recognizing individuals belonging to linguistic minorities and their rights to mother tongue language) has been neglected and not enforced. Under Article 19 of the law on authorities and liabilities of the Islamic Republic of Iran president, "Investigation of accusations related violations in president's duties and authorities is under the jurisdiction of the supreme court." Therefore, individuals belonging to linguistic minorities can file a lawsuit against the president in case of violation of these rights under Article 15 of the constitution and submit the case to the Supreme Court. However, the mentioned authority is not defensible for considered individuals due to the lack of a transparent procedure. If this case is confirmed, investigation in

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<sup>29</sup> Tabatabaee Motameni, M. (2006). Public freedoms and human rights, third edition, Tehran University Press, Tehran, 132.

<sup>30</sup> Javid, M.J. (2017). The theory of relativity in citizenship rights, Khorsandi Publications, First Edition, Tehran, 84.

the Supreme Court of Iran may lead to the verdict issued by the court against violation of legal tasks by the president, which may cause the president's dismissal by the leader. This case does not directly affect the adjudication of the rights of the individuals belonging to linguistic groups and minorities; nevertheless, this is a direct but important effect regarding the responsible officials to do tasks of providing education of ethnic, indigenous, and regional languages and literature.

The accepted international rights to indigenous language education in the legal system of Iran include the minorities' rights to establish their specific schools and use their language in these schools in accordance with Article 151 of the Convention against Discrimination in Education and the general rule of freedom of work with minorities subject to Article 27 of International Covenant on Civil and Political Rights. As mentioned before, international human rights treaties are regular rules accepted with similar legal status in the legal system of Iran. Therefore, violation of rights of individuals belonging to minorities in the legal system of Iran can be investigated in a competent court so that such violation can receive a judicial hearing. Subject to Article 173 of the Constitution, the competent judicial authority is the Court of Administrative Justice that investigates violations and obliges the public officials to fulfill their commitments and compensate for the losses. Court of Administrative Justice can pursue the mechanism of guaranteeing linguistic rights of minorities in terms of the relevant measures and actions, educational bodies, and officials. However, the Court of Administrative Justice can provide an eligible guarantee for full access of the individuals belonging to linguistic groups and communities to their rights accepted in Article 15 of the Constitution. The court's authority is annulling the governmental acts against these rights mentioned in Article 15.

On the other hand, the Court of Administrative Justice is one of the judiciary power units responsible to monitor the enforcement of rules and can oblige the relevant governmental institutes to realize the violated rights. It is recommended to enact some rules on citizenship rights, like common law countries, to compensate for any violated right. Hence, it is suggested to add article(s) with criminal sanctions under the plans of Islamic Consultative Assembly or public bylaws to make individual(s), whether governmental or others, who violate citizenship rights compensate for financial losses in addition to confinement punishment.

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