

# Iran's Criminal Policy Regarding Judicial Supervision Orders

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## Abstract

The occurrence of a fair trial and the realization of justice are not possible except on the basis of precise and transparent rules governing judicial proceedings. The right to a fair trial, which extends practically to all criminal and civil proceedings, encompasses the entire judicial process—from crime detection, prosecution of the accused, and preliminary investigations to trial, final judgment, and enforcement of punishment. The realization of justice constitutes the ultimate objective of all judicial proceedings, and a fair trial is considered one of the most important indicators for evaluating the advancement of a country's social and judicial structure. Assessing the fairness of proceedings is achievable only through the establishment of criteria identified as the necessary standards for recognizing judicial processes as fair. With the extensive application of pretrial detention against suspects and the harmful consequences resulting from it, along with widespread criticism concerning excessive reliance on imprisonment and detention-oriented policies, the proposal to establish alternatives to imprisonment at the pretrial stage emerged. This development led to the formation of a new perspective among criminal policymakers aimed at restricting the use of pretrial detention and respecting one of the most fundamental rights of individuals—personal liberty—throughout different stages of criminal proceedings, particularly during preliminary investigations. This new criminal measure, incorporated into the laws of most criminal justice systems, encouraged these systems, in accordance with international instruments, to reduce reliance on pretrial detention to the minimum possible level. The judicial supervision order represents such a measure and is regarded as one of the indicators of achieving a fair trial. Understanding the nature of judicial supervision orders, due to their emergence as primarily complementary and subsidiary measures alongside preventive orders, assessing the rationality behind the creation of this new institution, analyzing the method of issuing such orders and their enforcement procedures, and identifying the conditions and requirements that enhance their effective implementation are issues of particular importance given the novelty of this criminal institution.

**Keywords:** Judicial supervision, liberty-oriented approach, security-oriented approach, pretrial detention.

Received: 01 November 2025

Revised: 07 March 2026

Accepted: 14 March 2026

Initial Publication 12 May 2026

Final Publication 01 November 2026



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**Citation:** Valehi, H., ELahimanesh, M. R., & Goldoust Jouybari, R. (2026). Iran's Criminal Policy Regarding Judicial Supervision Orders. *Legal Studies in Digital Age*, 5(6), 1-15.

## 1. Introduction

At the pretrial stage, criminal security measures constitute one of the most significant responses within criminal policy. Judicial authorities may, considering the personal and surrounding circumstances of the accused as well as the severity and nature of the alleged offense, issue an appropriate preventive measure. Among these measures, pretrial detention represents the most severe form of criminal security order and the harshest judicial reaction toward the accused. This measure deprives the accused of liberty and leads to their detention throughout all or part of the criminal proceedings. For this reason, criminal policymakers, seeking to reduce the scope of such responses and the harmful consequences of pretrial detention, have attempted to avoid excessive reliance on detention by adopting more effective reactive mechanisms and ensuring greater protection of the accused's liberty during criminal proceedings—provided that such protection does not conflict with investigative necessities, discovery of truth, the conduct of a fair trial, compensation for private claimants, or protection of public interests. Accordingly, various alternative mechanisms have been introduced, among which judicial supervision constitutes one of the most important.

One of the defining characteristics giving meaning to the criminal policy of judicial supervision orders is the objective established by law for their application. The purpose of issuing such orders within criminal proceedings is the realization of a fair trial (Moazenzadegan & Yazdanian, 2018). Judicial supervision also aims at protecting the rights of the accused and enabling effective monitoring outside prison, thereby promoting a liberty-oriented approach, granting maximum possible freedom to the accused, moderating power-centered and security-oriented criminal policies, reducing detention-based practices, preventing recidivism, considering victims' rights, achieving restorative justice, rehabilitating and reforming offenders, and safeguarding societal interests.

In light of criticisms raised by human rights doctrine, criminology, and other legal and empirical criminal sciences against detention measures imposed on suspects, criminal policymakers have developed both traditional and modern alternatives. Traditional alternatives appear in the form of criminal security measures such as commitments to appear based on personal guarantee, financial undertakings, bail, and surety. Alongside these, newly emerging commitment-based mechanisms within criminal procedure—operating within the framework of preventive measures and judicial supervision—represent modern alternatives that have increasingly been recognized within the criminal policies of various countries. Judicial supervision is a method under which accused persons, while enjoying liberty, remain under the supervision of criminal justice authorities. This mechanism serves simultaneously as a substitute for detention during criminal proceedings and as a means of restricting liberty only to the extent necessary, thereby facilitating the accused's freedom while controlling their conduct outside custodial settings.

Accordingly, judicial supervision orders constitute a category of criminal security measures grounded in the principle of individual liberty. Rather than imposing deprivation of liberty, they aim to protect suspects from custodial measures by restricting freedom through diverse non-custodial conditions. This approach has attracted the attention of criminal policymakers as a means of expanding defendants' liberty and avoiding the adverse consequences of liberty-depriving measures (Niyazpour, 2013). Through the implementation of this mechanism, the accused is not detained but instead experiences limited restrictions on certain freedoms. Judicial supervision manifests itself through both negative and positive dimensions: the first includes prohibitions requiring the accused to refrain from certain acts, such as entering specified locations, while the second encompasses affirmative obligations requiring compliance with commitments such as undergoing psychological or medical treatment.

## 2. Foundations of Establishing Judicial Supervision Orders

The increase in prison populations and the negative consequences arising from imprisonment prompted scholars in empirical criminal sciences to expand the concept of alternatives to imprisonment beyond the sentencing phase and apply it to the investigative stage as well. Consequently, international institutions and domestic criminal policymakers moved toward adopting modern regulations limiting the use of detention prior to conviction. International standards—such as United Nations guidelines concerning persons deprived of liberty—emphasize that pretrial detention should be used only as a last resort and for the shortest possible duration. The same principle applies to adults. Achieving this objective requires an effective criminal

policy capable of introducing alternatives to pretrial detention within the criminal justice system, one of which is judicial supervision.

Judicial supervision orders rest upon both legal and criminological foundations. The legal foundation concerns respect for the principle of liberty and the protection of personal security, requiring that judicial supervision be capable of independent issuance as a preventive measure replacing pretrial detention. The criminological foundation relates to the physical, psychological, and environmental conditions of the accused and their interaction with society, aiming to avoid stigmatization during criminal proceedings. This approach contributes to rehabilitation and reform of the accused, respects victims' rights, promotes restorative justice, and protects societal interests (Najafi Abrandabadi & Hashembeigi, 2016).

### 2.1. *Liberty Orientation*

The dominance of the principle of liberty for the accused, contrasted with the exceptional nature of pretrial detention, reflects positive orientations within legislative criminal policymaking. Liberty represents a fundamental human value through which individuals may actualize their inherent capacities and exercise autonomy in behavior, provided no harm is inflicted upon others. Therefore, deprivation or restriction of liberty within the criminal justice system must be supported by strong and rational justification. Although maintaining order and ensuring security constitute important grounds for limiting citizens' freedoms, the recognition and regulation of liberty-restricting measures must always remain aligned with the principle of maximizing individual freedom.

The supremacy of this principle obliges judges to refrain from arbitrary decision-making and to avoid excessive or unfounded restrictions on the rights and freedoms of suspects (Shams Nateri, 2002). Clearly, although individual liberty is justified as a norm grounded in the presumption of innocence, exceptional circumstances may justify departure from it. When a crime occurs, the requirements of social defense and the protection of legitimate civic rights may come into tension during judicial proceedings. At this intersection, despite constitutional guarantees and procedural protections affirming liberty, the presumption of innocence may temporarily yield to indications of criminal responsibility within the judicial process.

Nevertheless, criminal policymakers have consistently attempted to minimize limitations on fundamental freedoms whenever possible. Modern criminal law, through recognition of judicial supervision as a criminal institution, seeks to realize liberty-centered governance by supervising suspects while preserving maximum freedom, insofar as this does not conflict with victims' rights or social order. However, although Iranian criminal procedure legislation has incorporated this modern institution, the underlying rationale and philosophical foundations of its creation appear insufficiently reflected in legislative design. Judicial supervision in Iranian law is generally issued as a complementary measure alongside other preventive orders, a structure that may place the accused under more restrictive conditions without fully guaranteeing effective liberty.

### 2.2. *Prevention of Recidivism*

Prevention of reoffending—or prevention of a return to criminal behavior—constitutes one of the principal objectives of security measures, grounded in the existence of a dangerous state within the offender that indicates deviation from normal processes of socialization. Consequently, mechanisms of social defense and reintegration must become more active in addressing such individuals (Babaei, 2004). This form of prevention, derived from supervision rather than punishment, lacks the punitive and suffering-oriented characteristics of criminal sanctions and instead seeks to neutralize dangerous tendencies through corrective intervention.

From a criminological perspective, reformative responses that respect the rights of the accused are more effective in preventing reoffending than harsh and repressive measures. Accordingly, legislative criminal policy in Iran introduced the institution of judicial supervision, whose affirmative and prohibitive orders—enumerated in Article 247 of the Criminal Procedure Code—possess preventive characteristics by eliminating opportunities conducive to criminal conduct by the accused.

### 2.3. *Attention to Victims' Rights and the Realization of Restorative Justice*

Restorative justice provides an explanatory framework that introduces an alternative conception of crime and criminal justice policy. It represents a modern mode of thinking about both criminal behavior and the appropriate societal response to it.

Restorative justice in criminal matters is fundamentally based on the principle of reparation, meaning that efforts must be made to compensate for the harmful consequences of crime and the damages resulting from it. Within this framework, offenders are given an opportunity to repair what has been destroyed through criminal conduct, primarily by compensating the victim, regardless of the reasons or circumstances underlying the offense. In restorative criminal processes, emphasis is placed on ensuring that reparation originates from the offender themselves (Gholami, 2014).

The idea of supporting victims has attracted significant attention from criminologists and criminal policy scholars since the second half of the twentieth century. Influenced by this perspective, the United Nations General Assembly adopted the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, granting the concept organized international recognition. Victim-oriented victimology, closely connected to criminology, emphasizes protection of victims throughout judicial proceedings so that they may effectively pursue compensation for damages suffered. Consequently, victim compensation moved from the domain of victimology into the broader sphere of criminal policy, drawing the sustained attention of criminal lawmakers (Najafi Abrandabadi & Hashembeigi, 2016).

In establishing any criminal institution, legislators pursue specific objectives. One of the aims underlying judicial supervision orders is the compensation of harm suffered by victims. Accordingly, the legislator—seeking compliance with fair trial principles, realization of justice, and restoration of material and moral damages—has introduced measures such as travel bans within Article 247 of the Criminal Procedure Code, reflecting explicit legislative attention to the position and rights of the victim.

#### 2.4. *Rehabilitation and Reform of the Accused*

Judicial supervision orders are fundamentally regarded as substitutes for liberty-depriving measures. This approach creates the possibility of avoiding deprivation of liberty while allowing the accused to remain under the supervision of the criminal justice system. At the same time, such judicial supervision prevents the accused from enjoying absolute freedom, as their conduct becomes subject to judicial monitoring. The essential distinction between judicial supervision orders and custodial measures lies precisely in their rehabilitative and reformatory character, granting the accused a renewed opportunity for reintegration and reconciliation with a lawful and socially accepted way of life.

Criminality is a social phenomenon present in all human societies. Criminal justice represents a collection of institutions and procedures through which society reacts to criminal behavior. The principal components of this system include substantive criminal law, criminal procedure, judicial institutions, and various policing bodies (Pica, 2014). The function of preventive measures may generally be classified into two categories: duty-oriented (retributive) and utility-oriented (preventive). The duty-oriented function focuses on past conduct and seeks primarily to reproach the offender for the committed act, whereas the utility-oriented function emphasizes the future of both the accused and society, aiming to prevent initial offending by potential offenders and to prevent recidivism through rehabilitation and treatment of actual offenders.

It is evident that detention and the prison environment neutralize rehabilitative and corrective programs. Beyond the well-documented social, cultural, economic, criminological, and psychological harms associated with detention, indirect negative consequences may also arise. For instance, an accused person subjected to prolonged detention may feel compelled to confess merely to secure release or obtain a lighter sentence. Consequently, the application of preventive and precautionary measures may resolve numerous difficulties within criminal proceedings and contribute to more constructive and beneficial responses toward suspects and offenders. On this basis, criminal policymakers may employ judicial supervision orders as instruments for rehabilitation, reform, and ultimately treatment of the accused throughout criminal proceedings.

### 3. **Effective Characteristics of Criminal Policy in the Tendency Toward Judicial Supervision Orders**

#### 3.1. *Security-Oriented Approach Governing Pretrial Detention and Liberty-Oriented Approach Governing Judicial Supervision*

Security-centered perspectives emphasizing protection of life and property and promoting control-oriented criminological thinking gradually marginalized the rehabilitative and educational orientations of clinical criminology. Criminal law policies consequently shifted toward security-focused and repressive models. Under the influence of this transformation, guarantees of

legal and judicial security became subordinated to concerns relating to physical safety, financial security of citizens, and maintenance of public order.

The dominance of security-oriented criminological theories, prioritizing concepts such as public order and collective security over individual rights and freedoms, generated wide-ranging consequences across legal systems. Security criminology thus emerged in contrast to normative criminology, which seeks to subject criminological methods and achievements to human rights standards before integrating them into criminal law. Within security criminology—sometimes described as strategic or risk-based criminology—certain categories of offenders or crimes are identified as socially dangerous and consequently subjected to exceptional criminal responses. This confrontation reflects a deeper tension between two competing rights: society’s right to security versus the individual’s right to protection against excessive police and judicial power (Najafi Abrandabadi, 2013).

Security criminology emphasizes dangerousness, preventive and corrective measures, and a “war against crime,” frequently prioritizing exclusion of dangerous offenders rather than their reform. As a result, national criminal policies—particularly regarding specific categories of offenses—may depart from their traditional models. In practical terms, this orientation leads to security-centered criminal policy, especially toward repeat or dangerous offenders.

The manifestations of this perspective within criminal law, particularly procedural criminal law, include expanded use of pretrial detention, increased reliance on imprisonment, investigative authority concentrated in prosecutorial bodies, and reduced attention to individualized punishment. Such outcomes demonstrate a diminished focus on the humanity of offenders, especially repeat offenders and those classified as dangerous. The dominant criminal justice model under this approach is the crime-control model rather than the fair-trial model. Within conflicts between individual rights and societal interests, the accused’s rights tend to be sacrificed in favor of collective security, with criminal justice institutions prioritizing rapid arrest, conviction, and punishment while procedural guarantees are weakened (Ghapanchi & Danesh Nari, 2012).

Another consequence of security-oriented policy is the classification of crimes into serious and minor offenses and the differentiation between dangerous and ordinary offenders. Accordingly, in some minor cases suspects may be subjected to strict supervision, while in serious offenses supervision may occur through less restrictive measures such as bail or surety. The requirement that suspects remain accessible to criminal justice authorities has transformed criminal policy thinking concerning preventive measures. Historically, accessibility was ensured through detention lasting until completion of proceedings—an approach fundamentally inconsistent with the principle of liberty.

With the evolution of criminal law, preventive measures increasingly came to emphasize supervision rather than detention, ensuring the availability of suspects while providing proportionate responses when obligations imposed by supervisory orders are violated. The emergence of liberty-oriented criminal policy significantly influenced criminal justice practices worldwide. Comparative criminal justice systems, despite procedural differences, increasingly favor supervisory orders functioning as warning-based measures rather than punitive interventions prior to proof of guilt (Miri, 2011).

Under this perspective, pretrial detention has been accepted only as an exceptional measure aimed at ensuring access to the accused and preventing destruction of evidence. Meanwhile, supervision—through monitoring systems, including electronic surveillance or restrictions on movement—allows control of the accused while preserving personal liberty. Contemporary governmental policies emphasizing supervision have consequently led to recognition of supervision-based measures as modern criminal institutions within the framework of preventive orders. This new institution establishes a differentiated and protective criminal policy during criminal proceedings, preserving pretrial detention as the harshest preventive response while restricting its application.

### 3.2. *Differential Model Based on Protection of the Accused*

The differentiation of criminal procedure forms part of a broader transformation experienced by criminal law—more precisely, criminal policy. Classical criminal law principles were reconsidered under the influence of modern social defense doctrines, which emphasize both the humanity of offenders and victims and the importance of integrating findings from empirical criminal sciences into criminal justice policymaking. According to this approach, criminal law and criminal justice, as central components of criminal policy, must diversify their responses based on developments in criminality, victimization, and evolving human rights standards (Najafi Abrandabadi, 2013).

Physical, personal, and environmental characteristics of the accused, together with individual criminological traits, justify adoption of a differentiated protective policy. Human rights principles, criminological insights, and even victimological considerations have therefore significantly contributed to the emergence of differentiated procedural regimes tailored to accused persons according to the nature of the charges brought against them (Kamali & Hosseini, 2016).

A central feature reflecting this differential perspective in preventive measures possessing supervisory characteristics is the substitutive function of judicial supervision orders in place of pretrial detention (Tadayon, 2013). This approach demonstrates that criminal policymakers, by creating supervision-based measures, sought to provide judicial authorities with flexible tools adaptable to the specific circumstances of each accused person.

For example, within the criminal justice system of England, specific rules govern conditional release where statutory limits on pretrial detention are exceeded. Upon expiration of permissible detention periods, the right to release on bail under the Bail Act 1976 becomes absolute. In such circumstances, courts are prohibited from imposing earlier custodial conditions such as requiring guarantors, financial deposits, or sureties, and may only impose supervisory conditions applicable after release—such as curfews, residence requirements, or obligations to report to competent authorities.

This comparative development illustrates how supervisory measures operate within modern criminal policy as instruments balancing procedural efficiency, protection of individual liberty, and effective administration of justice.

### *3.3. Negative Consequences Resulting from Depriving Accused Persons of Liberty*

#### *3.3.1. Incompatibility with the Presumption of Innocence*

In criminal matters, the principle is that all persons are innocent unless their criminal responsibility is proven. This principle is accepted throughout the criminal process, including at the prosecution and investigative stages, such that—based on it—individual liberty should not be restricted or deprived without strong justification (Keshvari Baghan, 2005). A liberty-depriving order, as one of the instruments of the criminal justice system for preventing the accused from absconding, colluding with others, and diminishing the risk of destruction of traces and evidence of the offense, has been recognized in the procedural laws of many countries, including Iran.

However, in today's world, many criminal policymakers, within the framework of criminal procedure rules, have moved toward narrowing the scope of liberty-depriving measures in order to better secure the rights and freedoms of individuals—even those accused of crimes. It is evident that an accused person who is detained, unlike one who is free, cannot properly and easily benefit from all available legal facilities. In this way, equality of arms in criminal litigation may be jeopardized, leaving the accused with weaker and unequal means of defense.

#### *3.3.2. Emergence of Negative Prejudgment Against Accused Persons*

Liberty-depriving measures can negatively affect the final decision-making of judicial authorities. In practice, judges tend to adopt harsher decisions against accused persons who have been detained than against those who benefited from non-custodial measures. For example, a study conducted in a city in England in recent years indicated that 64% of detained defendants were sentenced to imprisonment, whereas the comparable figure for defendants tried for similar offenses under non-custodial measures (other than pretrial detention) was 17% (Ashouri, 2009).

#### *3.3.3. Inconsistency with Certain Criminal Institutions*

In the contemporary world, criminal policy and criminal policymakers have increasingly moved toward establishing and applying alternatives to imprisonment at the stage of enforcement. This orientation has gained attention because imprisonment, in addition to failing to properly fulfill rehabilitative and therapeutic functions, has produced harmful consequences in many cases. Accordingly, criminal policy today is increasingly directed toward reducing reliance on liberty-depriving measures so as to prevent the detrimental effects of imprisonment. The fear and insecurity generated by the consequences of such measures may constitute an important factor in preventing recidivism and secondary deviance among detained persons.

Nevertheless, the fear generated by incarceration during pretrial detention—which can sometimes be lengthy—not only diminishes over time, but the accused, due to being held in a detention environment and living alongside other detainees (especially professional offenders and persons regarded as “dangerous”), may lose positive personality traits and rehabilitative capacity, particularly where classification between accused persons and convicted prisoners is not effectively implemented.

#### 3.3.4. *The High Cost of Detention*

From an economic standpoint, imprisonment and detention are not socially optimal. The harmfulness of prisons and detention facilities has been so widely recognized that many opponents of custodial sanctions have argued there is no justification for keeping certain individuals in prison at society’s expense. Thus, insofar as possible, non-custodial measures should be used in place of liberty-depriving measures. Proper use of non-custodial measures can, on the one hand, mitigate the crisis of prison overcrowding and, on the other hand, prevent the substantial costs associated with incarceration resulting from liberty-depriving orders.

#### 3.3.5. *Disruption of the Life Course*

Pretrial detention may cause employed individuals to lose their jobs for a period of time, and many may remain unemployed even after acquittal. In this way, such detention can trigger the collapse of the social standing of individuals who previously held recognized positions in society and may lead to their dismissal. Moreover, when the accused is detained, their family may face serious difficulties and, in reality, experience disintegration. In some cases, the accused is the household breadwinner, and detention deprives the family of its main source of support. Accordingly, detention disrupts the ordinary life course of the accused and their family by generating numerous difficulties, including economic hardship.

### 3.4. *Priority of Supervisory Policy over Detention-Oriented Approaches in the View of Criminal Policymakers*

Protecting individuals against unlawful encroachment is, rationally, among the most fundamental rights of every person in society. Liberty is among the greatest divine gifts bestowed upon human beings. Depriving persons of liberty is incongruent with human nature, because liberty is intertwined with the human disposition and cannot be separated from it; accordingly, throughout history many thinkers have articulated the sanctity of liberty in their works (Katouzian, 2003). For this reason, the principle of liberty must be protected by legislators.

Liberty-oriented considerations and the negative characteristics of pretrial detention contributed to the limited appeal of this measure in international law among the public and civil institutions. The principle of liberty became a significant international concern and was recognized in the Universal Declaration of Human Rights (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1951). The preamble of the Universal Declaration of Human Rights identifies recognition of the inherent dignity of the human person as the principal foundation of freedom, justice, and world peace. Given that failure to recognize human rights standards and the belittlement of such standards threatens human security, states are guided toward recognition of the principle of human liberty (Razani, 1979).

The Declaration emphasizes, through Articles 1 and 3, that “all human beings are born free...” and that “everyone has the right to life, liberty and security of person.” Its drafters extended this perspective to the sphere of criminal justice as well and, in Article 9, characterized arbitrary and unlawful deprivation of liberty as unjust and impermissible. It provides that no person may be arbitrarily arrested, detained, imprisoned, or exiled. In addition, Article 11(1) expressly presumes the innocence of citizens.

Moreover, the United Nations Economic and Social Council (ECOSOC), at the beginning of Resolution 46/1984 dated 25 May 1984, provided that—beyond reducing the duration of pretrial detention—any days spent in detention prior to trial should be fully credited against the final sentence. The increasing attention of international courts and communities to liberty-oriented standards led to the understanding in many criminal justice systems that pretrial detention constitutes an exception and an infringement of the most fundamental human right—liberty. As a result, constitutional recognition of the principle of liberty and the emergence of judicial control mechanisms aimed at strengthening and guaranteeing individual rights became widespread in the criminal laws of many countries, whether developed or developing. Ultimately, such control sought to

reconcile individual liberty (through avoidance of detention) with deterrent requirements (through compulsory supervision of the accused) (Larguier, 1999).

Islamic law, too, has tended to restrict resort to pretrial detention because of its quasi-punitive character, and this has contributed to the turn toward substitute measures, including judicial supervision (Barari Larimi & Ghabouli Dorafshan, 2010). In French law, the statute of 17 July 1970, by establishing judicial supervision as a reactive criminal institution, created an intermediate response between full liberty and imprisonment. With the objective of reducing prison populations, it allowed courts to implement judicial supervision measures to avoid and prevent reoffending and to emphasize prevention without detention. This law was adopted under the title of consolidating the freedoms of the accused (Tadayon, 2013). Under this framework, rules concerning judicial control were organized and it was emphasized that release of the accused by the investigating judge should be treated as the principle, while pretrial detention should be regarded as an exceptional criminal response.

In English law as well, in order to avoid defects associated with pretrial detention—particularly where magistrates fear the accused may abscond—granting bail subject to conditions can serve as an appropriate substitute for pretrial detention. Magistrates are obliged to determine exclusive, enumerated conditions pursuant to legal requirements, and statistics indicate they do not typically limit themselves to imposing only a single condition. As a result, the defects attributed to detention may be mitigated: liberty is not taken without reason, and the public interest is preserved (Ohammi, 2004).

Pretrial detention is the most severe preventive measure; under it, the accused is imprisoned during all or part of criminal proceedings, including investigation and trial. Under Iranian criminal procedure, as reflected in Article 237, issuance of this order is not permissible except in specified categories of crimes (e.g., those punishable by deprivation of life, life imprisonment, and similar sanctions). This means that even under Iranian law the principle is non-issuance of pretrial detention, and its issuance is considered an exceptional matter.

### 3.5. *The Dual Punitive and Preventive Nature of Pretrial Detention*

Pretrial detention of the accused—also referred to in Iranian criminal law as “precautionary custody”—means depriving the accused of liberty and imprisoning them during all or part of the preliminary investigation by judicial order. This deprivation of liberty may also continue at the trial stage and persist until a final judgment is issued. In common-law systems, this institution is described as pretrial detention. Although it conflicts with individual liberties, it is conceived as protective of society. This implicit conflict makes preservation of this penal idea and technique more visible and renders careful identification of its governing rules and standards highly necessary. Accordingly, the regulations governing this institution in each country reflect the degree to which states have succeeded in managing the tension between liberty and security.

The absence of any restriction on the accused’s personal liberty, the preservation of public order, protection of victims’ rights, and—at times—the punishment of the accused and others constitute rational markers of the confrontation between liberty and security. Ultimately, by prioritizing security over liberty—and by presenting liberty as safeguarded through that security—some limitation on this innate human right is accepted, thereby providing a basis for justifying the use of pretrial detention.

When an accusation is raised against a person, obtaining an appropriate security measure from the accused is not only necessary; after formally informing the accused of the charge, the judicial authority is obliged to issue a proportionate criminal preventive measure. If the authority concludes that no accusation is attributable to the suspect, then there is no need to require any security measure at present or in the future. Accordingly, even where the accused denies the allegation, the authority must issue an appropriate preventive measure until examination of the evidence submitted by the accused—such as expert opinion—is completed. If non-attribution of the charge or insufficiency of evidence is established, then at any procedural stage the adjudicating judge is obliged to release the accused without requiring any security measure.

If a preventive measure is treated as a tool for safeguarding public order and citizen security against the accused, and detention is imposed in certain cases, such practice can only be understood through a security-oriented perspective of criminal law. It cannot be described as rehabilitative or therapeutic, because the criminogenic characteristics of a person deemed “dangerous” are not reduced by detention or imprisonment and may, in many cases, be intensified. A detention order clearly reflects the dual structure of penal responses, because it is a hybrid combining the concepts of rehabilitation and justice

(Abrams, 2007). This duality is also intelligible in light of the roles of security and social institutions, medical centers, and judicial bodies. Therefore, this type of order does not operate under a single coherent regime.

In one form, detention is preventive custody issued before the commission of an offense, resembling a security measure while nonetheless following the logic of punishment. Preventive detention prior to offending is, in effect, a form of imprisonment that ultimately ends in the accused's release; its purpose is medical, clinical, and social treatment aimed at removing the "dangerous state" and addressing personality disturbances. In another form, detention is ordered after an offense has occurred to secure the accused's presence at different procedural stages where supervision-based preventive measures cannot be applied; its punitive character is evident, yet it still functions in many respects like a security measure.

Ultimately, it may be argued that—given the criminal policy embedded in the procedural regulations of most criminal justice regimes, whether developed or developing—preventive detention, from the standpoint of principles governing temporal application of law, operates as a punishment and is therefore subject to the principle of non-retroactivity of criminal laws. Supporters of a security-oriented approach maintain that the suppressive and punitive character of preventive detention, together with its deeply prevention-centered orientation, makes it a more readily realizable objective than supervision-based orders. They argue that the punitive aspect of this measure, as a response to non-compliance with rules, effectively confronts the individual with punishment. In addition, its preventive dimension—toward persons suspected of reoffending, often due to dangerousness associated with personality disorders—facilitates the prevention of recidivism.

Nevertheless, a decisive and practically significant point that must be emphasized is that sustainable security is never achieved by disregarding the accused's defense rights.

### 3.6. *The Role of Practical Challenges in the Use of Judicial Supervision Orders and Pretrial Detention*

One important feature influencing criminal policy's increased tendency toward pretrial detention and judicial supervision is the set of positive and negative effects associated with issuing and enforcing these orders. Supervision within the framework of preventive measures is, in substance, a commitment-based order: the individual undertakes obligations and is thereby kept accessible to judicial authorities. Commitment to remain at home is a new institution within supervision-based preventive measures, whereby electronic tools are used to bring the accused under judicial control. In enforcing this order—as with other preventive measures except pretrial detention—obtaining the accused's consent is ordinarily necessary.

However, with respect to judicial supervision orders under Article 247 of the Iranian Criminal Procedure Code, the accused's consent is not a condition, and non-compliance with imposed conditions and instructions triggers enforcement consequences. At the same time, in one clause of Article 247, no enforcement mechanism is expressly provided for failure to comply with the stated commitment. This general ambiguity in the issuance rules on the one hand, and the unclear scope of supervision on the other, are fundamental drivers of the criticisms directed at this category of orders.

It should be noted that, under Article 9 of the Electronic Monitoring By-Law (adopted in 2018) and its note—where the legislator addresses the manner of implementing supervision, particularly via electronic devices—after the appearance of the accused or the convicted person, the monitoring center is required, upon verifying identity, to: (1) obtain collateral in order to compensate for damage to electronic equipment and to secure performance of obligations; (2) provide necessary instruction and obtain a written undertaking from the accused or convicted person; (3) install and activate the equipment for the person under monitoring; and (4) collect the cost of using the equipment from the monitored person according to the tariff, either monthly or, if the person wishes, in a lump sum. The note to that provision states that obtaining a criminal security measure from the convicted person is the responsibility of the judicial authority and is governed by the criminal procedure rules.

Accordingly, alongside supervision using electronic equipment, obtaining collateral and undertakings to compensate potential damages becomes necessary. This reveals a basic challenge: the multiplicity of security measures, and the fact that many accused persons, instead of agreeing to electronically monitored supervision, consent to surety, bail, or supervision without electronic equipment in order to avoid the obligations and potential liabilities associated with electronic monitoring.

In the implementation of supervision orders, substantial time and cost are incurred; therefore, compliance with the prescribed conditions and procedures significantly reduces waste in administrative time and enforcement expenditures. Another challenge, even where the accused agrees to electronic monitoring, concerns determination of the monitoring devices themselves. A further challenge for the accused or convicted person in using GPS-based monitoring relates to the data and information

collected about their movements and location, because all mobility is tracked and received continuously. Monitoring equipment continuously records the movements of the accused or convicted person, checks compliance with prohibited zones, and evaluates any prohibited contact with restricted persons or individuals at risk of victimization, as instructions imposed within judicial supervision orders.

In this context, continuous satellite-based tracking—compared with radio-frequency technology—demonstrates a significant expansion in monitoring the ongoing structure of responses to offenders and their conduct throughout the monitoring period. Continuous supervision can facilitate institutionalization of a community-centered approach and enable supervisory policy toward groups connected to offenders and offending. With the expansion of supervisory policies and community-based responses toward accused persons and convicted individuals, more effective outcomes may be achieved in rehabilitation, reform, and prevention of recidivism.

#### 4. The Approach of the Iranian Criminal Justice System Toward Judicial Supervision

As previously stated, judicial supervision is an order through which the investigating judge, with the objectives of reform, treatment, and control of the accused's dangerous condition, neutralization of criminogenic situations, prevention of detention, and protection of the rights of victims and society, imposes certain supervisory measures upon the accused (Tahmasebi, 2017).

In the French legal system—considered the origin of judicial supervision—this order was recognized as a substitute for pretrial detention. Under this framework, the accused undertakes compliance with one or several legally prescribed obligations and thereby adheres to the rule of law. If the accused refuses to comply with these obligations, pretrial detention is imposed as a response to such violation. Accordingly, judicial supervision in French law constitutes an independent and substitutive measure.

In most Romano-Germanic and common-law legal systems, including France and England, both traditional and modern alternatives to pretrial detention have been incorporated under the modern criminal institution of judicial supervision, and pretrial detention has been designated as the enforcement mechanism for non-compliance. From this perspective, the nature of judicial supervision becomes clear: it occupies the highest rank among preventive criminal measures, encompasses numerous and diverse forms of non-custodial measures, and functions as a comprehensive framework covering all alternatives to detention. Whenever the supervised person violates imposed obligations, pretrial detention is activated as the legal consequence.

However, judicial supervision has taken a different form within Iranian criminal procedure, resulting in a distinct conceptualization and policy orientation. In Iran, after informing the accused of the charges, judicial authorities may issue judicial supervision orders in two forms: **independent judicial supervision** and **supplementary judicial supervision**.

Independent judicial supervision refers to a situation in which the judicial authority selects supervision as the primary mechanism for controlling the accused during criminal proceedings without first resorting to non-custodial preventive measures. This form has been primarily considered for Ta'zir offenses of degrees seven and eight. Supplementary judicial supervision, by contrast, operates alongside non-custodial preventive measures in order to enhance control over the accused during criminal proceedings.

Under Iranian law, judicial supervision is defined as a preventive measure that, regarding Ta'zir crimes of degrees one through six, operates as a secondary and complementary order accompanying other criminal security measures, while in relation to Ta'zir crimes of degrees seven and eight it may function as a principal and independent order through imposition of one or more of the five supervisory obligations listed in Article 247 of the Criminal Procedure Code.

The Iranian legal approach—by granting judicial supervision both complementary and independent characteristics and by situating it under the broader framework of preventive measures rather than recognizing it as a substitute for pretrial detention—demonstrates a departure from the original philosophy and functional rationale of judicial supervision. A significant issue requiring attention is the separation of liberty-restricting measures from traditional preventive orders and their recognition under the independent title of judicial supervision while pursuing the same objectives as preventive measures within Iranian criminal procedure. In principle, judicial supervision should operate as a primary measure and take precedence over pretrial detention, with detention serving only as the enforcement response in cases of non-compliance.

#### 4.1. *Method of Issuance and Enforcement of Judicial Supervision Orders*

In issuing judicial supervision orders, the central issue concerns the method of issuance and execution—that is, determination of obligations to which the accused must commit and the mechanisms through which competent authorities monitor the accused’s conduct during implementation. Judicial supervision therefore constitutes a bilateral process: without the accused’s commitment to the supervisory framework, effective control cannot be achieved.

##### 4.1.1. *Non-Dangerous Nature of Offenders’ Liberty*

Iranian criminal policymakers, in Article 237 of the Criminal Procedure Code, adopted a liberty-oriented perspective by establishing non-issuance of liberty-depriving measures as the general rule. According to this provision, pretrial detention is impermissible unless specific serious crimes exist and strong evidence indicates attribution of the offense to the accused. Furthermore, pursuant to Article 238, detention becomes justified only when the accused’s release creates specific risks: destruction of evidence, collusion with accomplices or witnesses, intimidation of witnesses, risk of absconding or concealment, or threats to public order or to the safety of the complainant, witnesses, their families, or even the accused.

Thus, only where the accused’s liberty threatens the effectiveness of criminal investigation or public security may judicial authorities resort to detention for certain offenses such as life-threatening crimes. Conversely, when the accused’s liberty does not obstruct prosecution or investigation, the judicial authority may independently issue a judicial supervision order or employ it alongside other preventive measures.

##### 4.1.2. *Reformability of the Accused*

Criminal policymakers have also approached judicial supervision from a criminological perspective. Judicial authorities may select this measure to facilitate rehabilitation during criminal proceedings. Article 250 of the Criminal Procedure Code requires that supervision orders be reasoned and proportionate, taking into account the nature and gravity of the offense, severity of punishment, evidentiary circumstances, risk of flight, possibility of evidence destruction, criminal history, physical and psychological condition, age, gender, personality, and social standing of the accused.

Judicial supervision, like other preventive measures, is governed by the **principle of proportionality**, and both share common proportionality criteria. Proportionality functions as a mechanism for limiting public authority, ensuring that coercive measures remain confined to necessity and do not exceed what is required to achieve legitimate objectives. Accordingly, whenever the intended purpose can be achieved through a lighter measure, that measure must be preferred (Rajab, 2017).

Where judicial authorities determine—through assessment of factors such as psychological condition, age, personality, and social status—that rehabilitative capacity exists, judicial supervision may appropriately be applied. Nevertheless, Article 247 of the Criminal Procedure Code fails to explicitly include therapeutic or corrective obligations capable of significantly contributing to rehabilitation and social reintegration. Given that some offenders commit crimes under the influence of psychological disorders, explicit inclusion of treatment-oriented obligations within judicial supervision orders could substantially enhance rehabilitative effectiveness.

##### 4.1.3. *Commitment of the Accused*

The discretion of the judicial authority plays a decisive role in selecting judicial supervision. The judge may, based on individual and environmental circumstances, determine the appropriateness of supervision. However, unilateral judicial discretion alone cannot ensure effective implementation of this modern criminal institution. Judicial supervision includes both prohibitive and affirmative obligations; therefore, the accused’s acceptance is essential to its effectiveness.

Acceptance by the accused of obligations imposed under judicial supervision—particularly where the order is issued independently—creates a contractual dimension for this institution, strengthening compliance and cooperation (Niyazpour, 2013). Iranian criminal policymakers have partially acknowledged this characteristic. Article 254 of the Criminal Procedure Code provides that failure to comply with supervisory obligations may result in intensification of preventive measures and

revocation of the supervision order. Nevertheless, strengthening the consensual or contractual dimension of judicial supervision could further enhance the reciprocal relationship between judicial authority and the accused.

## 5. Consequences Arising from Issuance of Judicial Supervision Orders

The consequences of issuing a judicial supervision order consist of responses established by criminal policymakers in relation to compliance or non-compliance with imposed obligations. These obligations represent duties determined by the judicial authority at the time of issuance according to the type of supervision order. The law does not exhaustively enumerate such judicial instructions, leaving determination largely to judicial discretion.

In jurisdictions where judicial supervision operates as a principal measure substituting for pretrial detention, criminal policymakers generally establish only one enforcement consequence: violation of supervisory obligations results in issuance of a pretrial detention order, while compliance protects the accused from detention.

In contrast, within Iranian criminal procedure—due to the predominantly supplementary character of judicial supervision—criminal policymakers have regulated both the positive consequences of compliance and the negative consequences of non-compliance with supervisory obligations.

### 5.1. *Consequences Resulting from Compliance with Supervisory Orders*

According to Article 235 of the Iranian Criminal Procedure Code, if the accused complies with the obligations imposed under a judicial supervision order and is subsequently convicted, the judicial authority may—upon the request of the convicted person, which must be approved by the prosecutor, or upon the prosecutor’s own proposal—grant mitigation of the imposed punishment. Compliance with judicial supervision orders therefore constitutes one of the legal grounds for sentence mitigation.

Just as mitigation mechanisms are inherently discretionary, the legislator has preserved this principle in the present context. Even when the accused or the prosecutor requests mitigation, the court retains discretionary authority to apply or refuse the reduction of punishment; the use of the term “may” in the provision explicitly confirms this discretionary nature. Consequently, mere compliance with supervisory obligations is not sufficient for benefiting from statutory mitigation. Such compliance must first be verified and confirmed by the prosecutor, and only thereafter—if mitigating circumstances are deemed applicable and the judicial authority so decides—the punishment may be reduced. Thus, the prosecutor’s approval in this provision does not merely confirm submission of the accused’s request but rather confirms the factual fulfillment of supervisory obligations by the accused.

This form of mitigation represents a relatively new legislative strategy within Iranian criminal procedure law. Nevertheless, criticism may be raised against this innovation: although mitigation requires both the accused’s request and prosecutorial approval, the law does not specify the grounds for refusal of approval nor provide a mechanism for challenging such refusal. This legal silence may create practical obstacles preventing effective implementation of the policy.

It is also necessary to emphasize that Iranian criminal policymakers have adopted a dual approach toward judicial supervision by recognizing both independent and supplementary forms. Accordingly, compliance with either type of supervision order may lead to mitigation. However, since independent judicial supervision applies primarily to Ta’zir offenses of degrees seven and eight, the conditions for mitigation differ slightly from those applicable to supplementary supervision orders.

Under Article 39 of the Islamic Penal Code, in Ta’zir offenses of degrees seven and eight, where mitigating circumstances are established and the court determines—after finding guilt—that the offender can be reformed without execution of punishment, and provided that the offender lacks an effective criminal record, the complainant has forgiven the offense, and damage has been compensated or arrangements for compensation have been made, the court may issue a ruling exempting the offender from punishment altogether. This provision constitutes one of the mitigation grounds referred to in Article 253 of the Criminal Procedure Code, even where the mitigating factors listed in Article 38 of the Islamic Penal Code are absent. Accordingly, an accused who complies with the obligations of an independent judicial supervision order may ultimately benefit from complete exemption from punishment.

A legislative measure that would have been preferable is explicit notification to the accused—at the time of issuing the supervision order—regarding the possibility of sentence mitigation resulting from compliance. Such notification would align

with the philosophical foundation of judicial supervision, namely protection of the accused's liberty and encouragement of lawful behavior.

### 5.2. *Consequences Resulting from Violation of Supervisory Orders*

It is evident that the Iranian legislator has adopted an aggravating approach toward violations of judicial supervision orders, reflecting a security-oriented and authority-centered criminal policy. According to Article 254 of the Criminal Procedure Code, two situations arise when the accused violates supervisory obligations.

In the first situation, where the violation relates to a supplementary judicial supervision order, the supervision order is revoked and the preventive measure is intensified. Such intensification may escalate progressively and, in certain circumstances, reach the level of pretrial detention.

In the second situation, where the violation concerns an independent judicial supervision order, the supervision order is converted into an appropriate preventive measure.

A principal criticism directed at the drafting of this provision concerns the absence of a structured framework governing the degree of intensification. The legislator could have regulated judicial discretion more precisely by establishing clear criteria for escalation. One possible reform would involve specifying time limits restricting judicial authority to impose pretrial detention following violation of supervisory obligations, such that once a defined period expires, the authority to order detention would automatically lapse. These temporal limits could vary depending on factors such as the nature of the offense, professional criminality, and the accused's criminal record.

Another ambiguity concerns whether the note appended to this article applies to intensified measures. Specifically, when the judicial authority revokes a supervision order due to violation and intensifies the preventive measure, may the authority directly convert the prior preventive measure into pretrial detention, or does the note apply only to independent judicial supervision orders?

Considering the introductory phrase of the note—referring to implementation of the article as a whole—and given that pretrial detention constitutes an exceptional measure whose use must remain limited, together with the fact that judicial supervision was designed precisely to prevent excessive resort to detention, it should be concluded that the note applies to both situations addressed in the article. In other words, escalation of preventive measures, whether arising from supplementary or independent supervision orders, must be interpreted within the same restrictive framework governing pretrial detention.

## 6. Conclusion

In the contemporary world, with the emergence of new forms of criminal behavior, criminal justice systems—particularly those grounded in power-centered approaches—have, in pursuing social security and public order, sometimes advanced to a point where human rights principles are perceived as obstacles to the swift administration of justice and maintenance of security. Security-oriented thinking represents a perspective that, on the one hand, imposes strict and intensive control over suspects, offenders, organized criminal groups, and individuals considered dangerous or at risk of committing crimes, and on the other hand, diminishes rehabilitative responses aimed at reform, treatment, and prevention of crime and recidivism. Such an approach expands state and societal supervisory mechanisms while restricting—and in certain cases depriving—individual and social freedoms of those subject to criminal reactions. This orientation encourages excessive reliance on pretrial detention, promotes its necessity, and legitimizes expansive interpretations favoring its application. Another consequence of this perspective is the optional and secondary treatment of alternatives to detention, including judicial supervision orders. Ultimately, security-oriented criminal policy tends to normalize the issuance of preventive measures—particularly pretrial detention—against suspects, offenders, or even convicted persons in order to compensate for deficiencies in effective supervision mechanisms.

Pretrial detention at the pretrial stage produces numerous negative consequences. From the author's perspective, detention of an individual who still holds the status of an accused person lacks sufficient legal justification. Deprivation of liberty not only imposes substantial economic and social costs but also conflicts with the principle of liberty as one of the fundamental doctrines of criminal law, as well as with human rights standards requiring respect for individual freedom and minimal interference with it. Gradually, these concerns created the foundation for renewed attention to the right to liberty. The shift in criminal procedure from a purely security-oriented paradigm toward a rights-based approach allows limitation of liberty to

replace deprivation of liberty. Humanizing the stages of criminal proceedings—especially the pretrial phase—can therefore contribute simultaneously to crime prevention and the rehabilitation of suspects.

A liberty-oriented perspective moderates the rigid and security-centered view of preventive measures by allowing supervision and control mechanisms to replace custodial responses. Expansion of judicial supervision orders and broader use of commitment-based measures can reduce reliance on liberty-depriving decisions. Ensuring the availability of the accused—or more generally the offender—for criminal proceedings has historically been a central objective of criminal policy. For a long period, this objective was pursued primarily through detention, whereby suspects were held in custody throughout proceedings, a practice fundamentally inconsistent with the principle of liberty. Over time, however, preventive measures gradually shifted toward supervision-based approaches that seek to control rather than confine the accused. Judicial supervision thus operates as a guarantee facilitating diverse community-based responses, promoting social reintegration, and providing a proportionate reaction to violations of imposed obligations.

Effective implementation of judicial supervision requires the existence of coherent legal, executive, and structural regulations. Securing the accused's consent, determining clear obligations assumed by the supervised individual, and coordinating responsible institutions and supportive organizations are among the essential elements for operationalizing judicial supervision. Establishing a more precise framework for effective implementation depends on two key components: first, formulation of clear regulatory standards governing execution of supervision orders; and second, normalization and institutionalization of supervisory practices within legal culture. Regarding the first component, it is recommended that the duration of supervision orders be clearly defined and that objective criteria be established for determining supervisory obligations according to the personal characteristics of the accused and the nature of the alleged offense. In particular, criminal policymakers should consider establishing supervisory boards responsible for monitoring implementation. Synergy among members of such boards—potentially composed of law enforcement specialists, social workers, psychologists, counselors, and related experts—would significantly enhance the effectiveness of judicial supervision.

With respect to the second component, strengthening cultural appreciation for liberty and promoting a liberty-oriented legal culture, while simultaneously reinforcing the accused's commitment to supervisory obligations, is essential. Another important issue concerns judicial policymakers' approach to the manner of executing supervision orders. It would be appropriate to establish binding procedural rules governing the performance of judicial authorities issuing supervision orders so that the foundational objectives of judicial supervision—respect for proportionality, adoption of a differentiated model supportive of the accused, and realization of legislative intent—can be effectively achieved throughout all stages of criminal proceedings.

### **Ethical Considerations**

All procedures performed in this study were under the ethical standards.

### **Acknowledgments**

Authors thank all who helped us through this study.

### **Conflict of Interest**

The authors report no conflict of interest.

### **Funding/Financial Support**

According to the authors, this article has no financial support.

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