A Comparative Analysis of the Independence of the Supervisory Authority over Pre-charge Detention in Iranian and English Law; Challenges and Solutions

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Abstract

The pre-charge detention stage (custody) represents the most critical phase in the criminal justice process, as the suspect is isolated from the outside world and remains within the sovereign domain of the police. Ensuring fundamental rights at this stage depends less on statutory texts and more on the existence of an "independent supervisory authority" capable of balancing the exigencies of crime detection with the protection of individual liberties. Utilising a descriptive-analytical method and a comparative approach, this research explores the independence of these authorities within the legal systems of Iran and England. In English law, following the enactment of the Police and Criminal Evidence Act (PACE 1984), the supervisory model is based on administrative-professional oversight. The "Custody Officer," who is legally required to remain independent from the investigative team, is responsible for overseeing the lawfulness of detention; however, their organisational affiliation with the police force poses challenges to their structural independence. Conversely, the Iranian legal system emphasises a judicial oversight model, where the Prosecutor and the Investigating Judge (Bāzpors) serve as the primary authorities supervising law enforcement officers (Ẓābiṭān). The findings of this study indicate that the fundamental challenge in Iranian law is the "overlap of duties" and the conflict of interest arising from the integration of the prosecution and supervisory roles within the Prosecutor's Office.

Keywords: Criminal Responsibility, Artificial Intelligence, Imāmīyya Jurisprudence, Human Agent, Causation, Initiative Rule.

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1. Introduction

The right to liberty and personal security is among the most fundamental human rights, emphasised in all international instruments and national constitutions. However, when confronted with the exigencies of crime detection and the maintenance of public order, this right is subject to limitations, the most challenging of which is the stage of detention prior to the formal charging of the suspect. At this stage, an individual—without their guilt having been established by a competent judicial authority—is placed in the custody of law enforcement agencies for the purpose of completing investigations or preventing the destruction of evidence. This period, known in Iranian law as "being held in custody" (taḥt-e-naẓar) and in English law as "pre-

charge detention," constitutes the most sensitive phase of criminal proceedings. The suspect is in their most vulnerable state, and the risk of abuse of power by law enforcement officers reaches its peak (Heydari, 2015).

The fundamental safeguard against arbitrary detention is the existence of a supervisory authority that is independent of the prosecuting and investigating bodies. The independence of the supervisory authority means the ability to make decisions without being influenced by police objectives and solely on the basis of legal criteria. In the English legal system, following the enactment of the Police and Criminal Evidence Act, an attempt has been made to create a form of intra-organisational independence between the investigative team and the custody officer through the establishment of the Custody Officer, in order to safeguard the rights of the suspect during the initial hours of detention (Cape, 2021). In contrast, the Iranian legal system, pursuant to Articles 28 to 63 of the Code of Criminal Procedure, as well as the Law on Respect for Legitimate Freedoms and the Protection of Citizens' Rights (2002), has adopted an extra-organisational approach, entrusting supervision of this stage to the judicial authority in order to prevent any arbitrary action by law enforcement officers.

The central problem of this research is that both supervisory models face serious challenges in terms of actual independence. In England, the professional and organisational affiliation of the Custody Officer with the police force and the possibility of hierarchical pressures can compromise their impartiality. In Iran, the concentration of prosecutorial and supervisory functions within the Prosecutor's Office, as well as the physical distance of the judicial authority from the location of law enforcement officers, has meant that supervision of detention facilities has, in some cases, become a formalistic exercise based on one-sided reports from law enforcement officers. This situation underscores the necessity of revisiting supervisory structures.

Given the importance of protecting citizens' rights and the necessity of compliance with global standards of fair trial, this research seeks, through an analytical and comparative method, to examine the structure of these two supervisory authorities. The key question is: on what foundations is the independence of the supervisory authority based in Iran's prosecutor-centred system and England's custody-officer-centred system, and what structural obstacles does each system face in achieving independence? The ultimate aim of this research is to propose solutions for strengthening the position of the supervisory authority and ensuring the fundamental rights of the suspect during the preliminary investigation stage, in order to establish a balance between police efficiency and individual liberties.

2. Conceptual Framework and Theoretical Foundations

2.1. Definition of Pre-charge Detention and Distinction between Custody (Taḥt-e-Naẓar) and Pre-trial Detention

A proper understanding of the position of the supervisory authority requires a precise explanation of the legal nature of the period during which an individual is held in police custody. In contemporary legal literature, pre-charge detention refers to the period during which an individual has been arrested on suspicion of having committed an offence but has not yet been formally charged by a judicial authority or competent body. In English law, this stage is shaped by police and investigative necessities, and its primary purpose is to provide an opportunity for questioning and gathering evidence that can lead to a decision on whether to charge the suspect (Sanders et al., 2021). In Iranian law, this institution is provided for under Article 46 of the Code of Criminal Procedure, under the rubric of "being held in custody" (taḥt-e-naẓar). This status has fundamental substantive and structural differences from pre-trial detention, and ignoring these differences can lead to confusion between the functions of law enforcement officers and judicial authorities. The first point of distinction lies in the issuing and supervisory authority. Being held in custody is an action initiated by law enforcement officers and, pursuant to the aforementioned article, may last for a maximum of 24 hours, whereas pre-trial detention, as the most severe measure of securing the accused, may only be ordered by a judicial authority (Āshūrī, 2025). From the perspective of legal objectives, pre-charge detention or being held in custody has an investigative and urgent nature. At this stage, the police seek to prevent the destruction of evidence by keeping the suspect in custody and to place the suspect before a judge in the shortest possible time. Pre-trial detention, on the other hand, which is usually ordered after the formal charging of the suspect, serves broader purposes such as preventing the suspect from colluding with others, ensuring their attendance at subsequent stages of proceedings, or preventing a potential risk to society (Ājūdānī, 2014).

Another important distinction lies in the criterion of independence of the supervisory authority. At the custody stage, independence means overseeing police conduct and ensuring compliance with basic defence rights, such as the right to silence

and access to a doctor. In pre-trial detention, however, the supervisor's independence is directed towards evaluating evidentiary materials and ensuring proportionality between the offence and the likely penalty. Comparative studies show that when the boundary between these two concepts is blurred, police tend to use pre-charge detention as a tool for punishing the suspect or extracting forced confessions (Cape, 2021).

In English law, pre-charge detention is considered an exceptional status, every hour of which must be justified by the Custody Officer. In Iran, however, being held in custody is accepted as a legal right of the law enforcement officer in flagrante delicto offences. This difference in approach shows that in England, supervision of this stage is based on the principle of necessity, whereas in Iran it is based on the principle of legality and judicial oversight. For this reason, distinguishing these two institutions from one another is essential for protecting citizens' rights, as the unlawful prolongation of the custody stage and its transformation into pre-trial detention without the direct and impartial intervention of a judicial authority is one of the greatest challenges to fair trial.

2.2. The Concept of Independence in the Preliminary Stage

The concept of independence in the preliminary investigation stage can be analysed at two levels—structural and functional—each of which plays a vital role in safeguarding the fundamental rights of the individual in custody. Structural or organisational independence means the complete separation of the supervisory authority from the prosecuting and investigating body. At this level of independence, the objective is that the supervisor has no administrative or organisational hierarchical dependence on the police or the authorities responsible for crime detection. In Iranian law, this type of independence is manifested by entrusting the supervisory function to the judicial authority pursuant to Articles 28 and 46 of the Code of Criminal Procedure. In effect, the legislator, by removing the power to extend detention from the scope of law enforcement officers and vesting it in the Prosecutor, has sought to create a high organisational wall between the executor and the supervisor, thereby preventing unilateralism in decision-making (Jabbān et al., 2023).

In contrast, functional or decisional independence means the ability of the supervisory authority to make impartial decisions, based on law and free from any external pressure or expediency considerations. This type of independence is less dependent on administrative position and more related to the nature of decision-making. A supervisor may be structurally independent but, in practice, due to limited access to information or a tendency to cooperate with security agencies, lose their functional independence. In English law, the Custody Officer is a challenging example in this regard. Although this officer is structurally part of the police force, the Police and Criminal Evidence Act requires them to act functionally independently of the investigation team and to make decisions regarding the necessity of detention solely on the basis of legal standards (Sanders et al., 2021). The main challenge in the preliminary stage is that structural independence does not always guarantee functional independence. For example, in the Iranian legal system, although the Prosecutor is structurally independent from law enforcement officers, because the Prosecutor is themselves responsible for prosecuting the accused and proving the offence, they may, when acting as supervisor over police detentions, develop a bias and view detention as a tool to facilitate the prosecution process. In fact, here functional independence is threatened due to the overlap of prosecutorial and supervisory functions within a single institution (Nūrī & Āqā'ī, 2023).

On the other hand, in English law, field studies show that the functional independence of the Custody Officer is highly vulnerable due to professional ties and shared organisational culture with the investigation team. An officer who must supervise the conduct of their colleagues may be subject to informal pressures to agree to the extension of detention. Therefore, actual independence in the preliminary stage is realised only when both the structural and functional aspects are simultaneously strengthened. That is, the supervisory authority must not only be outside police control, but must also be free from any personal or organisational interest in the conviction of the accused, so as to be able to establish a balance between state authority and individual liberties (Ḥājīpūr, 2022).

2.3. The Principle of Necessity and Proportionality

The principles of necessity and proportionality, as two fundamental pillars in restricting individual rights and freedoms, constitute the main framework for the supervisory authority's action in the pre-charge detention stage. The principle of necessity

requires that deprivation of the suspect's liberty be permitted only when no alternative measure is available to achieve the objectives of the proceedings. In effect, detention should be regarded as a last resort. The supervisory authority is obliged to examine carefully in each case whether objectives such as preventing flight, preventing collusion, or preserving evidence can be achieved by less costly measures such as a written undertaking to appear or the posting of bail (Ashworth & Redmayne, 2020).

In Iranian law, Articles 28 to 63 of the Code of Criminal Procedure are framed on the basis of this necessity. For example, the authorisation of law enforcement officers to hold a suspect in custody in flagrante delicto offences under Article 44 is conditional upon the existence of strong evidence and indications of the commission of the crime and the necessity of preserving its traces. The independence of the supervisory authority here means that the Prosecutor should not automatically accede to every request from the law enforcement officer, but must assess the nature of the necessity at every moment. The Law on Respect for Legitimate Freedoms and the Protection of Citizens' Rights also, in paragraph 3, explicitly emphasises the necessity of respecting independence and avoiding the extension of unnecessary detentions, as any detention beyond necessity is considered a violation of citizens' rights and an abuse of power (Shaykhī, 2020). The principle of proportionality is complementary to the principle of necessity and means that there must be a reasonable balance between the severity of the restriction imposed on the suspect's liberty and the seriousness of the offence committed and the evidence available. In English law, this principle is clearly reflected in the duties of the Custody Officer. They must assess whether continued detention is proportionate for the purposes of investigation, having regard to the nature of the offence and the evidence obtained. If the harm caused to the suspect by detention exceeds its potential benefit to the investigation, the officer is obliged to order release (Cape, 2021).

The practical challenge in applying these two principles arises when the supervisory authority, influenced by security-oriented perspectives, transforms the function of detention from a precautionary measure into a punitive tool. In such circumstances, pre-charge detention, instead of being a necessary exception, becomes a routine practice. The independence of the supervisory authority only acquires meaning when it has the power to say no to unnecessary demands of investigative bodies. For this reason, the principles of necessity and proportionality, as legal yardsticks, prevent the independence of the supervisory authority from becoming an abstract concept and transform it into an operational tool for protecting individual liberties.

3. The Supervisory Authority in English Law

In this section, while examining the structure of the Police and Criminal Evidence Act 1984 (PACE), we will explain the position and central role of the Custody Officer. We will also, by analysing the conditions of independence and quasi-judicial powers of this authority, examine the challenges facing its functional independence in balancing police power and individual liberties.

3.1. The Structure of the Police and Criminal Evidence Act 1984

The English legal system, with the enactment of the Police and Criminal Evidence Act—commonly known as PACE—effected a fundamental transformation in the balance between police powers and citizens' rights. Prior to the enactment of this Act, police practices in detention and interrogation lacked transparency and rigorous oversight, leading to widespread violations of suspects' rights. The beating heart of this Act is the creation of an institution called the Custody Officer, who acts as the supervisory authority over pre-charge detention. Under Section 36 of the Act, every police station must designate one or more Custody Officers, who are directly responsible for all detained persons. This model is designed on the basis of a separation of functions, to ensure that someone outside the investigation team monitors the lawfulness of detention (Cape, 2021).

The role of the Custody Officer begins from the moment the suspect arrives at the police station. They are required independently to assess whether sufficient grounds exist to continue the detention. Under Section 37 of PACE, if the Custody Officer concludes that there is insufficient evidence to charge the individual and that continued detention is not necessary for the preservation of evidence, they are obliged immediately to order the release of the suspect. This decision-making power

reflects the quasi-judicial status of this officer within the police force. In effect, they act as a legal filter to prevent weak cases or arbitrary detentions from proceeding to later stages (Ashworth & Redmayne, 2020).

One of the key aspects of independence in this structure is the prohibition on the Custody Officer's involvement in the investigative process. Under the Act, this officer must not play any role in the interrogation of suspects or the collection of evidence against them. This separation is designed to prevent the creation of a motive for securing a conviction in the mind of the supervisor. Their function is solely to protect the suspect's rights and to ensure compliance with legal and ethical codes. They are responsible for informing the suspect of their rights—such as the right to a lawyer, the right to have one person informed of their detention, and the right to medical care—and for ensuring that these rights are respected (Ḥājīpūr, 2022).

However, the Custody Officer's independence within the PACE structure faces practical challenges. Since this officer is typically of the rank of sergeant, they may lack sufficient authority to resist senior officers of the investigation team who hold higher ranks. Although the Act emphasises their independence, the hierarchical realities of the police force can overshadow this independence. Nevertheless, the PACE structure, by requiring the officer to record all decisions and their reasons in the custody record, has created a form of accountability that allows subsequent judicial authorities to review their performance. This recording of events is one of the most important supervisory tools in English law, preventing arbitrary and secret decisions (Sanders et al., 2021).

Ultimately, the Custody Officer model in English law represents an attempt to localise oversight within the police institution, with the aim of increasing speed and efficiency without sacrificing individual rights. This supervisory authority, as the guardian of the law in the police station, is obliged to balance the police's need for time to investigate with the individual's right to liberty. Although this model is structurally affiliated with the police force, it is legally bound to comply with standards that place it in a position distinct from that of an ordinary police officer (Cape, 2021).

3.2. Conditions of Independence

The independence of the Custody Officer from the investigation team in English law is not merely an administrative recommendation, but a fundamental legal requirement based on the philosophy of preventing mental tunnel vision and confirmation bias. Under Section 36 of PACE, the necessity for this separation arises from the fact that the investigation team, due to its direct involvement in the crime detection process and the pressure to achieve results, may, consciously or unconsciously, sacrifice the suspect's rights in favour of the speed and efficiency of the investigation. In effect, investigators and detectives have a vested interest in the outcome of the case, and this very fact compromises their impartiality in assessing the necessity of continued detention (Cape, 2021).

This separation is implemented at three levels: operational, hierarchical, and physical. First, at the operational level, the Custody Officer must not participate in any evidence-gathering activities, including the interrogation of the suspect or the search of the crime scene. This separation of functions ensures that the supervisor decides solely on the basis of legal criteria and objective information, and not on the basis of assumptions formed by the investigation team. If an officer involved in the investigation also assumes responsibility for the custody suite, they are likely to use their power to extend detention as a lever to obtain a confession (Ashworth & Redmayne, 2020).

Second, from a hierarchical perspective, although the Custody Officer is part of the police force, the Act requires them, in matters relating to detention, not to accept orders from any officer of higher rank who is involved in the investigation. This provision is designed to counter the culture of militarism in the police, ensuring that an inspector or superintendent from the investigation team cannot order the Custody Officer to unlawfully extend detention. Independence here means that the Custody Officer, within their domain—the custody suite—has ultimate authority and is accountable only to the law and the courts, not to their superiors on the investigation team (Sanders et al., 2021).

Third, this separation is reinforced by the creation of an independent supervisory space. The Custody Officer is required to communicate directly with the suspect and their lawyer and to hear their account. This direct access to the suspect, without the presence of the investigation team, allows the Custody Officer to assess the individual's physical and mental condition and to ensure that no unlawful pressure has been applied. Studies show that whenever the distance between the supervisor and the investigator is reduced, the number of unnecessary detentions increases significantly (Ḥājīpūr, 2022). Thus, the separation of

the Custody Officer from the investigation team ensures the principle that individual liberty should not be deprived solely by the will of those seeking the suspect's conviction.

3.3. Quasi-Judicial Powers

The powers of the Custody Officer in the English legal system go beyond simple administrative oversight and have a quasi-judicial character, meaning that they have the competence to issue orders that directly affect the individual's right to liberty and security. In the structure of PACE, the decision-making process for pre-charge detention is defined within specific timeframes, each stage requiring the satisfaction of progressively stricter conditions.

The first time period is limited to the initial 24 hours. Under Section 37 of the Act, the primary responsibility for decision-making at this stage rests with the Custody Officer. The Custody Officer must be satisfied that detention is necessary "to secure or preserve evidence" or "to obtain evidence by questioning" or by other investigative means. If, at any moment, this necessity ceases, the Custody Officer is obliged to order the release of the suspect without needing to seek authorisation from higher authorities. This power to terminate detention is the most salient manifestation of their quasi-judicial authority (Cape, 2021).

If the investigation is not concluded within the initial 24 hours, the question of extending detention to 36 hours arises. At this stage, PACE intensifies the oversight and vests competence in a higher-ranking officer, at least of the rank of Inspector or Superintendent, who has not been involved in the investigation. This officer, who at this stage acts as the senior supervisor, must establish, first, that the offence is a serious arrestable offence and, second, that the investigation is being conducted diligently and expeditiously, but that due to the complexity of the case, an extension of detention is necessary (Ashworth & Redmayne, 2020).

A noteworthy point in this quasi-judicial process is the requirements of fair trial at the time of decision-making. The supervisory officer—whether the Custody Officer at 24 hours or the Inspector at 36 hours—is obliged, before making a decision, to give the suspect or their lawyer an opportunity to present their defence orally or in writing. This procedure bears a strong resemblance to a judicial hearing. The supervisor must record their reasons for extending detention in the custody record, and these reasons must be communicated to the suspect. The precise recording of these details is intended to enable a judicial authority, namely the court, to review the basis of the officer's decision should a claim of unlawful detention later be made (Sanders et al., 2021).

These powers indicate that, in English law, the police, in the initial stages of detention, possess a form of delegated judicial competence. However, this competence is limited to 36 hours, and for any extension beyond that, the case must necessarily leave the police station environment and be referred to a judge. This precise demarcation between the quasi-judicial powers of the police and the ultimate jurisdiction of the court is designed to prevent the concentration of power and to ensure that no individual remains in police custody beyond a reasonable period without the direct supervision of an independent judge.

3.4. Challenges in England

Despite the careful legal design of PACE 1984, the independence of the Custody Officer in practice faces deep structural and cultural challenges that can undermine the effectiveness of this institution as an impartial supervisory authority. The most important of these challenges is the phenomenon of peer pressure and belonging to the organisational culture of the police.

First, it must be noted that the Custody Officer, before being a supervisor, is a police officer. They work in the same environment, eat in the same canteen, and enjoy the same job benefits as the investigation team. This professional affiliation creates a sense of "organisational loyalty" that can influence their decisions. Criminological studies show that in many cases, the Custody Officer is reluctant to refuse a request to extend detention, as doing so would waste the efforts of their colleagues on the investigation team or create tension in daily working relationships. In effect, standing up to the investigation team is often perceived as a form of "betrayal of the team" rather than enforcement of the law (Sanders et al., 2010).

Second, the quasi-military hierarchy within the police erodes functional independence. Although legally an inspector from the investigation team should not give orders to the Custody Sergeant, in practice, the difference in rank casts a shadow over the Custody Officer's will. In sensitive or complex cases, where pressure to solve the crime and respond to public opinion is high, the Custody Officer may be subjected to informal pressure to extend detention as a tool for "softening up" the suspect or

"buying time." In these circumstances, their role is degraded from an impartial supervisor to a "facilitator of the investigation" (Sanders et al., 2021).

Third, in sensitive cases such as terrorism or organised crime, the independence of the Custody Officer is further eroded. In such cases, due to the dominance of a security-oriented approach, Custody Officers tend to rely absolutely on the "intelligence reports" of the investigation team instead of independently assessing the evidence. This trust in colleagues causes the supervisory process to become a formalistic exercise—the Custody Officer merely signs the relevant forms without genuinely questioning the necessity of continued detention (Cape, 2021).

Finally, another challenge relates to resource constraints and time pressures. In busy police stations, the Custody Officer is responsible for several detainees simultaneously. This heavy workload means they lack sufficient time to scrutinise each suspect's file and genuinely hear the defence presented by the lawyer. As a result, independence—which requires care and deliberation—is sacrificed to speed and administrative efficiency. These factors combine to mean that the Custody Officer model, despite theoretical independence, faces a kind of "hidden dependence" on the police force in practice (Ashworth & Redmayne, 2020).

4. Findings and Discussion

4.1. The Supervisory Authority in Iranian Law

In the Iranian legal system, unlike the English model, which defines initial supervision within the police institution through the Custody Officer, the legislator, with a judicial-centred approach, has placed the responsibility for supervising pre-charge detentions directly on the Prosecutor's Office and, at its head, the Prosecutor. This model, which is based on the separation of the investigative authority, namely the law enforcement officer, from the supervisory authority, namely the standing judge, is precisely elaborated in Articles 46 to 53 of the Code of Criminal Procedure adopted in 2013. According to Article 46, the default rule is that detention by law enforcement officers is prohibited, except in flagrante delicto offences, where law enforcement officers are permitted to hold the suspect in custody for a maximum of 24 hours. The key point in this article is the obligation of law enforcement officers to notify the Prosecutor immediately. The phrase "at the earliest opportunity" in this article indicates that the independence of the law enforcement officer in holding the suspect is tenuous and entirely subject to the supervision of the judicial authority. In effect, in Iranian law, the Prosecutor, as the public prosecutor and head of law enforcement officers, has the duty to establish, from the very first moments, the lawfulness of the individual's being held in custody (Heydari, 2015).

Article 47 of the said law demonstrates an aspect of the functional independence of the supervisory authority. According to this article, the Prosecutor or Investigating Judge (Bāzpors) is obliged to review the status of persons in custody and, if detention is no longer necessary, to order their release. This supervision is not merely formal; the standing judge is required to inspect the places where suspects are held, namely law enforcement detention centres, and to meet with persons in custody personally. This field supervision is a tool for ensuring Article 52, which obliges law enforcement officers to record accurately the suspect's details and the time of arrest in a "special register." Any delay in reporting to the Prosecutor or failure to record the details, under Article 63, renders the law enforcement officer liable to disciplinary and criminal sanctions (Ṣāleḥī & Afrāsiyābī, 2018).

One of the legal challenges in this regard is the interpretation of "Prosecutor's supervision." Whereas in English law the Custody Officer is separate from the investigation team, in Iran the Prosecutor is themselves responsible for prosecution and is the head of law enforcement officers. Article 53 provides that the suspect in custody must have access to a lawyer, and law enforcement officers are obliged to respect their defence rights. The Prosecutor's role here is dual: on the one hand, they must guide the law enforcement officer in detecting the crime, and on the other hand, they must supervise the same law enforcement officer to ensure that they do not violate the suspect's rights. This overlap of functions—prosecution and supervision—in a single office may cast doubt on the functional independence of the Prosecutor as supervisor of initial detentions (Nūrī & Āqā'ī, 2023).

Furthermore, under Article 48, the right of access to a lawyer during the custody stage is one of the red lines of supervision. Although the note to this article provides for certain restrictions in the first week for certain crimes, including security and

organised crimes, the principle is that the Prosecutor must supervise the proper implementation of this right by law enforcement officers. The fundamental difference here from the English model is that, in Iran, if a law enforcement officer wishes to hold an individual for more than 24 hours, no police officer, even one of high rank, has the competence to extend the detention, and the case must necessarily be referred to a judicial authority to determine the "security measure" to be applied.

Ultimately, the Iranian model is based on the maximum "judicialisation" of the custody stage. In this structure, the Prosecutor is not only the supervisor of the lawfulness of detention but also the guardian of the suspect's physical and mental wellbeing against possible excesses by law enforcement officers. However, the effectiveness of this supervision depends on the real independence of the Prosecutor's Office from security and law enforcement agencies, as well as the Prosecutor's operational capacity to conduct surprise and continuous inspections of detention facilities.

4.2. The Overlap of Functions: The Paradox of the Prosecutor as Both Prosecutor and Supervisor

The concentration of functions within the Prosecutor's Office—the simultaneous possession of the "sword of prosecution" and the "shield of supervision" in the hands of the Prosecutor—constitutes the most fundamental structural challenge in ensuring the independence of the supervisory authority in Iranian law. This situation creates a kind of "legal schizophrenia" in which a single office must balance two conflicting objectives: the first objective, success in detecting crime and proving the charge, in its capacity as head of law enforcement officers; and the second objective, protecting individual liberties and supervising impartiality, in its capacity as standing judge.

In its prosecutorial capacity, the Prosecutor has an organisational interest in the detention of the suspect because holding the suspect in custody is the golden opportunity for law enforcement officers to gather evidence, prevent collusion, and uncover the truth. Under Article 46 of the Code of Criminal Procedure, law enforcement officers act under the Prosecutor's instructions. When the Prosecutor themselves has issued the investigative orders, it is difficult for them, at the subsequent stage under Article 47, to supervise with complete impartiality the necessity of the very detention that is probably vital to the progress of their investigation. In effect, here the "supervisor" and the "beneficiary" are conjoined in a single entity. This concentration of functions distorts the Prosecutor's mental independence because they subconsciously tend to justify the detention carried out by their subordinate, as their executive arm, in order to avoid hindering the investigation process.

The independence of the supervisory authority only acquires meaning when the supervisor takes a critical and external view of the law enforcement officer's performance. However, in Iranian law, due to the organic link between the Prosecutor's Office and the police, the Prosecutor often regards the law enforcement officer as a "colleague" in the fight against crime, rather than a "subject of supervision." This "comradeship in arms" leads the Prosecutor, when faced with violations by the law enforcement officer during the custody stage under Article 63, to adopt a lenient approach rather than a decisive one. In contrast, in the English model, the Custody Officer has no interest in the suspect's conviction, and their success depends on the precise observance of the "Codes," not on solving the crime. However, in Iran, the Prosecutor's success is tied to the number of cases resolved, which severely undermines their independence as supervisor of initial detentions (Rajab, 2017). This concentration of functions reaches its crisis point in sensitive cases and crimes against security. Where the Prosecutor is under pressure to maintain public order and uncover criminal networks, their supervisory role—which is crystallised in Articles 48 and 53, concerning the right of access to a lawyer and medical examination—is marginalised. In these circumstances, instead of asking the law enforcement officer, "Why is this person still in custody?", the Prosecutor asks, "Were you able to extract the necessary information?" This change in question marks the collapse of supervisory independence under the weight of prosecutorial necessities. Comparative studies show that whenever the supervisory authority is itself part of the prosecution process, the tendency towards "automatic extension of detention" increases, and supervision becomes a lifeless administrative act. The "standing judge" model in Iran, although organisationally, by virtue of being judicial, superior to the "Custody Officer" model in England, is, because of this very concentration of functions, more vulnerable in terms of "functional independence." In England, the separation of the function of "investigation" from that of "custody supervision" has created horizontal independence; but in Iran, the integration of these two functions within the Prosecutor's Office has made supervision a function of prosecutorial necessities. To overcome this challenge, it may be necessary to separate the "judge supervising the detention facility" from the prosecutorial body of the Prosecutor's Office and to entrust it to an independent body, such as the Judge of Liberties in France, or a model similar to the Custody Officer but with a judicial basis (Parvīzīfard, 2012).

4.3. The Investigating Judge (Bāzpors): A Paradigm of Judicial Independence in Pre-trial Detention

In analysing the independence of the supervisory authority, moving beyond the "custody" stage, namely the initial 24 hours, and entering the "preliminary investigation" stage brings us to another pillar of the Iranian judicial system which, unlike the Prosecutor, is founded on "judicial impartiality": the Investigating Judge (Bāzpors). The difference in the independence of the Investigating Judge compared with the Prosecutor in issuing security measures, particularly pre-trial detention, draws the boundary between "prosecutorial zeal" and "the pursuit of justice."

While the Prosecutor, by virtue of the nature of their role, holds a one-sided position, namely advocacy for society and the victim, the Investigating Judge, under Article 93 of the Code of Criminal Procedure, is obliged to be absolutely impartial. They are required to gather both evidence in favour of the suspect and evidence against them. This "obligation of impartiality" strengthens the Investigating Judge's independence over the Prosecutor in issuing security measures. In fact, when issuing a detention order, the Investigating Judge should not, like the Prosecutor, be thinking of "advancing the case at any cost," but rather, as an adjudicator of the investigation, should weigh the proportionality between the offence and the individual's liberty. This independence is crystallised in Article 92, which deems the Investigating Judge independent of the Prosecutor in conducting investigations and issuing orders, except in cases specifically provided for.

The most salient manifestation of the Investigating Judge's independence vis-à-vis the Prosecutor is seen in Articles 244 and 269 of the Code of Criminal Procedure. In the Iranian legal system, if the Investigating Judge believes in the release of the accused, or the imposition of a lenient measure, but the Prosecutor insists on pre-trial detention, or vice versa, this disagreement is referred, not to be resolved by the Prosecutor's hierarchical order, but to a third authority, namely the court. This dispute-resolution mechanism indicates that the Investigating Judge, unlike law enforcement officers, is not under the command of the Prosecutor. Here, the Investigating Judge acts as a "secondary supervisory authority" that can resist the prosecutorial tendencies of the Prosecutor. This is while, at the initial 24-hour stage of custody, no such separation exists, and the final word rests with the Prosecutor.

Despite theoretical independence, the Investigating Judge in Iran faces the challenge of the "organisational hegemony of the Prosecutor." Although, under the law, the Investigating Judge is independent in issuing orders, it must not be forgotten that they work within the "Prosecutor's Office"—an environment whose administrative head and organisational supervisor is the Prosecutor. Under Article 92, the Investigating Judge must conduct investigations under the supervision of the Prosecutor. These elastic phrases, namely "supervision despite independence," sometimes create friction for the Investigating Judge's independence in practice. In sensitive cases, the Prosecutor's pressure to issue a pre-trial detention order can overshadow the Investigating Judge's judicial independence. The difference here is that the Investigating Judge, in order to protect the suspect's liberty, needs "moral courage" to use their legal tools against their administrative superior (Amīrī, 2025).

If we compare this situation with the English model, the Investigating Judge in Iran plays a far more powerful role than the Custody Officer. The Custody Officer in England only supervises the first 24 hours, and their powers are limited to the police station; but the Investigating Judge in Iran wields a "judicial pen" that can extend detention for months or, with a bail order, release the accused. The Investigating Judge's independence vis-à-vis the Prosecutor, in fact, ensures that the case has passed from the "police-prosecutorial" phase into the judicial-investigative phase. Consequently, while the Prosecutor in Iran is caught in the paradox of prosecution-supervision, the Investigating Judge, because of the legal duty of impartiality under Article 93 and independence from the Prosecutor in cases of disagreement under Article 269, constitutes a more reliable authority for safeguarding the independence of the supervisory authority. However, the physical and organisational proximity of these two offices within the Prosecutor's Office always keeps alive the fear of the erosion of this independence.

5. Comparative Analysis

The following table provides a systematic comparison of the supervisory authority over pre-charge detention in the Iranian and English legal systems across key dimensions.

Table 1. Comparative Analysis

Dimension	Iran	England
Supervisory Authority	Prosecutor and Investigating Judge	Custody Officer
Nature of Authority	Judicial	Administrative-police

Structural Independence	External to police, but within the Prosecutor's Office	Internal to police, but functionally separate from the investigation team
Functional Independence Challenge	Overlap of prosecution and supervision functions	Organisational culture and peer pressure
Duration of Supervision	24 hours (custody), then judicial measures	24 hours (initial), extendable to 36 hours by a senior police officer; beyond 36 hours, court
Right to Lawyer	Yes, with limited restrictions for security offences	Yes, with exceptions for serious offences
Supervisory Mechanism	Physical inspection by judge and file review	Physical presence of Custody Officer and custody record
External Oversight	Supervisory boards and judicial hierarchy	Independent Police Complaints Commission (IOPC)
Legal Basis	Code of Criminal Procedure (2013)	Police and Criminal Evidence Act 1984 (PACE)

6. Common Challenges and Obstacles to Independence

Despite the structural differences between the two systems, several common challenges hinder the realisation of true independence of the supervisory authority. These are illustrated in the table below.

Table 2. Common Challenges and Obstacles to Independence

Challenge	Description in Iran	Description in England
Organisational Culture	The Prosecutor's affiliation with law enforcement leads to a "colleague" rather than "supervisor" mentality.	The Custody Officer's professional ties with the investigation team create loyalty to colleagues.
Formalism in Supervision	Supervision often becomes a mere file-based exercise without physical presence.	The Custody Officer may become a "rubber stamp" due to workload and time pressures.
Lack of Genuine Independence	The Prosecutor is both the supervisor and the prosecutor, leading to self-supervision.	The Custody Officer, although functionally separate, is structurally subordinate to the police hierarchy.
Inadequate Protection of Defence Rights	Despite legal provisions, access to a lawyer is often delayed or obstructed.	Although the right to a lawyer exists, practical barriers such as cost and availability remain.
Pressure in Sensitive Cases	Security concerns override supervisory independence.	Counter-terrorism and organised crime pressures undermine the Custody Officer's impartiality.
Lack of Resources	Insufficient personnel and facilities for proper supervision.	Heavy caseloads prevent the Custody Officer from conducting thorough reviews.

7. Conclusion

The present research, which sought to examine the independence of the supervisory authority over pre-charge detentions in the two legal systems of Iran and England, has shown that although the structural foundations of these two countries have fundamental differences, both are in pursuit of a common point of balance: limiting the power of law enforcement officers against the liberty of citizens.

In the English legal system, independence is built on specialisation and intra-organisational separation. The Custody Officer model has demonstrated that the physical presence of the supervisor at the scene and the transparency resulting from the recording of events can serve as a strong barrier against the arbitrariness of investigation teams. However, the risk of a collaborative culture and the supervisor's professional affiliation with the police institution is the Achilles' heel of this model.

In contrast, the Iranian legal system, by adopting a judicial-centred model, has sought independence in outsourcing supervision to the judicial authority. Entrusting the helm of supervision to the Prosecutor and the Investigating Judge has increased the credibility and enforceability of supervision, but this model faces the major challenge of the concentration of functions. When the Prosecutor is simultaneously responsible for success in prosecution and the protection of the suspect's rights, their independence is eroded by the exigencies of crime detection. The key findings of the research show that:

- **Independence is not merely organisational:** The judicial nature of the supervisory authority, as in Iran, does not, by itself, guarantee independence, just as the police nature of the supervisor, as in England, does not necessarily mean partiality. True independence lies in functional impartiality and the power to say no to the investigation team.
- **The vital role of the lawyer:** In both systems, the lawyer is not only the defender of the accused but also the "eyes and ears" of the supervisory authority's independence. The presence of the lawyer brings the supervisor out of the cocoon of one-sided police reports and enriches their decisions with legal substance.

- **The danger of formalism:** The greatest threat to both models is the transformation of supervision into a formalistic signature. Distant and correspondence-based supervision in Iran and bureaucratic supervision in England can both reduce independence to an empty shell.

To enhance the independence of the supervisory authority in Iranian law, it appears that the time has come to move from the model of the "Prosecutor as supervisor" towards the model of a "Judge of Liberties and Supervisor of Detention"—an office that is physically located in police stations, similar to the English model, but organisationally and administratively has no link with the prosecutorial body or the Prosecutor's Office, consistent with the independence sought in the Iranian model. Only then can it be ensured that the scales of justice, in the first and most sensitive hours of deprivation of liberty, will not be tilted by the sword of prosecution. The independence of the supervisory authority is not a privilege for the accused, but a guarantee of the integrity of the judicial process and the legitimacy of the justice system in a law-based society.

Ethical Considerations

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

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Conflict of Interest

The authors report no conflict of interest.

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