

VIDEO SURVEILLANCE IN THE IRANIAN LAW; CRIME PREVENTION OR ABUSE OF CIVIL RIGHTS

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ABSTRACT

The use of special preventive methods with recourse to illegal initiatives by the police or other vigilantes on the pretext and in the name of providing security for people and properties jeopardizes personal liberties. This is while using closed circuit television (CCTV) cameras is not illegal in public places and for providing security; but the utilization of cameras in private sanctuaries of individuals is blatant violation of the personal sanctuaries and rights of individuals. Based on the rational option theory which is the foundation of this method, individuals' incentive to commit crimes is impoverished upon noticing CCTVs due to fear of apprehension. Due to the intricacies of the issue, however, there is not a self-contained and comprehensive law currently in the Iranian law, considering how and why CCTVs are utilized; this underlines the need for further investigation to criminalize the cases of abuse and illegitimate intrusion into personal sanctuaries and penetration into civil rights of individuals through the installation of CCTV cameras. In this paper we will investigate the stance of such procedures in the Iranian judicial circle.

Keywords: video surveillance, security, prevention, privacy, Iranian penal law

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INTRODUCTION

Today the installation of CCTV cameras is but one of the methods of controlling individuals and is effectual in preventing crimes. More frequently than not we encounter signs in public places which remind people of and warn them about the existence of CCTV cameras. In all streets, schools, and even sometimes in private offices these controlling apparatus is used, and in fact this effective apparatus is used throughout the world in manifold qualities and quantities. Now it is impossible to cross a street in which private or governmental CCTV cameras do not observe you. Traffic-controlling cameras, police cameras and cameras which control the traffic plan, banks' cameras, CCTV cameras of companies and stores are wide-awake eyes that always monitor citizens' actions and behavior. As long as these cameras monitor citizens' actions and behavior in public places, no redline is ignored, but it is a crime when CCTV cameras violate individuals' privacy and would be prosecuted. This, on the other hand, has preventive effects on criminal deeds; this is because those criminals who know their actions are recorded 24 hours a day, even if they are able to commit crimes, due to recording their pictures and the possibility to recognize their faces, would not set out to commit a crime comfortably. In other words, the expenses of committing crimes increase for them. For example when motorists are driving their vehicles on their way and their performance is recorded and controlled by CCTV cameras fear of being fined by the police evokes cautionary behavior on their part to be more patient and have more fortitude while driving, and observe the traffic rules and regulations more seriously. But the issue of CCTV cameras which are recording events all the time contradicts civil rights, and in this paper we seek to investigate it. One of the flagrant cases of violating human rights is the use of CCTV cameras in individuals' inner sanctums to control and observe particular people. Today, many cameras are found in majority of places which have been installed in public places to ensure security. But this very same action may damage individuals' privacy and violate it. Cameras have been installed with a purpose in mind and they are allowed to serve that purpose only, and if their pictures are supposed to be used for different other purposes, it warrants the acquisition of the necessary permits and legal actions must be taken; when permits are issued and the importance of using pictures to provide security for people is established, using them would not be against the law.

PEOPLE'S PRIVACY, ITS POSITION AND IMPORTANCE IN ISLAM

The word 'privacy' means to become recluse, get alone, a place empty of intruders, loneliness and inner sanctum in Persian dictionaries [12]. The word 'solitude in Farsi in the equivalence of 'privacy' in English and is used in two senses:

- The status of being alone or without intrusion
- Final Stage Freedom from interference or observation and public noticing [11].

The word 'privacy' in the Oxford Dictionary of Law [12]. Means to be free on one's own and without intrusion.

The right of privacy or, in other words, the right of having a private life as a basic need in civil rights of citizens has a profound affinity with dignity, grace, personality, individual independence, and the development of personal relations, the development of intimacy, stable psychological security, control over emotions and thoughts and other important humane values. The acceptance and recognition of privacy as a right has their root on history. This right is mentioned in divine scriptures such as *Koran*, *Bible*, and Jewish Laws, and the right of privacy also exists in the Hippocrates's Oath. Islam recognizes a special dignity and position for human beings. Islam has recognized privacy officially and a number of verses in Koran speak of this issue. Verses 27 and 28 of 'Noor' (one of the chapters into which Koran is divided) read as: "OH, you believers, never enter into others' homes but yours, except when you come to feel at home with and salute them. This is better for you to be reminded. If there is no one home, do not enter it unless you are permitted to enter, and if you are told to return, do as you are told, because this is better for you, and Allah is cognizant of your deeds." Also, verse 12 of 'Hojarat' reads as: "Oh, you believers, eschew from suspicion and distrust of each other, since some suspicions are sins, and avoid scrutiny and curiosity about one another." Prophet Muhammad also reiterated that: "If you seek to scrutinize and investigate others' secrets, you have corrupted or have *almost* corrupted them." With this in mind, and due to the fact that our country is based on the principles of Islam, privacy has a remarkable value.

THE STATUS OF PRIVACY IN THE COMPILED IRANIAN AND INTERNATIONAL LAW

According to law, the privacy of all people in Iran is immune and under protection, and nobody is allowed to trespass it, except for privacy clash for others' rights, or privacy clash for public interest. Principle #22 in the Iranian constitution states that people's face, life, rights, accommodation, and job is protected against aggression, except in case law demands this. Principle 25 of the Iranian constitution also forbids any kind of investigation and scrutiny. On the other hand, however, the importance of crime prevention and preventive actions against crime commission has been emphasized by all civil and legal laws of the country, legislature and law enforcers, and even the judiciary. Now we must determine that which category includes installing cameras, the violation of individuals' privacy and civil rights or the factor of crime prevention.

During the twentieth century, newer forms of violation such as recording and bugging private telephone conversations, placing hidden microphones or cassette recorders in private places, photo and shooting cameras, the ability of computers to collect, store and access data and... were enough reasons to recognize privacy and inner sanctum as a basic and important right. This was strictly followed internationally, and in principle #12 of the Human Rights Declaration in 1313 and in principle #11 of the Universal Treaty of Civil and Political Rights in 1311 it was officially recognized. It was also discussed in numerous conventions such as the International Convention of Lawyers in Vienna in 1311, the Convention of Lawyers in Stockholm in 1311, the International Convention of Lawyers in London 1313. [2]

Privacy is considered as one of the fundamental rights of citizens and cannot be violated easily. Thus, the red line for using CCTV cameras is individuals' privacy. As long as these cameras have not trespassed upon this privacy, they have not committed a crime. Using CCTV cameras for legitimate legal purposes and for providing security will not bring about any problems. In the state of Islamic Republic of Iran individuals' privacy is protected and rendered immune, and no one has the right to violate it with the exceptions of privacy clash for others' rights or privacy clash for public interest. In principle #22 in the Iranian constitution it has been pointed out that people's face, life, rights, accommodation, and job are protected against violation unless law prescribes this. Principle #25 also forbids any kind of investigation and scrutiny. On the other hand, however, the importance of crime prevention and preventive actions against crime commission has been emphasized by all civil and legal laws of the country, legislature and law enforcers, and even the judiciary. Now we must determine that which category includes installing cameras, the violation of individuals' privacy and civil rights or the factor of crime prevention.

Samuel D Warren and Louis D Brandeis consider privacy as a principle that protects people's written works and intellectual properties, emotions and thoughts, and endows them with a right to have an unperturbed frame so that their statements, utterances and deeds are protected against violation and under the aegis of law in this frame. [17]

THE ROLE OF CCTV CAMERAS IN PREVENTING CRIMES

Preventing crime has always been man's vision. Although in the past traditional reaction to criminal acts circulated around the pivot of retribution only, and investigating the relationship between the crime and its cause discussions have been posed to either eliminate this cause or to prevent the crime. Since times of yore crime prevention, namely in divine religions, has been one of the best ways to reduce crime rate in communities. In religious instructions there exists a kind of prohibition to punish criminals who do not enjoy acceptable age, physical, mental, and even economic normal conditions. Thus, crime prevention is the acceptable method in communities and divine religions. Path selection enjoys a high level of importance though. Different communities have made use of different ways to prevent crime based on their facilities. Divine religions are also cognizant of its importance and have issued decrees in this realm.

The best way to prevent crime is to fight abnormalities and criminal behaviors. Alongside the above-mentioned method, another method to prevent crime is also adopted which is called 'status quo prevention. 'Status quo prevention is a method which interrupts the condition and situation of the purpose of the crime and frustrates the equity and cause of its genesis; the issue of installing cameras in streets is involved in this frame. Analyzing the conditions which lead to a certain type of crime, status quo prevention approaches suggest alterations to the settings, hence diminishing the opportunity of crime commission. Therefore, this approach, unlike current criminology, focuses attention on the settings in which crime is committed instead of the criminals themselves. In this approach, detection or retribution of criminals is not posed and, instead, the main problem is to prevent crime commission. This approach is also recently adopted in modern and electronic forms such as 'X-ray' in airports and many other border gates, as well as in organizations and other secured regions.

In the status quo prevention method the commission of a certain crime is the tally of three conditions:

- The existence of the committer
- The existence of the target or victimized entry [12]
- Lack of defense of the target or victimized entity or lack of protection.

That is why in the policy of prevention victimization is reduced through the discovery of the prone targets of the crime and then hardening them. [10] Buttressing or hardening the target of the crime is but one of the ways of preventing crime that according to some can be a suitable word for that part of the mechanical prevention which has to do with the hardware of security. Because strengthening the protection of the target of the crime warrants building physical impediments between the criminal and the target of the crime. [11] Hardening is purported to increase physical security so that offenders will have more difficulty committing their crime. This method is based on the premise that through the reduction of vulnerability of the target of the crime, the crime can be prevented. This will increase the endeavors on the part of the criminal to commit their crime. [6]

One of the reasons and purposes of installing CCTV cameras in places under supervision and monitoring is to transmit this message to the criminals that once they are observed trying to put their thoughts into practice, they will be controlled and apprehended. Thus, with inculcating this sense and transmitting this message, the offender will have second thoughts lest they should be apprehended or embarrassed due to their wrongdoing. Monitoring and control is, in fact, one of the elements of classical social control and involves the rules of warranty and reinforcement. Therefore, an official or an institution legislates on a rule and through monitoring wants to make sure that it is obeyed, and punishes its violators. These three elements are complimentary to each other. Without law and rule monitoring will go without foundation and the enforcement warranty will be unfair. Without monitoring crimes will not be detected, and without enforcement warranty no one will take observing the rules seriously. Occasionally it might be rendered true that monitoring will be effective on criminals to abandon their criminal thoughts without enforcement warranty temporarily, but watchdogs who find monitoring without any reaction sufficient, induce the idea that the rule is not indispensable gradually through time. [3]

The settings in which the possibility of crime is high must be under strict and precise monitoring. Thus, offenders will sense a high risk of apprehension and might abandon the idea of wrongdoing. A brief glance on the theory of rational option we will realize that humans often act based on more money and more facilities in search of profits, i.e. before doing anything they consider the profits and losses of any action. This way of thinking is so called 'rational thinking. Therefore, in settings in which one might commit an offence by considering the right conditions, individuals' proclivity toward committing an offence will decrease upon noticing CCTV cameras and due to fear of apprehension.

Social actors such as the police force, security guards, caretakers, and salesclerks in boutiques that have the responsibility of monitoring are numerous and many. These are supported by electronic apparatus such as cameras, alarms, and other exposers.[2] Although at first installing CCTV cameras and their warnings might reduce crime rate, but over time criminals learn about the reaction of the police and their speed to take initiatives and thus can adjust themselves to the new settings. The level of success of this method depends on the effective reaction on the part of the police and the performance of the judiciary. Research in Australia indicates that an increase in apprehensions has been effective in short term, but in long term it loses effect without preventive policies. [4] Therefore, reducing crime opportunities can generally be an effective factor to reduce crime rate. Many think that for this preventive characteristic of CCTV cameras to be effective in this method, there needs to be two conditions:

- The would-be wrongdoer must be cognizant of the camera.
- The offender must really believe that the existence of the camera is a real menace of apprehension [7]

Ever since a decade ago in Iran CCTV cameras have been utilized to monitor some places and of course banks. Using this equipment brings about the risk of abuse of people on the part of organizations, which is a violation of people's privacy. But observing the law and for the security of community the advantages of using this method and installing CCTV cameras outweigh its disadvantages.

VIEWS ON THE CONTRADICTION BETWEEN PRIVACY VIOLATION AND SECURITY

The use of cameras for public safety and crime prevention is allowed on the condition that it does not penetrate into individuals' privacy and violate it. Generally speaking, the profits of this event outweigh its losses and all the countries throughout the world have come to this conclusion. The use of CCTV cameras for legal and legitimate purposes to protect the public space does not have legal problems, but using the camera in individuals' privacy is a blatant violation of their rights and their privacy as well.

Conflict between the right to security and privacy has made theoreticians disagree on the use of cameras in cities. One camp considers privacy as a basic human right that must not be excluded on any pretext. These people do not consider security as a justifiable pretext to monitor citizens, especially with the advancements made to the scientific policing knowledge and methods, other methods can replace CCTV cameras. On the other hand, some others give precedence to security, law and order and think that when citizens know if whatever happens to them is recorded, will live a comfortable life since they know if there is a trouble, the memory of the cameras are accessible to be used as reliable documents.

Both the right to security and the right of privacy are respected rights. Thus, as long as the sum of these two is workable, there is no reason to prefer one over the other. Insisting on this, many experts have been trying a way to the sum of these two rights.

Shooting pictures by cameras by the owners of stores and markets is a legal right to prevent crime, but the privacy of individuals is also recorded without them knowing the owners of these places and what kinds of uses or abuses will be made of their pictures. If there are CCTV cameras in place, this must be publicized to people, and the basic premise is that people must be informed about the existence of CCTV cameras so that they can defend their rights in case there is a trouble or a crime is committed. If people know about the existence of CCTV cameras, they will learn about their rights and duties, and if they do not want, they can intend not to be at that location. Store owners have the right to install CCTV cameras in their stores to prevent crime, and they are not obliged to inform their customers about these cameras. But according to the stated matters there are two views on this issue: if a sign is posted about the existence of the camera, thieves and muggers might not enter the place; on the other hand, the thief tries to disable the camera and only then tries to attempt their burglary. The fact that the owners of places do not notify that there is a camera at that place is banned, but the law is not explicit on this issue and this is only a precautionary measure. In other word, using the methods of reducing the vulnerability of the would-be target, making access to apparatus and instruments difficult, reducing the profits and advantages of crime commission, hardening the target and observing it, environmental management and educating would-be victimized entities can help reducing crime commission.[8] Because if committing crime is the plausible deduction on the part of offenders, making crime commission hard for them can bring it under control.

CONCLUSION

In compliance with the law and for the safety of community, the use of CCTV cameras has more benefits than its disadvantages. About using CCTV cameras the principle goes that people must be notified about their existence and shooting so that people are able to defend their rights in case there might occur a problem or a crime. Owners generally notify people of the existence of CCTV cameras and shooting cameras in stores and places by posting a sign; if so, people learn about their rights and duties in case these cameras exist in a place, and if they do not like, they can intend not to be there.

Privacy is but one of the main and basic civil rights that cannot be violated easily. Therefore, the red line for using CCTV cameras is individuals' privacy. As long as cameras have not entered this privacy, they have not done anything wrong. Using CCTV cameras for legitimate and legal purposes and for keeping security will not cause any problems. Individuals' privacy is rendered immune in Islamic Republic of Iran and no one is allowed to trespass upon it, except for privacy clash for others' rights or privacy clash for public interest. But given the complexity of the current issue, there is a lack of a comprehensive and independent rule in the Iranian legal atmosphere, and it requires further investigation to criminalize the cases of illegal penetration into individuals' privacy and invasion of the civil rights of citizens, and also determining standards and legal regularities in the field of installing and using CCTV cameras.

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