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Role of Common Law Principles (Presumption of Innocence and Castle Doctrine) on the Criminal Justice System in Kurdish Region: Moderating Role of Government Support

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Abstract

The implementation of common law principles is the necessary element to implement the criminal justice system, and government support helps in this regard. This aspect requires the intention of policymakers and current literature. Hence, the present article examines the impact of common law principles, such as the presumption of innocence and castle doctrine on the criminal justice system in the Kurdish region. The article also investigates the moderating impact of government support among the presumption of innocence, castle doctrine and the criminal justice system in the Kurdish region. The study used survey questionnaires to gather primary data from the selected respondents. The article also employed the smart-PLS to check the correlation among items and variables and the association among the constructs. The outcomes indicated that the presumption of innocence and castle doctrine have a positive linkage with the criminal justice system in the Kurdish region. The outcomes also exposed that the government support significantly moderates among presumption of innocence, castle doctrine and the criminal justice system in the Kurdish region. The study guides the policymakers in making policies related to develop and implement the criminal justice system by implementing common law principles.

Keywords: *Presumption of innocence, common law principles, criminal justice system, government support, castle doctrine*

Introduction

The criminal justice system refers to the practices and institutions, designed to control crime and manage social order within society. It consists of laws, agencies, and processes aimed at prosecuting, detecting, and punishing people who have committed crimes. The criminal justice system consists of various components such as the police being responsible for investigating crimes, managing public order, collecting evidence, and apprehending suspects (Kovera, 2019). They are considered the initial contact point between the criminal system and the community. Courts are also responsible for determining the innocence and

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guilt of individuals as well as adjudicating criminal issues. Also, prosecutors referred to as crown prosecutors or district attorneys, represent the governments and are considered responsible for providing the evidence against the accused in front of a jury (Cumming et al., 2020; Kovera, 2019). They decide whether they want to pursue a case or file a charge against a defendant. Further, defense attorneys' also present people who are accused of crimes and then prosecutors have to make sure that their client's rights are protected during that legal process. They have the right to challenge the evidence of prosecution, work, or arguments to save the best results for their clients. Moreover, if a person is found of crime guilty, they would face sentenced to different punishments such as community service, probation, or prison depending upon the nature of the crime they commit (Grella et al., 2020; Mueller-Smith & Schnepel, 2021). Correction government agencies which include the probation department and prisons are responsible for rehabilitating offenders and supervising them. However, the criminal justice system also tries to prepare offenders by integrating them into society by rehabilitating them after they serve their sentences. Rehabilitation programs include different services such as education, counseling, and substance abuse treatment (Dunlea & Heiphetz, 2020; Hetey & Eberhardt, 2018). On the other hand, victim support organizations and advocates provide help and assistance to these crime victims by supporting them in navigating the criminal justice procedures, coping with the crime's aftermath as well as providing access to resources. This justice system process is within a legal framework that includes statutory laws, constitutional rights, and case precedents that not only formulate the rules but also provide a procedure that is used during trials, sentencing, and investigations of different cases. However, the criminal justice system might face several challenges in all the regions of the world which need to be overcome to manage the justice system and peace of the society. There are various factors such as the presumption of innocence, castle doctrine, and government support which tackle these issues.

The presumption of innocence is referred to as a basic principle that exhibits that an accused person is innocent until various proofs prove that person guilty in the criminal justice system. It is a basic human right and legal concept that protects the individual from criminal treatment without a fair trial and sufficient evidence (Finlay et al., 2019; Mallone & Eizirik, 2020). The innocence presumption is a cornerstone in the worldwide criminal justice system protecting the rights of individuals, promoting fairness, and ensuring that a person is declared guilty based on solid evidence (Picinali, 2021). The castle doctrine is also considered crucial for legal concepts that enable individuals to use force to defend or save themselves or their property within their own homes or in different cases within their occupied space. It is based on the fact that a person has the right to feel secure and safe within their personal space (Binswanger et al., 2019; Graham Jr, 2021). However, it is significant to determine that the details or rules of these castle doctrines may differ between jurisdictions. Not all jurisdictions adopt castle doctrine while those who have these policies then contain additional requirements or variations (Griffin, 2018). It is important to consult the specific jurisdiction to understand the application and scope of the castle doctrine in a specific region. Government support is crucial to ensure effective and fair administration and functioning of justice. Government plays a significant role in enacting legislation, providing resources, and integrating policies to tackle various issues of the criminal justice system.

The legal system of the Kurdish region is influenced and formulated by the Kurdish Regional government. The KRG has its legal institutions such as courts, police force, and correctional facilities. The Kurdish region of Iraq follows the same structure as followed in the legal system

of Iraq with a focus on police investigations, criminal laws, and correctional facilities. However, the criminal justice system of Turkey has been integrated into the southeastern and eastern regions of the country (Bozcali, 2020). Moreover, the Rojava region in north-eastern Syria consists of a Kurdish population that has developed a unique legal system and self-governance. They follow democratic confederalism which emphasizes community-based justice and local governance (Gunes & Bayır, 2020; Gavilán, et al., 2022). This legal system includes criminal courts, and civil courts, and also focused on conflict resolution through peace and consensus committees. The details, practices, rules, and regulations may vary in the Kurdish region. Each system is impacted by the legal framework of that specific country, having variations in enforcement practices, laws, and the recognition of Kurdish autonomy in specific areas. However, this legal system may face some challenges (Jongerden, 2019). Economically disadvantaged and minority communities may experience harsher treatment and unappropriated representation within the criminal justice system. Many areas in the Kurdish region may face political instability, ongoing disputes, and armed conflicts and these issues hinder law enforcement efforts, disrupt the justice system functioning, as well as influence the access to justice for these communities. The Kurdish region in some cases also faces challenges in having its legal framework integrated or recognized into legal systems at the border. This may lead to inconsistencies and uncertainties creating challenges in administration and inconsistencies in law applications. Inadequate infrastructure, restricted financial resources, and limited trained personnel can disrupt the effective and efficient justice system. Lack of funds may lead to defective court proceedings, investigations, and correctional facilities (Bozcali, 2020). The Kurdish government has also faced various security threats from different sources including terrorism, insurgency, and armed groups, and ensuring the safety of this justice system can be challenging. However, these challenges can be tackled with various factors such as government support, the presumption of innocence, and the castle doctrine. The objective of this paper is to fill this gap to study the impact of various factors enhancing the justice criminal system. This paper highlights the significance of an effective criminal justice system and the factors which play a crucial role in implementing the proper legal system in the region.

This paper is divided into the following section. The first section is comprised of an introduction, followed by a literature review in the second section. The third section consists of methodology and data collection while the fourth section has a discussion, implications, and limitations.

Literature Review

The presumption of innocence is referred to as a basic human right that not only protects from being treated guilty before proven, wrong. Law enforcement agencies can be stopped from arresting individuals wrongfully without reasonable grounds when the government helps in enacting laws and regulations (Shiner & Ho, 2018). This helps to uphold the principle of Presumption of Innocence and the protection of citizens' rights. Serious cases of human rights abuses can be investigated and individuals and law enforcement agencies can be held accountable when government helps in implementing monitoring mechanisms. When unjustified arrest and detention takes place, these mechanisms provide remedies to individuals and their rights and liberties thus respecting the principle of Presumption of Innocence (Ferzan, 2020). The people from the Kurdish regions have long been involved in fights against extremist groups such as ISIS, and Al Qaeda and against military involvements from foreign governments such as US, Russia, and NATO. Safeguarding their rights from unorthodox detentions helps boost the willpower of these people to keep these destabilizing forces at bay. The presumption of innocence makes sure that individuals

are not subjected to punishment or unjustly deprived of liberty. Through the presumption of innocence, the justice system will not only secure the right of the individual but also help to maintain peace in society. This discussion formulates the following hypothesis:

Hypothesis 1: *The positive impact of the presumption of innocence on the criminal justice system.*

The Castle Doctrine, also known as the right to self-defense is a principle in the criminal justice system that grants individuals their right to protect themselves and their properties from aggressors and trespassers. The rights and responsibilities of individuals when using force in violent situations are clearly defined in the comprehensive self-defense laws which are created and established with the help of government support. By outlining the limits and boundaries in these established laws, the government makes sure that this doctrine is not abused and misused by individuals (Wahyuni, 2019). Education programs and public awareness programs enacted and supported by the governments help citizens to learn their rights and responsibilities under the Castle Doctrine. This helps to ensure that citizens abide by a system where they can exercise their rights to self-defense within the boundaries of the law and helps in preventing vigilantism and stops individuals from engaging in illegal actions by taking the law into their own hands. The people from Kurdish regions have picked up arms to defend themselves and the support from the government to enact these principles helps the people fight to protect themselves and their lands from unwanted invasions and plundering of their resources (Alexander Adams, 2022). The castle doctrine positively relies on reasonable and responsible application and helps in avoiding misusing and abusing. Oversight and safeguards should make sure that the castle doctrine should operate within a legal framework that not only promotes public safety but also respect sanctity. This discussion leads to the following hypothesis:

Hypothesis 2: *The positive impact of castle doctrine on the criminal justice system.*

Government support as a moderator plays a very vital role in the implementation of the principles of Presumption of Innocence and Castle Doctrine in the criminal justice systems in the Kurdish regions. The government can ensure a fair and just criminal justice system by supporting the implementation of these principles which is done by providing necessary resources, legal frameworks, infrastructure, aid, and security. This support is very crucial to smoothly and successfully run the criminal justice system in these regions. The governments of Türkiye, Syria, Iraq, and Iran can guarantee this support as they all share the Kurdish regions among them. The following points explore how this can be done by these governments so that these two principles are upheld to the highest standards in the criminal justice systems in these regions.

The creation and establishment of independent and impartial courts can highly contribute to accomplishing fair trials and this creation can be supported in the form of legal aid provisions by the governments. The principle of Presumption of Innocence is upheld for the defendants when governments help in providing them access to competent legal representations regardless of their financial means. The defendants can effectively understand their rights, challenge the charges against them and present their case during litigations. The government also ensures an environment where evidence evaluation and impartial decisions are made by judges through the establishment of these courts (Roberts, 2021). Judges and legal professionals can be provided with government-supported training programs to enhance their skills and decrease the likelihood of wrongful convictions thus making the prosecution alone liable for the burden of proof. The people from the Kurdish regions have been long subjected to illegal persecution and war crimes by terrorist and extremist groups as well as crimes committed by foreign military involvement alike. Governments supporting criminal justice systems ensure that the people get the justice they deserve and are not left behind and deprived. This discussion leads to the following hypothesis:

Hypothesis 3: *The positive moderating role of government support between the presumption of innocence and the criminal justice system.*

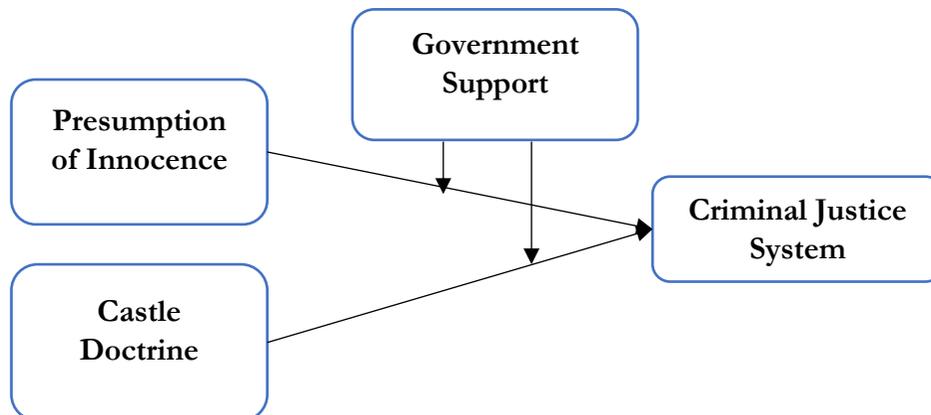
The government sends a strong message of consequences to criminals by empowering the rights of individuals to defend themselves and their properties against violence and trespassing thus guaranteeing the positive effects of the implementation of the Castle doctrine. This helps to deter the criminals and aggressors who acknowledge that there will be prosecution and severe punishments will be enacted against them by law (Murray, 2023). This effect promotes a reduction in crime rates and makes the society and environment safer for citizens. A spirit of self-reliance and autonomy takes a stronghold in the community due to the contribution of this doctrine and helps to build high levels of resilience among individuals. Due to the support of the government in this regard, societal bonds are reinforced and a culture of safety and security is ensured and communities and society safety initiatives become strong due to the engagement of individuals who feel confident to defend themselves thus leading to a collective effort to prevent crime and increase vigilance. By supporting the prosecution of criminals, terrorists, and foreign military personnel, the people of the Kurdish region become confident that no crimes against them go unpunished and it serves as a deterrence to these criminal and military groups that they will face justice for their crimes.

Hypothesis 4: *The positive moderating role between castle doctrine and the criminal justice system.*

Research Methods

The article examines the impact of presumption of innocence and castle doctrine on the criminal justice system and also investigates the moderating impact of government support among the presumption of innocence, castle doctrine and the criminal justice system in the Kurdish region. The study used survey questionnaires to gather primary data from the selected respondents. The items were used to measure the variables extracted from past literature. For example, presumption of innocence is measure with five items extracted from Łyś, Bargiel-Matusiewicz, and Studzińska (2023), castle doctrine is measured with six items taken from Sower, Alexander, and Klukoff (2023), government support is measured with five items extracted from Ilyas, Hu, and Wiwattanakornwong (2020) and criminal justice system is measured with six items adopted from Pryce and Wilson (2020).

Figure 1: Research Framework



In addition, the study selected the lawyers as the respondents. The data was collected by using personal visits to the lawyers' offices. The lawyers are selected based on simple random sampling. A total of 544 surveys were sent. After one month, only 292 valid responses were received. These valid responses have 53.68 percent response rate. Moreover, the article also employed the smart-PLS to check the correlation among items and variables and the association among the constructs. It is a widely used tool for the analysis of primary data and provide best outcomes using complex models (Hair Jr, Howard, & Nitzl, 2020). Finally, the study used two predictors named presumption of innocence (PIN) and castle doctrine (CDT), while the study used one moderating variable named government support (GSP) and one dependent variable named criminal justice system (CJS). These variables are mentioned in Figure 1.

Research Findings

The study checks the association among items using Alpha and values are higher than 0.70, also using composite reliability (CR) and values are bigger than 0.70, also using factor loadings and values are exceed the limits of 0.50 and also using average variance extracted (AVE) and values are not less than 0.50. These values exposed high correlation among items. These values are mentioned in Table 1.

Table 1: Convergent validity

Constructs	Items	Loadings	Alpha	CR	AVE
Castle Doctrine	CDT1	0.746	0.754	0.772	0.565
	CDT2	0.559			
	CDT3	0.593			
	CDT4	0.518			
	CDT5	0.635			
	CDT6	0.542			
Criminal Justice System	CJS1	0.559	0.763	0.838	0.513
	CJS3	0.743			
	CJS4	0.628			
	CJS5	0.763			
	CJS6	0.851			
Government Support	GSP1	0.892	0.806	0.859	0.554
	GSP2	0.805			
	GSP3	0.686			
	GSP4	0.648			
	GSP5	0.659			
Presumption of Innocence	PIN1	0.886	0.864	0.903	0.653
	PIN2	0.683			
	PIN3	0.768			
	PIN4	0.911			
	PIN5	0.770			

The study also checks the association among variables using Fornell Larcker and cross-loadings. The outcomes indicated that the figures that exposed association among variable itself are bigger than the figures that exposed the association with other variables. These values exposed low correlation among variables. These values are mentioned in Table 2 and Table 3.

Table 2: Fornell Larcker

	CDT	CJS	GSP	PIN
CDT	0.604			
CJS	0.523	0.716		
GSP	0.426	0.728	0.744	
PIN	0.510	0.589	0.464	0.808

Table 3: Cross-loadings

	CDT	CJS	GSP	PIN
CDT1	0.746	0.454	0.376	0.474
CDT2	0.559	0.223	0.194	0.244
CDT3	0.593	0.335	0.376	0.274
CDT4	0.518	0.290	0.141	0.219
CDT5	0.635	0.279	0.229	0.314
CDT6	0.542	0.229	0.131	0.241
CJS1	0.407	0.559	0.313	0.374
CJS3	0.334	0.743	0.462	0.432
CJS4	0.286	0.628	0.322	0.382
CJS5	0.435	0.763	0.637	0.481
CJS6	0.408	0.851	0.728	0.445
GSP1	0.379	0.741	0.892	0.444
GSP2	0.301	0.657	0.805	0.372
GSP3	0.391	0.450	0.686	0.276
GSP4	0.259	0.302	0.648	0.239
GSP5	0.252	0.367	0.659	0.351
PIN1	0.380	0.437	0.326	0.886
PIN2	0.413	0.440	0.418	0.683
PIN3	0.449	0.583	0.431	0.768
PIN4	0.435	0.472	0.366	0.911
PIN5	0.347	0.393	0.295	0.770

The study also checks the association among variables using Heterotrait Monotrait (HTMT) ratio. The outcomes indicated that the figures are lower than 0.90. These values exposed low correlation among variables. These values are mentioned in Table 4.

Figure 2: Measurement model assessment

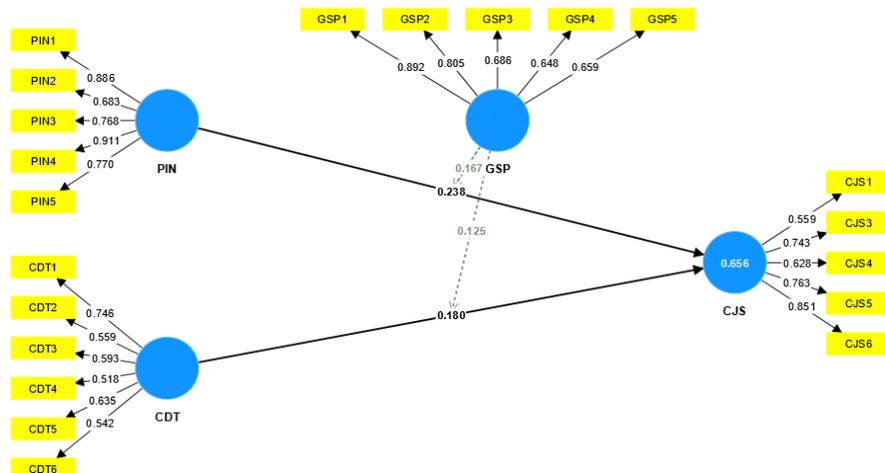


Table 4: Heterotrait Monotrait ratio

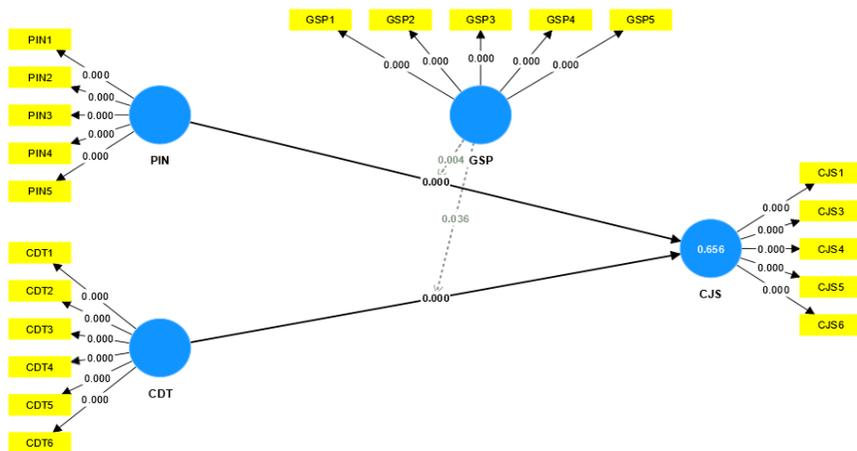
	CDT	CJS	GSP	PIN
CDT				
CJS	0.708			
GSP	0.541	0.807		
PIN	0.638	0.712	0.529	

The outcomes of path analysis indicated that the presumption of innocence and castle doctrine have a positive linkage with the criminal justice system in the Kurdish region and accept H1 and H3. Moreover, the outcomes also exposed that the government support significantly moderates among presumption of innocence, castle doctrine and the criminal justice system in the Kurdish region and accept H3 and H4. These linkages are given in Table 5.

Table 5: Path analysis

Relationships	Beta	Standard deviation	T statistics	P values
CDT -> CJS	0.180	0.043	4.157	0.000
GSP -> CJS	0.505	0.033	15.240	0.000
PIN -> CJS	0.238	0.036	6.554	0.000
GSP x PIN -> CJS	0.167	0.057	2.947	0.004
GSP x CDT -> CJS	0.125	0.059	2.124	0.036

Figure 3: Structural model assessment



Discussions

The presumptions of innocence play a crucial role in determining the criminal justice system. Past studies done by Stoykova (2021), also support this hypothesis. The presumption of innocence supports the principle that a person is considered innocent until that individual is proven guilty. This not only safe their rights such as dignity, and liberty but also assist in fair trial. It also makes sure that person should not face any social stigma and punishment without due process or proper evidence. Another, study done by Fauzia and Hamdani (2022), also supports this hypothesis and has used judiciary using statutory, and historical approaches. The presumption of innocence is also referred to as a safeguard regarding wrong convictions by

requiring and placing proof beyond a reasonable doubt. It also assists in preventing the convictions of innocents by ensuring that guilt is developed on convincing and reliable evidence. The presumption of innocence promotes fair trial as it indicates that a person should be treated innocent during the legal process until the person is proven guilty. The presumption of innocence is a crucial aspect of a fair legal system. It enables the maintenance of the confidence of the public in the justice system by making sure that results should be based on fair process and solid evidence.

The castle doctrine positively influences the criminal justice system by enabling individuals to save their property and themselves within their occupied space or home. Past study done by Ferencz et al. (2022), also supported this hypothesis. The castle doctrine acknowledges that individual's inherent right can be defended themselves, their property, and their families from imminent threats. DeMora, Collingwood, and Ninci (2019) also supported this hypothesis. According to them, it determined that people have the right to feel secure and safe within personal space as it allows them to use force, if necessary as it empowers them when encounter with genuine threat. The castle doctrine also encourages equal treatment and consistency by ensuring that people have similar legal protections and rights across jurisdictions as it develops baseline standards for individual self-defense which create uniformity and prevent inequities or discrepancies in geographical location.

Government support plays a moderating role between the presumption of innocence and the criminal justice system through effective protection and implementation of basic principles. A past study done by Stoykova (2021), also supported this hypothesis. According to them, government plays a crucial role in implementing legislation that formulates guidelines for application and supports the presumption of innocence within the criminal justice system. They defined proof burden, legal standards, and procedural safeguards that support the presumption of innocence and make sure of its practice. Ramsay (2020) also supported this hypothesis and according to him the government also plays a crucial role in implementing international conventions and human rights treaties that protect and secure the presumption of innocence. In short, government acts as a moderator by creating a supportive environment for the presumption of innocence that deals with the criminal justice system. It ensures that the laws are only for the theoretical concept but also ensure practical practice in society. By providing the legal framework, oversight, resources, public awareness, and training government support encourages and support a balance between efficient justice administrative and individual right.

The government support moderating role between castle doctrine and the criminal justice system that encourages that appropriate and responsible practices of self-defense. A past study done by Yeargain (2020), also supported this hypothesis. According to him, government support plays a significant role in developing the legal framework that ensures the Castle Doctrine laws implementation. They define the limitations, conditions, and threshold for the use of self-defense and make sure that it is applied proportionately and reasonably. Government support ensures that these laws should be aligned with social values, creating a balance between public safety and individual rights and preventing the abuse or misuse of claims of self-defense. Government support has clear standards and guidelines for the castle doctrine application within the criminal justice system. These policies help prosecutors, law enforcement, and the court understand the criteria and boundaries for acknowledging whether a person should use self-defense or not.

Implications

This paper provides a significant contribution to the literature as it analyses the role of various factors such as presumption of innocence, castle doctrine, and government support in the successful implementation of the criminal justice system. The criminal justice system is very crucial to maintain the peace and safety of the civilians of the country. However, the Kurdish region is facing some challenges to the successful implementation of the justice system. To address these challenges this paper analyses the direct role of the presumption of innocence, castle doctrine, and the moderating role of government support on the criminal justice system. The Kurdish region faces various threats due to terrorism, or other various agencies which try to damage the security of this region. This paper provides guidelines for policy maker or government agencies for the successful implementation of the criminal justice system. The presumption of innocence plays a crucial role to enhance the security system of the region. The presumption of innocence provides support to the people until or unless that individual is proven guilty. The study guides the policymakers in making policies related to develop and implement the criminal justice system by implementing common law principles. The castle of doctrine also plays a crucial role to enhance the judiciary system of the country, thus making the legal framework more efficient. Further government support also plays a moderating role between the presumption of innocence, castle doctrine, and the criminal justice system.

Conclusion

The people from the Kurdish regions have been through a lot of suffering due to destabilization, devastation, and sometimes desolation of their societies and their lands. Government support plays a very important role as a moderator in the implementation of the principles of Presumption of Innocence and Castle Doctrine in the criminal justice system in these regions. In case Individuals are involved in criminal cases, they become confident that they will receive free and fair treatment when they see the government actively committing to uphold the principles of the Castle Doctrine. Public trust is built and strengthened when the governments ensure full support in implementing these principles. The implementation of these principles with government support provides a strong ground for cooperation between the public and law enforcement agencies. This leads to an increase in trust between the public and the criminal justice system. It increases confidence and courage in individuals who then openly come forward and report the crimes committed against them to these law enforcement agencies and these individuals. This increases the faith of the individuals in the fairness and integrity of the agencies. The criminal justice system functions very well when it is perceived positively due to the government's support in upholding these principles. It creates a positive image of the overall justice system and the law enforcement and crime prevention efforts are boosted thus benefiting the law enforcement agencies as well. After the complete decimation of various destabilizing forces in the Kurdish regions, the government support for criminal trials against terrorists and military personnel ensures that the people of these regions remain confident about their agencies and the justice system on domestic as well as international levels. Public trust is cemented when government supports the efforts of the justice system to provide free and fair trials, protection from arbitrary detentions, strengthen individual rights to self-defense against aggressors and trespassers, and promote a safe environment for the public and deterrence against criminals. The faith of the people in the criminal justice system from this region is reinforced and societies and communities benefit from this strengthening of these principles which ultimately leads to growth in the confidence and trust among the public.

Limitations

This paper has several limitations. First, this paper has used various factors such as the presumption of innocence and castle doctrine and their positive impact on the criminal justice system. For future reference, scholars can also use laws and policies, prosecution and defense, and study their impact on the criminal justice system. Further, this paper has analyzed the role of government support as a moderator between the presumption of innocence, castle doctrine, and the criminal justice system. For future reference, resources and funding, and the judicial system can be used as a moderator between the presumption of innocence and castle doctrine and their positive impact on the criminal justice system. Third, this study has been done on the Kurdish region which is an underdeveloped area which means that this story might not apply to the developed region. For future reference, the researcher can use this framework in developed countries.

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