Restrictions on the Right to Freedom of Expression and Thought in the Constitutions of the Islamic Republic of Iran and the United States of America

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Abstract

The present paper endeavors to examine in vivid details the fundamental notion of freedom in a comparative fashion between the Islamic Republic of Iran and the United States of America. It goes beyond constitutional laws to study different Acts, Codes, Provisions, and Articles and the constraints all these regulations can bring to the right of freedom and liberty. The scope of the study touches upon numerous aspects of the concept of freedom, including the right to the freedom of speech, expression, thought, conscience, public access to information, and Internet use, to name but a few.

Introduction

It has always been one of the most essential human needs the existence of a collection of civil laws based on which an individual can realize one of their most important desires, which is order. An order that can initially prevent the occurrence of any disharmony, convulsions and unlawful enforcement, and eventually lead to, and most importantly, the prosperity of nations. For instance, the existence of civil transaction laws to ease and regulate economic contracts and resolving conflicts regarding people’s contractual relationships. Eventually, the existence of such laws provides people with a sense of comfort and peace of mind to do their transactions. Obviously, the realms of freedom is limited, otherwise everyone can meddle in people’s lives to the extent they wish. An unlimited freedom leads to chaos and cannot meet the basic needs of life and the weak will be oppressed by the strong.

At present, it is difficult to name a constitution in which the right to the freedom of expression is not recognized. But there is disagreement on the amount and method of determining the limits of such liberty; whether the general direction of a legal system is to expand the scope of freedom or to enforce various restraints. Human liberty can nurture talents and encourage competitive atmosphere that has its own law. Participants who take part in a competition are obliged not to hurt one another, or cross certain red lines and to play by the rules of the game. Hence, a free competition has also some rules and it is not like whatever you wish to do.

First Words: Restrictions of the Right to Freedom of Thought in the Constitutions of the Islamic Republic of Iran and the United States of America:

In this section, we examine the instances of the freedom of thought.

The First Discussion: Restrictions of the Right to the Freedom of Conscience in the Constitutions of the Islamic Republic of Iran and the United States of America:

Neither the constitution of the Islamic Republic of Iran nor that of the United States of America has explicitly recognized the right to the freedom of conscience. Also, the common laws do not talk about this issue. The right to the freedom of conscience has implicitly been raised in the criminal and civil procedures in the way of observing conscience when testifying. Interestingly enough, the legislator has not considered any limits on this. Although, the right to the freedom of conscience has not explicitly been raised in the constitution of Iran, it seems that it can be investigated under the title of “civil disobedience” or the religious term “advice to the
leaders of the Muslims”. Regarding civil disobedience, it is necessary to say that although public law scholars have not commented on this issue, in some circumstances it is regarded as a crime and such scholars would tend to justify it by saying: the verse 172 of surah Baqarah and 145 of surah Anaam and 115 of surah Nahl clearly show that an ordinary citizens of the nation will be deprived of all their rights in case of defiance against a just Imam and leader of the community (Mansoory, online source), and to criminalize it, they reason, “to deal with these citizens legally, there needs to be documentation of law.” Therefore, such documentation on criminalization of civil disobedience is listed as follows:

According to Article 499 of the Islamic Penal Code, If the person who has committed civil disobedience is a member of a group or organization – listed in Article 498 of the Islamic Penal Code – and whose action is in line with their group or organization, has technically committed organized civil disobedience, and accordingly, their action shall be criminal and subject to punishment: “anyone who is a member of one the aforementioned groups or communities or branches of these communities in Article 498 shall be sentenced to three months to five years imprisonment unless it is proved to have been unaware of its objectives.” According to Article 500 of the Islamic Penal Code: “Anyone promoting any activities against the Islamic Republic of Iran or in the interest of opposing groups and organizations shall be sentenced to three months to one year imprisonment.”

Hence, all civil disobedience activities can be regarded as criminal and will be subject to punishment provided that they promote against the government of the Islamic Republic of Iran as they are categorized under the term “promoting any activities”. In other cases, such as Articles 607 and 618, this issue has been raised in another way.

It should be noted that civil disobedience is not an attempt to overthrow the government, nor can it be regarded as lawlessness, but the rejection of obeying the law in terms of conscience however the person accepts liability resulting from failure to adhere to the law. It does not mean the person has desired to commit any crime. Although, the right to the freedom of conscience has not been recognized in the constitution of the Islamic Republic of Iran, some scholars consider civil disobedience – an issue closely related to it – as an offense. This issue seems not to be justified since resorting to civil disobedience in the field of Islamic law is explained under the title of Advice to the Leaders of the Muslims.

Resorting to civil disobedience has been fully recognized in the constitution of the United States of America. Scholars in this field have raised some restrictions on civil disobedience as follows:

First, the objection must be made to deal with cases of apparent injustice. Second, all other legal means that have the chance of winning have already been employed. And third, the actions of disobedience shall not take such measures that would jeopardize the operation of the order of the constitution.

The Second Discussion: Restrictions on the Right to the Freedom of Opinion in the Constitutions of the Islamic Republic of Iran and the United States of America:

Given the fact that legislative basis of the Islamic Republic of Iran is Islam and Twelver Shi’ism and this principle applies to all rules and regulations of the Islamic Republic of Iran and even other articles of the constitution unconditionally – the fourth Article of the constitution of the Islamic Republic of Iran, it is necessary to initially explain its limitation on any aspects based on Islamic Sharia. In Islam, because the holy Quran puts much emphasis on human freedom in choosing a superior way, the appearance of this holy Book (Islam) indicates that a person is free to choose the thoughts and ways of thinking, and even does not accept converting to Islam without thinking. Since the constitution of the Islamic Republic of Iran is believed to be solely based on the pure spirit of Islamic thought, Article 23 fully recognizes the freedom of opinion: Inquisition on people’s private affairs (especially their inner affairs) is not permitted.

The phrase “freedom of opinion” is not used and is not explained that individuals have the right to possess any opinion and to express that opinion. Rather it emphasizes that the individuals are not molested for “having an opinion”. With this constraint, not only “acting according to opinion” is not supported, but also “expressing opinion” is excluded from the provisions of the Article and cannot say that the inhibition of expressing opinion is negated in the law. Therefore, it is not plausible that some lawyers say, “[in this constitutional Article], the freedom of having an opinion and expressing that is assured” (Katooziyan, et. al., pp. 107)! Although in Articles 24 and 175 the “freedom of expression” in the press has been recognized, this freedom is again subject to obeying and not interfering with the laws and principles of Islam.

Regarding Article 23 of the constitution, those who claim that the Article does not imply more than “having an opinion” and “revealing that opinion” is not included in the Article are in the right: “in this Article, because of the use of the term ‘mere’, meaning ‘only’ having an opinion, and nothing more than that, having an opinion
in the realm of thought is limited and expressing any atheistic beliefs in the Islamic Republic is not permitted.}\) Ayatollah Yazdi's interpretation of this Article is the same, "if an atheist talks, writes and behaves in a way that there is 'no trace' of blasphemy, no one has nothing to do with him."

Because of the principles of Islamic jurisprudence and laws, freedom of opinion, and consequently the freedom of expression, have always been one of the major challenges of the Islamic Republic of Iran and current assumptions do not offer any solutions and no one can expect, with these principles, to have any results in the level of our society and government (the freedom of opinion and speech on Tabnak Online News Agency website).

The constitution of the United States of America does not write specifically on the right to the freedom of opinion. Hence, it seems to be the absolute right and no institutions cannot restrict this right. Of course, the promotion of these ideas is subject to the restrictions of the field in which the opinion is expressed. For instance, if it is a religious opinion, it will be subject to religious limitations.

Although the freedom of opinion has not been raised in the US constitution, it has been approved in the courts' decisions, and is considered to be absolute, but expressing it has some restrictions.

**The Third Discussion: Restrictions on the Right to the Freedom of Religion in the Constitutions of the Islamic Republic of Iran and the United States of America:**

The Constitution of the Islamic Republic of Iran recognizes four religions. Below is the explanation of the restrictions on these religions:

Shiite Muslims are those who base their belief on Quran and the GhadirKhum and believe Hazrat Ali (AS) and his children to be the successor of the Holy Prophet of Islam. At the moment, there are around a hundred million Shiite Muslims living in Iran, Afghanistan, Pakistan, Lebanon, Iraq, Azerbaijan, Syria, Yemen and other Islamic countries. Shi'ism, like other sects of Islam, has been the subject to ramifications, among which the most important ones are Zaidi, Ismaili, Imami (Ja'fari duodenum). The constitution of the Islamic Republic of Iran declares Islam as the official religion and Shiites Duodenal the official sect (Article 12 of the constitution). Also, the position of the constitution of the Islamic Republic of Iran is to fully recognize the religion and sect in all facets of life. This has always been the subject to controversy. A number of scholars believe that when the official religion is Islam, it is not necessary to consider Shiites Duodenal as the official sect if it is intended to name the change brought upon the country a revolution. To name Shiites Duodenal the official sect of the country causes rejection on the part of other Islamic countries as the majority of them are Sunni. Therefore, they would not model the revolution, for this revolution is restricted to a specific faith and oppose their way of thinking. Others reason that because the Iranian nation, based on their old belief in the government of justice and truth and Quran, voted the rule of the Islamic Republic of Iran (the first Article of the constitution), the recognition of Islam due to the fact that the majority of the nation is Muslim, and the recognition of Shiite due to the fact that the majority of the nation is Shiite, is a logical factor (Hashemi, pp. 164-165). Also, whatever persistence is put on the need of respecting Islamic brotherhood and maintaining unity, this fact cannot again be denied that there is disagreement among Islamic sects about the practice of ijthhad and its sources and documents. These visions are the result of 14 centuries of history and we all know that they are not some retractable principles. So it is better to put aside idealism and respect the realities, though unpleasant [15].

Therefore, there is no specific restriction on the official sect of the country. Perhaps, it can be said that the fact that the leader, the head of the judiciary, Chief Justice, and the Attorney General has to be a Shiite clergyman is a restriction for other Shiite laities. Of course, such positions are available for them if they continue their education in religious majors. Islamic sects are numerous. Some people, based on a hadith from Prophet Mohammad that Islam would have 72 sects but only one would be in the right, counted around as many sects and considered their sect to be the rightful. The Islamic legislator, among all these sects, recognizes only five of them, namely Hanafi, Malik, Hanbali, Shafei, and Zaidi, and considers some rights for them. These rights can be categorized as fundamental rights (Article 12) and political and administrative rights (Articles 19, 20, 25, 105).

In the constitution of the United States of America, according to the unique nature of religion, founding fathers in drafting the First Amendment to the constitution viewed religion and religious beliefs different from other forms of expression and tried to protect the freedom of religion. America's constitution about freedom of religion includes the clauses. The first clause is not to promote and disseminate a religion, based on which the government is not allowed to try to promote a particular religion. Some American scholars argue that the government promote and disseminate a religion when it advocates a religion against another one and to support a religion against atheism does not subject to this clause. Some other reject this justification and claim that the government has to remain neutral in any circumstances [6].

In the constitution of the Islamic Republic of Iran, the right to the freedom of religion is given to four groups. The first group is the official religion of the country which possess an absolute freedom in any aspect and has been given all the political and civil rights. The second group is the five Islamic sects recognized in the constitution. These sects are not recognized as minority, yet they are deprived from some civil and political
rights. The third group is the religions recognized in the constitution under the title of religious minorities. This group is also deprived from some civil and political rights. The fourth group is other religions and sects which only entitle to the right of good morals and Islamic justice and human rights (Rights given in the third chapter of the constitution) and do not have the right of expressing opinion.

The freedom of religion has two sections in the constitution of the United States of America. The first section is dedicated to the separation of religion from politics and in the second section the freedom of religion is recognized. According to the first section, the enacted laws must primarily have a legitimate, non-religious and secular purpose. Secondly, these laws must have a central, main and primary effect that neither discourage nor promote the religion. Thirdly, they prevent any conflict between the government (local and federal) and the Church. Although, the second clause of the constitution of the United States considers the freedom of religion absolute, the judicial procedure has determined that in certain temporal or special cases, it can be limited by the government.

The Fourth Discussion: Restrictions on the Right to the Freedom of Education in the Constitutions of the Islamic Republic of Iran and the United States of America:

The freedom of education is of three kinds:
1. The freedom of building schools
2. The freedom in choosing educational system and institution
3. The freedom of the content of learning

The way the constitution of the Islamic Republic of Iran views education is different from the issue of the freedom of education. The constitution of Iran emphasizes on the right of education, rather than the right to the freedom of education. Of course, Article 12 of the constitution emphasizes on the right to the freedom of education for other Islamic sects recognized in the constitution. Accordingly, the constitution restricts education in different laws. The first restriction is about building schools. Article 1 of the Abolition Act of the establishment permit of non-governmental schools says, “the Supreme Council of Education, in enforcing the Abolition Act of the establishment permit of a school, enacted in 1964, can, according to the articles of this act, abolish the authorization of the establishment of the schools that have acted against the rules of the Ministry of Education and the enactments of the Council.” According to the amendment of this article, in this act, the term “school” refers to preschool, elementary and high school, college and vocational school. Article 2 of this act lists the circumstances under which the establishment permit of non-governmental schools can be abolished:

A. Criminal conviction of the holder of the establishment permit that causes deprivation of all or some social rights.
B. The loss of one or more of the educational conditions of the establishment permit because of legal reasons.
C. Transferring the school to another entity without the approval of the Ministry of Education.
D. Withholding of the removal of the people who are not qualified to serve or teach in the school by the Ministry of Education after a written notice by officials and the expiration of the time limit set in the notice.
E. Violation of implementation of laws and regulations related to student enrollment.
F. Supervision of the holder of the establishment permit in violating the laws concerning the provision and regulation of educational qualifications and examination offices and issuing fabricated and falsified educational certificates.
G. Refusal of following the educational programs during the school year.
H. Committing acts against cultural affairs by the holder of the establishment permit in recognition of the Supreme Council of Education.

Regarding teachers, the most important limitations are as follows:

1. According to the Employment Act of Literacy Movement in Islamic Republic of Iran, one the preconditions of the permanent members of the movement is having faith in Islam and being committed to its principles and believing and adhering to velayat-e faqih and Islamic Republic of Iran. In other words, members cannot be from other religions or sects.
2. Article 2 of the Selection Act of Teachers and Employees of the Ministry of Education says:
   a) Believing in Islam or one the official religions recognized in the constitution of the Islamic Republic of Iran.
   b) Real commitment to the principles of Islam.
   c) Believing in and adherence to velayat-e faqih, Islamic Republic of Iran and the constitution.
   d) Lack of organizational affiliation or support for political parties and organizations and groups that their illegality has been or will be declared by competent authorities unless they repent. According to note 1 of this article, regarding clause 2 of religious minority explained in the constitution, these people comply with the rules and regulations ideologically and practically and are subject to their own certain conditions, yet in any case shall not violate Islamic laws in public.
Therefore, the constitution of the Islamic Republic of Iran has used a right to education (an economical-social right) instead of educational right (a civil right). Accordingly, it has considered restrictions on the educational system on three levels of textbooks, school establishment permit, and scope of the content of subjects. It seems that in all these levels, it has been tried to introduce Islam as the main basis of religion and education and the spirit of the constitution in terms of restrictions on ideology and religion dominates it.

Although the constitution of the United States does not talk about, in any sense, about educational right or the right to education, in a practical sense, it tries to secure this right. It does so according to the nature of the constitution, that is the restriction on the government about promoting a certain religion. Hence, the limitations of the US educational system have been the result of two issues. First, they are the result of the educational system as there exists no national educational system in the United States and consequently different educational systems use different methods. The second restriction is of an external nature, meaning that entities outside educational system have the power to limit teachers and professors. Using their financial power, these people bring some restrictions upon teachers and professors.

Second Words: Restrictions on the Freedom of Speech in the constitutions of the Islamic Republic of Iran and the United States of America:

Restrictions on the freedom of speech have also been addressed in international documents like the first and second clause of Article 19 and 20 of International Covenant on Civil and Political Rights that subject the right to the freedom of speech to constraints, or the second clause of Article 29 of Universal Declaration of Human Rights that subjects the rights of others to identifying and respecting the rights of others, and also the second clause of Article 10 of European Convention on Human Rights, Articles 13 and 14 of American Convention on Human Rights, second clause of Article 27 of African Charter on Human Rights subject freedom of speech to constraint (SeyedFatemi,).

Article 40 of the constitution of the Islamic Republic of Iran is based on a relativist thought. To design constraint on rights and fundamental freedoms, this article refers to two limitations found in modern and common constitutions of other democratic countries. Article 40 claims that only in two cases, ‘invading public interests’ and ‘hurting others’, a right can be restricted. Of course, experts of the constitution have also considered other cases like Article 24 of the constitution, ‘disturbing the principles of Islam’, as the red lines of rights and fundamental freedoms. The US constitution has also given some power to the congress based on which the exercise of the freedom of speech can be affected [10].

The First Discussion: Restrictions on the Right to the Freedom of Speech and Words in the Constitutions of the Islamic Republic of Iran and the United States of America:

The freedom of speech in an oral way is not addressed separately in the constitution of the Islamic Republic of Iran. Article 24 and 175 of the constitution talk about the freedom of speech in the press, which constrain this freedom to lack of disturbing the principles of Islam and public rights. Also, Article 8 of the constitution says, “in the Islamic Republic of Iran, inviting to enjoin good and forbid evil is a public duty, which is of people toward each other, the government toward the people, and the people toward the government. Its conditions, scope and quality shall be determined by law…” (Abbasi,). Also, the eighth clause of Article six of the amendment to the Press Act, enacted in 2000, bans insulting legal and real entities who have religious sanctities even by publishing photos or caricatures (Mo’eenAbadi, ). Article 26 of the constitution subjects the freedom of parties, societies, political or union associations, religious and Islamic minorities to not violating the principles of independence, freedom, national unity, and the criteria of Islam and the Islamic Republic of Iran. This article also puts much emphasis on the holy religion, which shows its importance and sensitivity on the part of the legislator. The legislator does not mean an absolute freedom, rather it is constrained by protecting the government and Islam. Article 27 of the constitution allows the freedom of assembly and protests, a manifestation of democracy, without carrying weapons and disturbing the principles of Islam and security. This issue has been emphasized in Article 16 of Activity of Parties Act. Therefore, the constitution of the Islamic republic of Iran recognizes freedom of peaceful assembly and protests. However, Article 35 of Parties Code subjects peaceful assembly and protests to informing and getting permission from the Ministry of Interior Affairs, which is not in line with Article 27 of the constitution and is considered to be an obvious constraint. Other restrictions stipulated in the laws of the Islamic Republic of Iran is Article 57 of the Islamic Consultative Assembly Elections Act that forbids the use of any banners, posters, graffiti and advertising caravans and also mobile speakers outside the speech area. Moreover, Article 84 of the constitution allows the members of the Islamic Consultative Assembly to express their opinions. Also, Article 75 of the Internal Code of the Islamic Consultative Assembly, according to Article 86 of the constitution, stipulates that members of the assembly, when fulfilling their duties as a member, are absolutely free in expressing their opinions and no one can prosecute, detain, or deprived them from their civil rights because of their opinions expressed in the assembly or as fulfilling their duty, which apparently is admirable. However, in practice, we witnessed constraints created for the members of the sixth assembly and later their eligibility approval failed for next terms so as not to be
able to be elected by the people, so that they can freely defend their people’s right in the Islamic Consultative Assembly.

According to the First Amendment of the US constitution, “the congress shall not pass any laws restricting the freedom of speech and the press...”. Using the phrase literally restricted the government even more and affected not only the congress, but also all branches of the federal government and also state and local governments. But regarding the First Amendment, Supreme Court of the United States of America believes that the First Amendment should apply less protection to some cases than others, like commercial speeches, offensive speeches, such as defamation and libel, and speeches that may be harmful for children and also broadcast of the aforementioned speeches on radio and television and public speeches of civil servants and government employees.

For example, Chaplinsky, in his Fighting Words, says that some of the words [of course exceptionally and very limited] are in a way that preventing them from being expressed and convicting them will never be a violation of the constitution. These words include statements that are against modesty and chastity, are shameful and heretical, offensive or aggressive. Those who express these words harm the people in the society and public order. It has to be noted that these statements are not a major factor in the expression of any opinion and only are socially considered as means of inferiority that are against public order and good morals of the society and are not the instances in which the words are the means of communicating thoughts and opinions, which are protected by the constitution. Moreover, if the punishable act is considered as a great misdemeanor, it will not be supported by the constitution. Also, using speakers to hold speeches in public places like streets and parks is not allowed or subjects to the relevant rules of general interest. According to the constitution, it might be prevented to hold speeches in streets because of disturbing order, unrest and inconvenience of traveling vehicles or pedestrians. Yet, giving speeches in lecture halls is legal and no one can condemn these speeches because they might cause revolution or disputes (Greenawalt, ).

As it was stated in the beginning of the discussion of restrictions, the notion of limitation has been accepted in the majority of legal systems, so has the right to the freedom of speech. In the constitution of the Islamic Republic of Iran, Article 24 and 175 subject this freedom to not disturbing the principles of Islam and public rights. Article 26 of the Iranian constitution interprets parties and unions in a special way and subjects them to not being against the religion and constrains the freedom of political parties and associations and communities to not violating the independence, freedom, national unity and principles of Islam and the government, which is not surprising in a religious system. Article 8 talks about limiting and warning people, which is called forbidding the evil, and dictating people to do and speak well, which is called enjoining the good. These are religious affairs and are based on critical thinking. This article, in general, introduces religious or moral criticism as a frontispiece, which includes criticizing governmental authorities by the public. Article 31 of the Parties Code allows the right to assembly based on the constitution. Yet, in Article 35, this assembly is subjected to the Ministry of Internal Affairs approval, which seem to contradict the soul of fundamental freedoms and human rights and even the constitution of the Islamic Republic of Iran. Furthermore, clause 8 of the Article 6 of the Press Act considers insulting real and legal entities. But, the First Amendment of the US constitution recognized a very general freedom, including the freedom of speech, and just believes that some speeches and words (insult, libel, offensive speeches, speeches harmful to children, etc.) have to be restricted and provides less protection for these cases, which is an interesting point in this regard. Also, the Espionage Act and Smith Act, which was passed during the Second World War, can be considered as attempts to limit freedom of speech and words in the laws of the United States.

The Second Discussion: Restrictions on the Right to the Freedom of Information in the Constitutions of the Islamic republic of Iran and the United States of America:

In recent years, governments have gradually been obliged to provide people with information for the enjoyment of fundamental freedoms in an international, regional and local scale. Of course, many government do not recognize this right because international documents do not specifically talk about the right to access information with the government agencies. This issue has not been raised in International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. And even during the drafting of the European Human Rights Convention, many countries resisted the Swedish government efforts to connect the right to access information with the right to the freedom of expression. But, even those who do not consider the right to access information as an instance of the freedom of expression, they believe that it is an independent right that can contribute to the freedom of expression and eventually accept that the relationship between freedom of expression and the right to access information is undeniable [4]. In any case, today, it has to be accepted that the freedom of information is not a negative freedom and aside from the fact that the governments must not prevent free expression, they also have some responsibilities to realize this freedom and provide the necessary fields. The right to access information with the government is one the crucial aspects of realizing the freedom of expression fully and completely [23].
In the laws of the Islamic Republic of Iran, the right to access information, just like other rights, has its own limitations and boundaries. This right may contradict public rights, such as the right of national security or the right of prosecuting crimes and criminals, or contradict private rights, such as the right of privacy, the right to maintain the sanctity and dignity of individuals or the rights of intellectual property. Accordingly, Articles 13 to 17 of Publishing and Open Access to Information Act explain exceptions on the freedom of information (Baba’i, ). In short, restrictions on the freedom of information can be categorized as follows:

A. National security and state secrets (Article 13 of Publishing and Open Access to Information Act)
B. Privacy (Articles 14 to 16 of Publishing and Open Access to Information Act)
C. Intellectual property and confidential business information (Article 16 of Publishing and Open Access to Information Act)
D. Safety and health of individuals
E. Environment
F. Other cases (Article 17)

In different countries, military, intelligence, and security agencies are exempted from the freedom of information. In our country, the most important security and intelligence agencies are:

1. Supreme National Security Council (Article 167 of the constitution: In order to protect national interests and territorial integrity and national sovereignty of the Islamic Revolution, the Supreme National Security Council is created with the president as its chairman.)
2. State Security Council
3. Ministry of Intelligence
4. Armed Forces Intelligence Protection

Currently, different categories of classified state secrets are subject to the Penal Code of Leaking Secret State Documents enacted on 18/02/1975 and the code on how to keep confidential and secret state documents and to classify and how to determine the kind of documents and information enacted on 01/03/1975.

James Madison, one of the first political leaders in United States of America, expresses the debate on the need of the right to be informed and says that a popular government without popular information or the means to obtain it is a tragedy, or comedy, or both of them... People who want to govern themselves must arm themselves with the power knowledge. In the United States of America, Supreme Court holds that the First Amendment guarantees freedom of speech and press, but it does not give the right to public access to government information and resources [22].

In the United States of America, since 1950, the congress has restricted federal agencies in regulating the internal mechanisms of actions, including filing and maintenance of records and information and in 1966 passed Freedom of Information Act. In fact, passing this law in the US can be considered as an important motivation for all those who wish to have a responsive government (Howard). But in practice, this Act has faced security considerations. For instance, John Marks, author of The Search for the Manchurian Candidate: The CIA and Mind Control, writes, “according to Freedom of Information Act, I asked CIA to give me all the documents related to behavior control that the agency made available for Rockefeller Commission. Although, according to the law, an agency has to respond this request within 10 days, it took more than a year for the agency to give me the first papers which were 50 documents in this regard and extremely cencered [19].

The Third Discussion: Restrictions on the Right to the Freedom of the Press in the Constitutions of the Islamic Republic of Iran and the United States of America:

Expressing one’ opinion by the press is more effective than other means of mass media. Materials which are published in the press may again, after years, go hand in hand and next generations read them. Because of this significance, constitutions of the majority of countries pay a special attention to the press give it rights and privileges so that influential individuals and groups cannot constrain the freedom of the press. However, the freedom of the press is not an absolute factor and as Hook says, in circumstances that the country has been threatened or the freedom of the news agencies contradicts other rights and freedoms recognized in the constitution, the freedom of the press has to be restricted. Whenever more important interest such as observing public order and security, governments never hesitate to threaten the freedom of the press. There is a difference between democratic systems and the systems of the third world. In countries with a free publish of the press, the freedom of the press is restricted based on a punitive system after the publication in case the newspaper or the magazine publishes something that violates the law [20]. In non-democratic countries, restrictions on the press are considered before publication.

Regarding the restrictions on the freedom of the press in Iran, according to the constitution and the Press Act, there are some cases as follows:
A. Any violation of the dignity and rights of individuals
B. Harming others
C. Any press activities in line with disturbing Islamic principles or public rights to promote prostitution and vice, and publish images and content against public chastity.
D. Libel against officials, institutions, organizations and any citizen, and an insult to real and legal entities who have got religious veneration, even by publishing images or caricatures and insulting women.
E. Publishing any libel or defamation, slanderous words, or offensive titles
F. Publishing materials that contain threats of violating the honor or reputation of individuals or expose personal secrets.

The challenge between the freedom of expression and maintaining national security is an important and controversial issue in the majority of countries. Because of security and military reasons, the United States of America greatly censured the press during Vietnam War – while preventing reporters to attend war zones, the invasion of Grenada, Panama, Persian Gulf War, the invasion of Haiti, and the recent invasion of Afghanistan, which was against the constitution that forbids any restrictions on the freedom of expression and the press [7].

Article 6 of the Iranian Press Act determines cases in which the principles of Islam and public and private rights are disturbed. These include publishing atheistic materials and contrary to Islamic norms, promoting prostitution and vice, and the publication of photos against public chastity, promoting materialistic life, and insult to Islam. Other instances that bring restrictions in the laws of the Islamic Republic of Iran can be Child Protection Act enacted in 2002 for pornography reasons.

The freedom of the press has been a challenge for the US in the times when the country was at war with Vietnam, Grenada, Panama, Haiti, and the invasion of Afghanistan and Persian Gulf War. In the First Amendment of the Constitution, the congress of the US, while paying attention to the freedom of expression and the press, determines the restrictions on these freedoms, which includes the Individual’s support for insult and defamation, the society’s support for the spread of pornography, the government support for domestic violence, the government support for foreign aggressions. Also, the statement of “the principles of journalism” expresses the responsibilities and principles of journalism in the United States of America.

The Fourth Discussion: Restrictions on the Right to the Freedom of Radio and Television in the Constitutions of the Islamic Republic of Iran and the United States of America:

Cultural industries such as radio and television play a significant role in shaping contemporary human understanding of global issues and proposing solutions for them. Accordingly, the content of movies can be considered as statements in which a particular conception of the nature of the problems is formed and the contemporary human condition is studied and solutions are offered.

The constitution of the Islamic Republic of Iran has a two-pronged approach toward radio and television. On the one hand, article 44 allows the public ownership of radio and television, and on the other hand, article 175 stipulates their management a totally governmental task. Hence, it can be said that the Islamic Republic of Iran Broadcasting Company is a governmental agency. It actually is so according to the clear explanation of law and its budget is included in the total budget of the country annually. Article 175 of the constitution subjects the freedom of radio and television and generally the Broadcasting Company to obeying the principles of Islam and being in line with the interests of the country.

Article 44 of the constitution of the Islamic Republic of Iran, regards the radio and television as state property, which are considered exclusive in the field of public media. In 1989, some of the representatives of the Islamic Consultative Assembly, according to the letter of Article 175, and due to the necessity for passing the laws on the supervision of organizations, passed a bill called “The Legal Bill of Execution Manner of Article 175 of the Constitution in Supervision Sector” on 1/10/1989, which was eventually approved by The Expediency Discernment Council of the System on 3/10/1991. Also, the Guardian Council, recognizes some restrictions on the audiovisual media. For instance, we can mention the verdict of Guardian Council on the essentiality of the management law of the Islamic Republic of Iran Broadcasting (IRIB). Provision 1 of this act, declares that generally, broadcasting programs contradictory to Islamic views, via television or radio is forbidden. Therefore, the freedom of thought for non-Muslims is not recognized in the state radio and television (IRIB). Also, the Act of Punishment for Unauthorized Activities in Audiovisual Affairs, approved on 6/1/2008, with the aim of supporting the prestige and dignity of the people in provisions 4, 5 and 10, has defended the privacy policy. Provision 19 of the IRIB Policy Act, has determined some items not to be broadcasted in all programs, especially in news, and has issued some restrictions on items as follows:

A. Military, political and economic secrets which can be abused by the enemy in case of being broadcasted.
B. Scandals defaming the official and legal institutions and organizations, groups, associations, and parties
C. The items that cause moral corruption and outrage in the society, as Holy Quran declares: “Indeed, those who like that immorality should be spread [or publicized] among those who have believed will have a painful punishment in this world and the Hereafter. And Allah knows and you do not know.”
D. The items that may hurt the religious emotions, national unity and the ones that may cause tension in the society.
E. The items that may propagate subversive and counter-revolution groups
F. The things which may endanger the friendly relationships with ally countries or what may unsettle the foreign affairs.

In the United States, the radio and television are private and their foundation and activity relies on the permit of the non-government institution “The Federal Communications Commission” and the mentioned media should act under this the supervision of this institution. In the USA, due to the radio act approved in 1992, an obligatory permit from the Trade Ministry of that country was required for creating amateur radio transmitters, but in a new radio act, approved in 27th February, 1927 by the US Congress, the collection of special regulations of systemization of the radio affairs, on the basis of private and independent non-government sector activity, called “The Federal Radio Commission”, was responsible for rejecting the permits related to the activity of the radio transmitters according a certain article, including the prefiguration of the equal time of using the microphone and the radio programs in the political discussions and election debates of different think tanks, not censoring the radio programs and avoiding the radio broadcasting programs.

In 1934, a new act was approved under the title of “Remote Communication Act” in the US Congress. The regulations was revisited in 1996. In the recent act, instead of “The Federal Radio Commission”, another commission called “The Federal Communication Commission” was selected which has been at work in the Remote Communication and Audiovisual Affairs Office, since then.

The Fifth Discussion: Restrictions on the Right to the Freedom of Internet in the Constitutions of the Islamic Republic of Iran and the United States of America:

The vast domain of the Internet has developed the freedom of expression and information and has provided an infinite space for spreading the information and the news. One of the concerns which emerged in line with the universality of the Internet, is the issue of uncontrolled content of this phenomenon, as everyone can put anything on the web which can be viewed by millions of people. Also, some of the western thinkers, while insisting on liberalistic theories, believe that the issue of Internet censorship is against the right of freedom of expression, and also different subjects such as conserving the public morality, the national security, privacy and so on, has caused the states to consider some restrictions in the law. In the surveys done in 2001, by the Freedom House Institute in the USA, the way the states treat the accessibility of the Internet for the people, is studied in 131 countries of the world. In this survey, the countries are classified in three groups in case of the limitations of accessing the Internet: “Very limited”, “Rather Limited” and “Less limited”. 59 countries (45%) were put in the “less limited” group. In the “rather limited” group, there are 53 countries (40.5%), and in the third group, 19 countries (14.5%), imposed limitations on the users of the Internet.

In general, the mechanisms through which, one can limit the cyber space are “the filters and authentication policy” which are the regulations of restricting the access to the software programs and content. Both of these tools are technical and have common executional source. Filtering is the most important policy for preventing the cybercrimes which were practiced for avoiding the computer offenses, and for the same reasons, the filtration policies have developed in line with the information technology development. The filtration policy is enacted by installing on certain systems, programs, and access points to prevent the user from entering the network or sending unauthorized data. Of the other instances, one can mention the firewalls and proxies which act on the basis of a list of authorized and unauthorized programs. In the authentication policy, the anonymous or invalid users are prevented from accessing the net, according to certain criteria. The basic example of this policy, is using the password. This means that the users, who receive passwords, after passing the authentication and verification phases, can have access to a system or website. Nowadays, instead of using the password, biometric methods (verification systems) like scanning the iris, the retina or the fingerprint are used for identification to minimize the error coefficient. Authentication is one of the most suitable ways of restraining the cyberspace.

Conclusions:

According to the sixth clause of section A of the Act of General Policies of Cyber Information Networks in the Islamic Republic of Iran, the content of the Internet is controlled in Iran. One of these methods is the proper refinement system, in order to prevent from the access to moral and political forbidden websites and also to delete the inappropriate inputs. Since 2001 until May of 2009, the organization for supervision and organization of the Internet was the Supreme Council of the Cultural Revolution and according to the act approved by this council, a committee consisted of three people, was determined as the officials for defining the instances of Internet censorship. The Cybercrimes Bill, was approved by the Islamic Consultative Assembly in 2009, and the criminal instances in this bill are as follows:

1. Publishing content against the public virtue and morality.
2. Publishing content against the Islamic standards.
3. Publishing content against the public security and welfare.
4. Publishing content against the state officials and institutions.
5. Publishing criminal content related to the audiovisual affairs and intellectual property.
6. Publishing content related to the cybercriminals.
7. Instigating, inciting or inviting content to committing crimes.

The obvious fact is that this act, tends more to control rather than to manage the situation, and also one can observe that the issues such as electronic theft, hackers and hacking in the cyberspace were ignored in the legislation of this act. The maximum restriction imposed in the cybercriminal acts and laws is related to the political and news websites, where limiting or banning of publication of comments and ideas by the state is the mere violation of freedom of expression.

The laws of the United States concern the least control on the Internet, but the privacy policy led to the proposal of the right of “solitude”, and the approval of the fourth amendment which expressed the guarantee of the privacy protection.

The United States, approved the Communications Decency Act in 1996, against the online child pornography, in which it was declared that showing any indecent content on the Internet is illegal. This act, was an attempt to control the pornography on the Internet and to support the children against the flood of indecent content.

In 2003, the Child Support Amendment Act was approved; according to which, all the public schools and libraries had to ban or filter the websites in which the sexual pictures are harmful for the teenagers. Also, another act was approved after the September 11 attacks in 2001, under the title of “Patriot” as to combat the terrorism and for keeping the national security which allows the law administrators and the forces of American National Security Agency to access the online privacy of the users. The legal constraint and restrictions of privacy violation was removed by the approval of Patriot Act, and the American officials violate the privacy of the American citizens, uncontrolledly.

REFERENCES


[22] NamakDoostTehrani, H., 2005. The right of free access to information and its role in advancing democracy.A doctorate dissertation, Faculty of Social Sciences at AllamehTabatabai University.