



Judicial review of Criminal Protection of the right of access to Information

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ABSTRACT

The key component of the right to free access to information, freedom of information and to determine the mechanism by which citizens can have access to information in public institutions Today, the right to govern society to become aware and informed of the foundations of democracy is as indispensable as pillars of democracy is freedom of speech and press. Protecting this right, especially with the use of the criminal law power is different depending on the disposition and political policy. Criminalization of criminal intervention using very different media, freedom of information acts with criminal constraints they face. In the criminal policy of criminalization and exposing them access to classified information, violation of privacy, spying, etc., along with criminal defamation, insults, propaganda, propaganda against the constitution and freedom of information, press and of expression is limited. In Iran, the constitution and the fourth and fifth development program on strengthening elements reinforcing the right of free access to information and tools, are discussed. However, the appropriate protection of the right elements and tool suppliers, such as the press, political parties and new technologies has taken place. Release Act and the Access to Information Article 22 dealt with access to criminal infringement but the law is influenced by political developments with the necessary standards and principles on freedom of information in the field away. Non-criminal measures such as requiring agencies to publish information, The realization of e-government and strengthen the monitoring mechanism can Prevent threats and violations of the right to information while recognizing this right can be Preventive factor in the incidence of corruption and administrative offenses.

Keywords: Iran's rights, the right to information, freedom of information, safeguards

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INTRODUCTION

Passing law of free access to information and then passing the regulation of this law in the Eleventh Government resulted in hopes for transparency in the country's information space. However, various regulatory barriers as well as the lack of available and fast-acting mechanism for releasing documents and information have given formality to the enforcement of this law, and it is unlikely that in the years ahead, with the exception of a few cases, we witness the implementation of the release of documents. More than half a century passes from the law on free access to information as well as the law on release of information as the most obvious rights of citizens in many countries. In Iran, the law on free access to information was ratified on 22 August 2009 at Islamic Consultative Assembly, and the regulations of this law were approved on November 12, 2014 in the cabinet, so that the agencies and organizations are obliged to provide information on their portals. Accordingly, any natural or legal person can easily access the information they need easily in any field, and in fact, the documents of sovereignty, governmental, non-governmental, and private collections should be publicly available [1-5].

According to Article 6 of the law on free access to information, "request to access to personal information is accepted only from natural persons or their legal representative to whom information is related." Moreover, in accordance with article 7 of this law, "public institutions cannot demand any reason or justification for the applicants' request of access to information." Based on Article 8 of this law, "public or private institution must respond to request of access to information in the fastest time possible. Besides, response time cannot be more than 10 days from the time of receiving the request in any case[6].

Hypotheses:

1. The criminal protection of the right of access to information was thoroughly investigated.
2. The right to inform people was investigated as a fundamental right.
3. The concept, principles, and tools of information freedom were investigated.

The definition of criminal law

Criminal law is a branch of public law that deals with investigating the support of state of the rights of individuals and the values of society.

The definition of information

In the shortest definition, information or consciousness means "raw data." Data are potentially meaningful raw materials obtained in knowing and understanding a material or immaterial concept through research techniques and using cognitive tools.

The definition of information security

Information security means protecting information and information systems from unauthorized activities. These activities include unauthorized access, use, disclosure, reading, copying or recording, destroying, altering, and manipulating.

Principles of the right to free access to information

Today, democracy has been recognized as the most acceptable system of government. Self-government of the people is not possible in a vacuum. Citizens can participate in their own government when they are aware of the policies governing them and are able to criticize the policies freely. Therefore, access to information is a necessary and indispensable condition for democracy.

Moreover, this right is in line with citizenship, because a citizen who lives in a democratic society should have the right to be aware of the laws, policies, and other information that may affect his life directly or indirectly.

Status of Freedom of Information in the Iranian constitution

In the second paragraph of Article III of the constitution, promoting public awareness in all fields with the proper use of the press, mass media, and other means is mentioned. It seems that what is relevant in this principle is promoting public awareness and using the press and mass media and other means that are also possible in this paragraph. The eighth paragraph of Article III refers to the principle of public participation in determining their political, economic, social, and cultural future. If people are not aware of what is happening in their country, how can they contribute to determining their own destiny and manage the society? Accountability and access to information are the freedoms that facilitate continuation of popular sovereignty in the Islamic Republic, improve the general knowledge, and are considered central condition for the role of citizens in society.

The theoretical foundations of the right to free access to public information

Some pundits have interpreted the role of information in democratic life as the role of "money" in the economy, where citizens with information can have more rational choices and options about their political life. Moreover, with the help of information, they can better arguments and evaluation of their arguments. Information is not a public good, but it is a public resource whose treasurer is the state. For the people to govern their representative government and for democracy to become more inclusive and more participatory, the quantity and quality of access to information should increase accordingly. Freedom of speech is a civil and political freedom, but when the government makes its information available to the public, it cannot be said that, it is using freedom of expression, but it is merely carrying out its duty to inform. Having an open system to protect the rights and interests of citizens for public participation in government is possible with a vibrant and sustainable democracy. Here, with the existing transparency, the government prevents corruption and discovers it in case of happening and thus protects the integrity of the government. In this process, where excessive secrecy is replaced with transparency of the government, the information created, which in principle belongs to the people, is given to them.

CONCLUSION

In the international legal system, many documents have emphasized the need to exercise this right by governments. Among the most important of these documents is the Universal Declaration of Human Rights that has referred to this right in Article 19. Iranian legislator has pointed to the right implicitly in Article 23 and Article 582 of the Islamic Penal Code and explicitly in Article 2 of law of free access to information. It seems that what could justify the non-enforcement of this law are a) lack of comprehensive executive regulations and b) lack of formation of public opinion in order to implement this right. The first alternative is obvious, but about the latter, it should be said that the most fundamental principle in any democratic country is citizens' being able to examine and monitor the behavior of the government and government officials, but it does not occur in a vacuum. In the law of the right to access,

it was stated that it does not include information about the private lives of people, and as people are the owner of information generated by the government, they have the right to have this information.

Today, information as a determining factor along energy has become very important. In practice, information is considered not only as an economic, cultural, and political asset, but also its importance is so much that the current era has been called the information age. In addition, people's free and unrestricted access to information is one of the instruments to institutionalize real democracy. Thus, we can say that if the law on publication and free access to information is properly implemented, it can effectively help the democratic system. Freedom of information law does not have popular origin in our country. Therefore, people never give authorities a request for information and do not believe in clarifying matters by them. Authorities per se are reluctant about transparency and misuse this belief of the citizens.

Therefore, it is necessary: 1) to promote and improve communication among officials in governmental agencies with people to make people aware of their rights so that in light of this knowledge, they can demand the realization of their right from the authorities and oblige officials for accountability.

2) It is also necessary to pass the executive regulation of this law as soon as possible, so that one can implement this law according to the conditions set out in the law, and support stakeholders with criminal and civil benefit provided in it. 3) It is also necessary to develop educational programs, especially for government employees who are subject to the enforcement of this law.

REFERENCES

1. Ashouri, M. (2000) Criminal Justice (proceedings), first edition, Tehran: Ganj e Danesh library.
2. Ardebili, M.A (2005) General criminal law, published in Tehran, Eighth Edition, Volume I, page 240.
3. Afrasyabi, M.E (1997) Criminal Law, Tehran University Press, second edition, Volume I, page 311.
4. Ardebili M.A (2004) Keeping under surveillance (Proceedings of Criminal Sciences), First Edition, Tehran: SAMT Publication.
5. Shambayati, H. (1999) criminal law, -Jubin Publications, Tehran, ninth edition, Volume I, page 408.
6. Zeraat, A. (2004) motivation and impact on criminal responsibility, first part of the hearing, No. 46.