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*THE RIGHT TO INFORMATION AND KNOWLEDGE:  
A CRITICAL DEBATE IN IRANIAN LAW SYSTEM*

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## § 1 AN INTRODUCTION TO "THE RIGHT TO INFORMATION"

Information constantly adds new things to our system of knowledge. Besides, upon consideration of new information, our ideas and thoughts change and develop and new ideas appear.

Information means any material in any form in relation to acts and decisions of general officials. General officials are real and legal persons whose competence is determined by constitutional law or ordinary law enacted by the parliament. As outlined in the law, information such as that contained in advertisements, information having economic and financial value such as rights to individual property and its branches and or among the private limits of persona and finally governmental information, are subject to regulation.

The currency of information and knowledge is a process that justifies knowing them, a clear water which should quench all people. Consequently, information is important for people from two (2) points of view. From one side, all people get their needed information from governmental associations. When the government monopoly on ownership of information is broken, people achieve one their basic rights, called the Right to Information and Knowledge. From the viewpoint of placing the person in a democratic society and the Right to Self-Determination and cooperation in one's political, social, etc. destiny, this is accompanied by the right of supervision of the person over governmental agents, which, in turn, is a basis for realizing democracy based on government in which the supervisory role of the people plays an effective part.

Modern human beings in democratic government should have a wide knowledge of the existing social atmosphere with all its processes. No governmental act should be hidden from public opinion. All things should be subject to the auditing of public opinion.

Nowadays, the rights of mankind have deep roots and at the same time multi-dimensional aspects. From one side, it involves different branches of philosophy in the discussion of human rights, and from other side, lawyers and even owners of religions have not been indifferent in this realm. Contemporary human rights, at first, present a modest claim and that is guaranteeing the minimum human rights which are taken from the moral realm to the realm of law, and it is considered for all human beings without any discrimination, ignoring color,

sex, religion, nationality, race, etc. However, deep thought about this claim clearly reveals that it is not a modest claim, either because from one side, it challenges tradition or from the other side, it frightens politicians. So, if its dimensions are known, both motto agreements and bios and ignorant oppositions follow.

Theoretical discussions of human rights play an effective role in better understanding human rights and in determining norms and the legal terms of human beings. The lack of knowing the basic concept of human rights makes it difficult to understand human rights. Contemporary human rights are a complicated conversation that includes many different conversations. Concepts such as the right of freedom, equality and justice are so well rooted that every one of them is effective and influencing in its own place. Knowing the rights of contemporary human beings has a direct relation and inseparable connection with analyzing the aforementioned key concepts. So, the necessity of analyzing the concept of the "Right to Information" with regard to the above key elements, so as to better understand its aspects, seems justified and logical.

## §2 A CONCEPTUAL ANALYSIS OF THE "RIGHT TO INFORMATION"

### §2.1 THE RIGHT TO INFORMATION: "TO BE A RIGHT" OR "TO HAVE A RIGHT"?

A distinction between the Right to Information as "a right" and "to have a right" to information seems completely necessary. If it is said that the "Right of Information" is a "right", that is, from moral and normal viewpoints, it is a good case with good value. It is only a moralistic viewpoint to speak of the "Right of people to have access to information". But, by stating that the right of information means "to have a right" to information enters another realm of law and only its being good or bad is not considered. In the realm of human rights, the "Right to Information" is accompanied by concept of "to have a right" to information because all human beings have right to use the existing information in hands of general officials according to the existing standards set forth in international documents on human rights.

### §2.2 A CONCEPTUAL ANALYSIS OF THE "RIGHT OF INFORMATION" IN THE FRAMEWORK OF "TO HAVE A RIGHT" TO INFORMATION

The Right to Information, as conceptualized as "to have a right" to information, puts the owner of the right in a competent and legally supported place, and in fact, the legal system supports such a person in line with having information and guarantees his legal rights under this title. The Right to Information in the sense of "to have a right" to information, may have different meanings in different places. So, for determining this right, the famous distinction of Hofeld is used. He divides rights into (4) groups: 1) claim -right 2) liberty-right 3) power-right 4) immunity-right.

The Right to Information in framework (2) of the first division is analyzed;

#### THE RIGHT TO INFORMATION AS A CLAIM-RIGHT

Every person (X) in society has the right to receive his needed information from general officials (Y). So, X has the right to have access to information and Y is obliged to present the

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requested information to X in a justified manner. Hohfeld calls this right a claim-right. And, it is completely understandable that if Y does not present needed information to X, X has a right, according to law, to claim a lack of information provided from Y. A legal necessity of a claim-right is the opposite party. In fact, Y as owner of a duty is obliged to present the needed information to X, the holder of the right; otherwise, a claim-right with all the necessary consequences which may legally be implemented are created as a performance guarantee for X. The rights of human beings are basically individual rights and are nearest to a claim-right. In the above case, when X presents his request legally and Y does not perform his duties, X can complain about Y's non-performance and/or leave the matter to a referee for resolution, and in case of the absence of the legal performance guarantee, he can scorn Y morally. And, indeed, doing both is not impossible.

Pursuant to the Right to Information, the general official undertakes:

-To respect the Right to Information of citizens.

-By supportive steps, he can eliminate fields of breaching this right by other persons.

**THE RIGHT TO INFORMATION AS LIBERTY-RIGHT.**

A legal system can give special freedom to privileged persons, i.e., it exempts the person from a potential special undertaking which he has been given. In fact, the ignorance of the potential right of the persona and his release from this duty means that he has right. When the law considers the Right to Information for all members of the society, in fact, its equal does not make any corollary duty for the person.

The Right to Information is from one view, a liberty-right, and this is when this right is considered in relation to the owner of the right. And, its negation is duty and commitment. This right involves not having a right of the other party. You have the right to get information from a governmental official, but this right does not exist mutually for the governmental official. With regard to these kinds of rights, the legal system has not considered any potential duty for the owner of the right and his release from this duty means justifying him, and expressing this in legal terms is as follows:

"All people have right to have access to their needed information."

### §2.3 THE EXCHANGE BETWEEN HUMAN RIGHTS AND SMALL RIGHTS IN THE "RIGHT TO INFORMATION"

The right to have access to information and knowledge is an international and a global right and is based on principles accepted by all members of universal society, and besides a basic and internationally legal right, there are some trivial rights which are a Connecting Bridge between universal human rights and culture and religion and the history of nations. Thus, absorbing the right of information as a basic right in a domestic legal system without considering cultural relations that exist in the society is not possible. And, it seems the best way for an exchange between national large and trivial rights is in relation to accepting the right of information.

### §3 FREEDOM OF INFORMATION

A right in one aspect means freedom, and freedom either in the realm of thought and/or doing an action that needs determination. Freedom of information means the right of people to have access to existing information in systems and general institutes, and from one aspect, the form of positive liberty and negative liberty has been considered. Isaiah Berlin has a famous distinction from liberty. Negative liberty or "liberty from", means liberty from all external hindrances and interferences of others, and "liberty to" means the person's rules over all acts and decisions. Apart from Berlin's distinction, liberty of information means X is free to ask or not ask for his needed information from Y. In any case, he has full powers in his choice. Such a kind of power exists in implementing the right to Information.

#### §4 EQUALITY IN HAVING THE "RIGHT OF INFORMATION"

The idea of equality is one of basic axles of human rights. Equality in human prestige and greatness goes with the equality of having human rights. Although equality has inevitable challenges, in this realm, it would be better to pay attention to Ronald Dworkin's division of human rights so that status of the Right to Information is determined in the discussion of equality.

1-Some rights are of such character that all citizens have equal rights to use it and equal treatment for all citizens should be the principle of all legal systems and no inequality is justified. The "right of information", the "right of free expression" and "freedom of ideas" are among this group of rights.

2-In the second group of rights, although they are equal for all citizens, treatment of them may be unequal, and recognizing the equality of citizens and not equal treatment of them is considered.

## §5 THE "RIGHT TO INFORMATION" IN INTERNATIONAL LAW

The right of access to information is one of the basic rights of human beings. This is not just a simple belief, but it is a result of many international efforts over the years to recognize this right and enter it among the international documents of human rights; moreover, the constitutional laws of many countries support it. From historical times, human beings after many horrible and wars have searched for a way to obtain global peace, and have found the existence of increased communication in society as a way for achieving this goal. After World War II, the charter of the United Nations for saving the world from war and achieving peace was written.

The Universal Declaration of Human Rights was written in 1946 and then in 1948, it was enacted by the general assembly of the United Nation Organization and in which development of the free circulation of information was considered as an agent for increasing peace and removing misunderstanding. In the articles of association of the UNESCO Organization, in this regard, it is said that: "Thought of war is created because of lack of mutual understanding of nations from each other and if there are conditions that nations know each other, and instead of hostility and hatred, an idea of peace and friendship is created, there would then be no war."

After new ideas concerning the liberty of information were circulated, the International Conference of Liberty Information was held in Geneva in 1948. In this conference, representatives of 51 countries which are member of United Nations Organization wrote article 19 of the global declaration of human rights. The mentioned article specified that all over the world, every person has the right of receiving, searching, transferring and distributing information. And, based on this fact, in the 1950s, the United Nations Organization, with help of UNESCO, conducted research on the situation of the freedom of the press and information in the world. After many challenges in the world, finally, by the 1990s, the subject of access to information entered a new era and in the first international gathering, world leaders, by signing a declaration of principles, undertook to create an information society in the new millennium.

Nowadays, in the constitutional law of more than 40 countries in the world, liberty of information is enacted with different titles such as the "law of clear government", the "law of information liberty", the "law of mass media", the "liberty law of people's access to governmental information" and the like. The mentioned laws have specified concepts, manifestations and methods of realizing the principle of information freedom and its exceptions.

The Right to Information as one of basic rights of human society in the article 19 of the Universal Declaration of Human Rights is presented. According to article 19 of this declaration:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Besides this law, article 19 of the international convention of civil and political rights enacted in 1999 states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

1. For respect of the rights or reputations of others;
2. For the protection of national security or of public order (ordre public), or of public health or morals.

Although in international documents on human rights, it is referred to freedom of expression, these two freedoms or rights have distinct concepts and are not equal.

In association with the above-mentioned article 19, in June 1999, to aid in the drafting of a law on the right to access information from governments, some criteria were written which are considered as the nine-principles that form the basis of the right to information, and are as follows:

### **A-The principle of utmost disclosure**

The presuppositions of the utmost disclosure principle are that:

- 1) All information that is at the disposal of a governmental association should be disclosed.
- 2) Only in very limited and special conditions, will the first presupposition be ignored.

### **B-The principle of the obligation to publish**

One of the duties of governmental associations is the principle of the obligation to publish information. This duty, on one hand, stems from the request and demand of citizens and also, on the other hand, is imposed independent from any request on the part of citizens, ensuring that general information should be constantly published for the public. So, the general official is obliged to publish information and he should also classify the existing information with regard to its capacity or non-capacity for publishing.

### **C-The principle of reinforcing open government**

In this case, the Right to Knowledge has great importance. If the level of citizens' knowledge increases and the government is limited to its rights, it will lead to better observation of the information right for citizens from the side of governmental officials. So, in this regard:

- 1) Freedom of Information for citizens has a positive sense, with general education provided on the subject of the right of access to existing information and the method of achieving access to such information.

2) Freedom of Information for citizens also has a negative sense, with regard to changing the culture of some governmental sections of hiding information from its citizens.

### **D-Limits on the Right to Information**

The law should clearly specify any applicable limits and exceptions on the principle of freedom of information and any such limits or exceptions should have legal justification.

### **E-Facilitating access to Information**

### **F-Expenses**

Access to information that is to the benefit of all should be free to the greatest extent possible; to the extent a charge is necessary, it should be kept to a minimal amount.

### **G-Opening negotiations**

### **H-Priority of disclosure**

A legal system encompassing the "Right to Information" and "freedom of information" should be definite and should not include contradictory regulations.

### **J- Supporting those who warn**

Notwithstanding the international documents for human rights and important principles referred to therein, more than 40 countries of the world have also enacted laws on the freedom of information, and many countries intend to enact such legislation.

## §6 The right of information in the Iranian legal system

In the legal system of Iran, the "right of information" is clearly mentioned, and this right and related rights are addressed in the following provisions:

### **A-The sixth principle of constitutional law:**

In the Islamic Republic of Iran, the country's affairs should be managed by holding general votes through elections: Choosing the president, the representatives of Islamic Council Majlis, the members of councils and the like through election in cases which are specified by this law.

### **B-The third principle of constitutional law**

The government of the Islamic Republic of Iran is obliged to achieve aims predicted in the second principle of constitutional law, to use all its possibilities for realizing the "cooperation of people in specifying its political, economic, social and cultural destiny" and "making the correct office system and eliminating unnecessary foundations".

### **C-Principle 24 of constitutional law**

Publications and the press are free in expressing matters unless they are against the basic principles of Islam and general rights. Its details are specified by the law.

The above principle indirectly affects the right of information, perhaps in gathering and transferring information, but is also an indirect right of information itself.

### **D-Principle 175 of constitutional law:**

"In the TV and Radio of the Islamic Republic of Iran, free expression of thought and distributing ideas observing Islamic norms and the country welfare should be supplied."

The center of attention on this principle of press freedom and freedom of expression in TV and Radio is on the process of providing such information, i.e., searching, gathering, transferring, distributing and receiving freely news and opinions.

### **E-Article 5, press law:**

"Getting and distributing domestic and foreign news for increasing public knowledge and preserving the interests of the society observing this law is the legal right of the press".

F-Bill of publishing and free Access to Information: before final enactment

In all the aforementioned principles and articles, the right to freedom of information and/or a special law on this subject does not expressly exist in this case. However, at present, Islamic Council Majlis, after many efforts and negotiations, have enacted the law of the "right of press freedom". But, the Guardian Council as the supervising association for comparing enactments of Islamic Council Majlis to Islamic jurisprudence and constitutional law have found some faults in it. After removing them, it will be enacted. The "law of press freedom", as drafted before its final enactment, reads as follows:

## **Bill of Publishing and Free Access to Information**

### **Chapter one- Definition and Generalities**

#### ***First section- Definition:***

Articles 1- In this law, the below expressions are used in relating the expressed meanings:

A) Information: Any kind of data mentioned in documents or reserved as software and/or any tool or object that is recorded.

- B) Personal information: Personal information such as name and surname, addresses of residence and workplace, family status, individual habits, physical attributes, bank account and passage code.
- C) General information: Non-personal information such as regulations and bylaws, statistics and national and official figures, official documents and correspondence that are not among the exceptions of the fourth chapter of this law.
- D) Public institutes: Organizations that are an association related to the government in the general meaning, including all its principles and components which are specified in the laws of the Islamic Republic of Iran.
- E) Private institutes: According to this law, private institutes include any beneficial and non-beneficial institute except public institutes.

### ***Second section- Freedom of Information:***

Article 2- Every Iranian has the right to have access to general information unless prohibited by the law. Using general information or publishing them is subject to related regulations and laws.

Article 3-Every person has the right to prevent publishing or distributing information prepared by himself which are changed in the process of preparing them for publication, provided the mentioned information is not prepared by order of some one else, and in this case, it will subject to the applicable "in-between" contract.

Article 4-Forcing preparers and distributors of information to disclose their information source is prohibited unless by verdict of judicial competent official, and, of course, this does not negate the responsibility of the preparers and distributors of information.

Third section- The Right of Access to Information:

Article 5- Public institutes are obliged to put the information subject to this law in the least possible time and without discrepancy at the disposal of the people.

Footnote-Information that includes the rights and obligations of people, in addition to existing legal cases, should be announced to the people by publishing, public announcements and mass media.

Article 6-Private institutes are obliged while observing regulations of this law, to put

information of persons which is necessary for executing rights or protecting their rights at their disposal.

## **Second Chapter- Method of access to information**

*First section- Requesting access to information, answering and delays in answering*

Article 7- A request for access to personal information is accepted only from real persons to whom the information is related or from their legal representative.

Article 8- The public institute cannot claim any reason or justification for his request from the applicant for having access to information.

Article 9- The public or private institute should answer a request for access to information in the earliest time possible, and at any time, the time for answering cannot be more than ten (10) days from date of receiving the request. Regulations related to the request and delays related to presenting information with regard to their specifications is subject of bylaws which within six months from date of enacting this law according to proposal of Commission of Publication and Free Access to Information will be enacted by directors board.

*Second section- The method of answering requests:*

Article 10- The answer of private institutes to requests for access to information should be written or electronic.

## **Third Chapter- Clarity Promotion**

*First section- Duty of publishing*

Article 11- Every public institute should, except in cases in which information is classified, in accordance with public benefit and citizenship rights, at least annually publish general information including its function and balance sheet, including the information listed below, using computer software and as much as possible in a manual, and if the citizen asks for it, they should deliver it to the citizen after obtaining the related expenses from him:

A) Aims, duties, politics and policies and structure.

B) Methods and stages of finishing services which are directly presented to the society

members.

C) Procedures for citizens' complaints about the decisions or steps of that institute.

D) Kinds and forms of information which are kept in that institute and the bylaw pertaining to obtaining access to them.

E) Powers and duties of their superior officers.

F) All procedures and bylaws by which real and legal persons and non-governmental institutes can take part in executing powers of that unit or by which they can be effective through some other method.

Article 12- An enactment and decision which creates a right or a public right cannot be classified as governmental secrets and publishing them will be obligatory.

*Second section- Report of the information unit to the Publication Commission and Free Access to Information*

Article 13- Public institutes are obliged through an information unit or related unit to annually present a report about activities of that institute in executing this law to the Commission of Publishing and Free Access to Information.

#### **Fourth Chapter- Exceptions Concerning Access to Information**

*First section- governmental secrets*

Article 14- If the request of an applicant is related to classified documents and information (governmental secrets), the public institutes should refuse to put them at the applicant's disposal. Access to classified information will be subject to regulations and special laws.

*Second section- Supporting private boundaries:*

Article 15- If requested information would breach the boundaries of persons' private lives and/or is among information which is obtained by negating rules related to such private boundaries, the request for access should be rejected.

Article 16- If granting the request of the applicant would result in the illegal disclosure of personal information about a third real person, institutes included in this law should refrain from presenting the requested information unless:

A) The third party has agreed to the disclosure of information related to himself in explicit and written form.

B) The applicant is a guardian or third party lawyer acting within his powers.

C) The applicant is from a public institute and the requested information within the framework of the law is directly related to its duties as a public institute.

*Third section- Supporting health and commercial information:*

Article 17- If for institutes included in this law, it is certain by reference to legal documents that presenting the requested information will endanger the life or health of persons or cause financial or commercial loss for them, they should refrain from putting that information at the applicants' disposal.

*Fourth section- Other cases:*

Article 18- Institutes included in this law are obliged to refrain from presenting the requested information where it may cause damage by:

- A) Adversely affecting security and the public welfare.
- B) Preventing the discovery of crimes, or the capture or pursuit of criminals.
- C) Interfering with tax audits or the payment of legal taxes.
- D) Implementing supervision on immigration to the country.

Footnote- Subject to article 14, article 18 does not include information related to the existence or occurring of environmental dangers and the threat to public health.

## **Fifth chapter- The Commission of Publication and Free Access to Information**

*First section- holding commission:*

Article 19- In order to support freedom of information and general access to existing information in public institutes and private institutes which present general services, to formulate necessary policies in the realm of distributing information, to establish general supervision on good performance, to remove difficulties in the technology or "know-how" relevant to information subject to this law by the creation of a procedure unit, to improve culture-making, guidance and presenting council opinions, the Commission of Publication and Free Access to Information by order of the president is formed comprised of the individuals listed below:

- A) The Minister of Culture and Islamic Guidance (head of commission).

- B) The Minister of Information and Information Know-How or the related deputy.
- C) The Minister of Information or the related deputy.
- D) The Minister of Defense and Supporting Military Forces or the related deputy.
- E) The Head of the Management and Programming Organization of the Country or the related deputy.
- F) The Head of the Official Justice Court.
- G) The Head of the Cultural Commission of Islamic Council Majlis.
- H) The Secretary of the Supreme Court of Information Know-How of the Country.

Footnote- The secretariat of the mentioned commission is held in the Ministry of Culture and Islamic Guidance. The method of holding meetings and managing them and the duties of the secretariat recommended by the aforementioned commission will be enacted by board of ministers.

Article 20- Related institutes are obliged to cooperate with the commission.

*Second section- Report of commission:*

Article 21- Every year, the commission should present a report about the observation of this law by institutes included in this law and its activities to the Islamic Council Majlis and the president.

### **Sixth chapter- civil and penal responsibilities**

Article 22- Every person, either real or legal, that because of the publication of false information about him, has had material and spiritual damages, has the right to deny the mentioned information or present some pieces of information about it and in accordance with the general rules of civil responsibility, he can claim compensation for incurred losses.

Footnote- In the case of publication of true information against content of this law, the real and legal persons have the right, according to general regulation of civil responsibilities, to claim for the incurred losses.

Article 23- Performing the following acts on purpose is considered a crime and the person who has committed it will be condemned to pay a cash amount from three hundred thousand (300,000) Rls to one million (1,000,000) Rls with regard to the effect of the crime, the

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number of times the crime was committed, and his situation:

- A) Preventing access to information against the regulations of this law.
- B) Every act or omission which hinders the Commission of Publication and Free Access to Information to perform its duties or duty of distributing information of public institutes against regulations of this law.
- C) Removing part or all of the information without having the legal power to do so.
- D) Not observing regulations of this law with regard to the specified time limits.

If every one of the mentioned crimes in other regulations has a greater punishment for its violation, the same punishment will be implemented.

Article 24- Executive bylaws of this law, at most within three months from date of enactment by Ministry of Culture and Islamic Guidance and with cooperation of related systems, are prepared and enacted by the directors board.

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