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**THE COMPARISON BETWEEN THE COMPONENTS OF THE FREEDOM OF
SPEECH IN THE CONSTITUTIONAL LAW OF THE ISLAMIC REPUBLIC OF IRAN
AND THE UNITED STATES OF AMERICA**

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ABSTRACT

The world has learnt through experience that power must be imprisoned in a magical bottle, and governments must obey the determination of nation, God or human instinct law. If ruling minds was as easy as ruling the speeches, there was no governor able to rule safely and there was no aggressive government, because everyone would live according to the nature of the authorities and would not judge on their being right or wrong, good or bad, fair or unfair rather than their order. But it is impossible. There is no way of complete dominancy over a person's mind. In fact, nobody can forcefully transfer or neglect their personal laws or the talent of benefiting their minds freely and their power of judgment over everything. If a government claims to rule the minds, it is known as an aggressive one and if a governor intends to order everybody what is right and what is wrong, or what motivates them in purifying in front of God, they are treating their subjects with oppression and expropriating their rights. As this is their personal right, nobody even if they want to, can divest them. The freedom of speech is the most comprehensive way of freedom and it is related to all kinds of personal freedom; so this freedom by its instinct is limitlessly different and complex according to the target, and limitlessly different and even illusive according to the justifications. It seems as if the experience of the Unites States of America is known as a society surrounded with the environment full of tolerance and forbearance against all opinions and expressions which is a bejeweled experience in identifying most of their freedom of opinion and expression for all human beings and followers of all religions. Islam as a comprehensive religion which addresses the whole world has a thoughtful

invitation and this right has been emphasized in the constitutional law of the Islamic Republic of Iran. On the other hand, this open-mindedness and denying any obligation has been concluded in joining the opinion and religion in the nature of Islam.

Key words: Comparison, freedom, Constitutional, rights, Islamic , Iran , America

INTRODUCTION

The freedom of speech is the basic criteria for every polyphonic and democratic society. The violation of this freedom would always lead to the eradication of other standards of human rights. Usually using these points to the lack of governmental law is legislated by limiting the speech. In this research “ speech” is used in its general term and consists of linguistic and non-linguistic speech, (like visual or gestural) writing or oral. The freedom of speech in Islam has been applied in a way that the prophet encouraged the ones who asked for their rights explicitly and recklessly. The most important basis in fundamental improvement and transcendence is the existence of freedom, especially freedom of speech, writing and press.(Gharavi, 1998,p.120) It is necessary to mention that the freedom of speech is in two groups: 1) the freedom of opposition 2) the freedom of suggestion (Falsafi, 2007,p.26) According to this, the article is in six chapters. In the first chapter, we talk about the freedom of speech in two law systems of the Islamic Republic of Iran and the United States of America, in the second chapter, we consider the right of

freedom in spreading and promoting thoughts and opinions, in the third chapter we explain the right of freedom in defining the contents of speech; in the fourth chapter, it is the right of freedom in choosing the addressee of speech, the fifth chapter is about the right of achieving the freedom of speech and the last chapter is about the freedom in searching the information in two law systems of the Islamic Republic of Iran and the United States of America.

Chapter one

1- The comparison of components of the freedom in speech in the constitutional law of the Islamic Republic of Iran and the United States of America

1-1- The comprehension of the freedom of speech and lecturing

One of the most important basis of democracy is exchanging ideas and thoughts by speaking and giving lectures to express the reciprocal interpretations and judgments. The conversation needs freedom. People must be able to communicate with each other in every

subject without fear, even if it is related to their destiny. There must be a subject of discussion between the heads of the government and people to continue their conversation in its natural route. Having conversation in an open and free environment would establish democracy and erase the border between the government and the ones that are governed, or at least inspire people that the governors and the head of the government are not exceptional or elite. People's cooperation would increase the power of discussion if the society improves more, then people would be more aware, the media more extended and the press would be freer. (Judge, ShariatPanahi, 2004, pp. 51-58)

1-2- The components of the freedom of speech and giving lectures in the constitutional rights of the Islamic Republic of Iran

According to article 26 of the constitutional law of the Islamic Republic of Iran, giving lectures and having conversation among people and people with the system and each of the members of the system of the Islamic Republic of Iran would have no limitation, unless it ruins the discipline of the society. Also, article 31 of the parties' regulation law has to guarantee to hold meetings if nobody is armed or causes disruptions in the basis of

Islam; and in the amendment of article 35 of the same regulation of the cabinet members, the Interior Department is due to give the written permission of holiday meetings and parades, according to the Interior Department notice and the qualification of article 10 of the commission. As a result, we can make a conclusion that holding parades in a country is due to pre-permission and cannot be held just with the reference to article 27 of the constitutional law. (Shaabani, 1992, p.210) In the same case "the article of association related to the free conversation of the nation house" ratified in the 596th meeting session on 5/10/2006 of the supreme council of the Cultural Revolution. In articles 1, 2, 3 it points out on establishing the nation house with free conversation to make a suitable domain for holding conversational meetings, disputes, lectures and free conversations in human science and Islamic culture in defined locatins.

Moreover, after representatives are elected, in order to show the symbol of the representatives' determination in the Islamic parliament by article 84 of the constitutional law "each representative is responsible for all people and has the right to express his opinion in every internal and external subject in the country." Continuing this, article 75 of the interior regulations of the Islamic parliament

appointed that: “According to the article 86 of the constitutional law, the members of the parliament are free in expressing their opinions and doing their responsibilities; and they cannot be ceased or arrested or deprived from their social laws, because of giving opinions in the parliament or voting as part of their responsibility.” Some of the lawyers believe in this basis of the constitutional law that it shows people have the right to express their opinion in every matter so they transferred it to their lawyers. (Hashemi, 2000, p.224)

1-3-The components of the right in freedom of speech and giving lectures in the constitutional law of the United States of America

The first expression of the amendment one in the constitutional law of American congress prevents every rule, which would make any limitations in the freedom of speech or press or people’s right to make the society in peace and litigate the government to stop any damage. The right of speech and giving lectures which is legislated in the constitutional law of America implicitly and generally is known as the right of freedom of speech; the American legislator has no rights to put any limitations in this area especially in speech. As the United States of America is a democratic and republic country in which

people would choose their own leaders, it is necessary for the citizens to write or criticize without any fear of punishment about their potential leaders.

America’s court might prevent the local governments to control the contents of speeches, but they would permit them to have some logical rules and regulations to take care about time and place in their speeches. According to this every person has the right to have their own opinion of the legislated law or any other cases and even expressing them. But they cannot do any action which is in violation of the legislated law, because that would make a great deal of responsibility for them. (Cohen, 2009, p.15) Also, we have to pay attention that this freedom of speech is not absolute. (John r.Vile. opcit. 133-134)In addition to the right of freedom of speech in governmental sections, in the first article of the sixth section of the constitutional law of the United States of America it is said that: “... the ones who attend the related meetings, are not to be reprimanded in any other places and are safe to make any kinds of discussion or lectures in the meetings except treachery, committing a crime and violating the public discipline which would lead to their detention.

1-4- Comparing the components of the freedom of speech in the constitutional rights of the Islamic

Republic of Iran and the United States of America

Although in the Islamic Republic of Iran, the constitutional law does not authorize the freedom of speech explicitly, but it is confirmed in different articles such as articles 8 and 71. In the constitutional law of the United States of America, the right of freedom in giving lectures and speeches, according to the first amendment and in its general meaning of the freedom of speech is well-authorized. Also, the constitutional law of the United States permits the representatives to express their opinions in country's problems.

Chapter two

2- The comparison of the components of freedom in spreading and promoting ideas and opinions in the constitutional rights of the Islamic Republic of Iran and the United States of America

2-1- The comprehension of the right of freedom in spreading and promoting ideas and opinions

Multiplying vote means authorizing the right of thinking about others and the right of expressing the thoughts of opponents. (Mohammadi, 2013) The freedom in spreading and promoting thoughts and opinions that exists after the freedom of

thoughts and opinions is divided into two parts; the first is the person's freedom in expressing opinion, in which the person himself would express and promote the result of his own thoughts and believes. (Ansari, 2007, p.21) It seems we have to differentiate among people who stand in different social positions. About legal people, the private rights of the article is according to different situations that they have a complete freedom of speech or the lack of speech. These people have the right to express their opinions and keep silence and no condition can make them express their opinions. But legal people have general rights (the government and legal people related to it) and they do not have the right to keep silence or prevent to give information, unless the law has permitted them. (Jafari, 92-93, p.8)

Secondly, the people who have no role in shaping an opinion, but are willing to transfer that opinion to others and have enough financial facilities in this field, they can promote these opinions and thoughts with no obstacles.

2-2- The components of the right of freedom in spreading and promoting thoughts and opinions in the constitutional rights of the Islamic Republic of Iran

By the establishment of the system of the Islamic Republic of Iran in 1357 one of the

most important and necessary issues which was in its schedule was executing Islamic laws and establishing Islamic legislative system. (Mehrpour, 2011, p.36) God is the only legislator and human beings are not well-qualified in this matter, unless in some issues that the religion would assign the right legislation. (Jurisdiction and university research Centre, 2002, pp.294-330) According to this, articles 4, 72, 91 and 167 of the constitutional law of the Islamic Republic of Iran shows this, too.

One of the legal organs which exists in Islamic legal execution and even in other monotheistic systems, is “the apostasy” which is apparently in contradiction with “human right” and especially “the right of the freedom of speech” (Soleimani, 2004, p.95; JafariLangeroudi, 1999, c.1, p.256) Apostasy in its literal meaning is renunciation or changing your decision. (EbnemanzourEfrighi, 2000, c.5, pp. 184-186; RaghebEsfehani, 2009, pp.192-193; ValezBidiAlhossein, 2006, c.8, pp. 88-90) and an apostate is someone who leaves Islam and chooses paganism. (AlmoosaviAlkhomeini, 1990, c.2, p 329; Helli, 1999, c.2, p.236; Andelsi, 1988, c.12, p.108) Although, some of the Muslim Intellectuals contingent it on maturation (MoghaddasArdebili, 2010) and some others,

contingent it on the utterance. (Alaameli, 2010, c.2, p.51; Amani, 2013, pp. 53-54) But in some verses from the Koran (Koran: Mohammad, 25 and 29, AaleEmran 58 and 59; Toubé, 74, Anaam, 93) There is no secular judgment for them and only eternal tribulations were mentioned while they are near death. In anecdotes there are also different narrations, some of the narrations are recorded as absolute and do not consider repentance. (Bokhari, 2009, c.8, p.50; Tarandi, 1991, c.3, p.10) In some other narrations it is recorded that there is no need for repentance and they would be killed. (Kelini, *Bitá*, c.6, p. 174 and c.7, p.256) In other narrations it is recorded that they are caused to repent without making it clear that they are nation or instinct apostates. (EbneBabevei, 1988) There are other narrations which differentiate these two. (Nouri, *Bitá*, c.18, p.163) According to this, Muslim Juris consults are divided into different groups: it is famous among Shiite Muslims that the instinct apostate would be killed without repentance and it is necessary for the nation apostate to cause to repent and in case of refusal he would be killed; if women do not cause to repent, they will be sentenced into hard working and the end of their lives would be death or repentance. This has also been narrated by Sunnite Juris

consults. Hassan Basari had said that both instinct and nation would be sentenced into death with no exception. (Tousi, Bitā, c.5, p353) Of course, some of the Shiite intellectuals were agree to cause to repent of the apostate even if he is instinct or nation and they consensus on the lack of repentance only for Imams who were innocent. This idea has also been mentioned by four other Juris consults. (Sarakhsi Hanafi, 1428, c.10, pp. 98-99; Shafeii, Bitā, c.6, p.222) Some of the contemporary Muslim intellectuals have also taken an intellectual position about this subject and do not make an alteration in the chain of narrations to show it is unique and according to the religious jurisprudence “نذر الحدود بالشبهات” which means decreasing the punishment by the governor that it has to deny the external Islam against the Islamic governor, as it happened in the beginning of Islam and the first Caliph. (Ghanoushi, 2001, pp.28-33) According to this the Iranian legislator has specified no verdict to this subject in the Islamic punishment law issued in 2013 which is based on religion and it is implicitly expressing this in article 262 of law referring to the apostasy and it is also mentioned in article 26 of the press law issued on 22/12/1985 of the Islamic parliament and its further expressions.

2-3- The components of the right of the freedom in spreading and promoting thoughts and opinions in constitutional rights of the United States of America

The first article of the first amendment of the constitutional law of American Congress prevents making any rules that would help existing or spreading any kinds of religion. The article of the authority of executing the religion prevents the congress of every free execution and the next article prevents spreading the religion as a formal religion of the country. So, the constitutional law of America would stop the states' churches to make any limitations and on the other hand, it would give extensive freedom to local people to spread and transfer their own religious believes. (John r.Vile. opt. cit. p133-134) According to the constitutional law of the United States of America, the congress does not have any permission to legislate or limit any rules on the freedom in spreading and promoting thoughts. The constitutional law of the United States of America and its procedure moves also beyond this and goes further to the freedom of speech that liberal democrats have confirmed; for example, in the freedom of speech of American doctorates there is no prohibition for suppressing racism and even according to the first amendment they would support racism. (Cohen, Henry,

op. cit, 2009, p.3) These doctorates also reflect optimistic views over opinion market. People would choose to believe or do not believe in something. Some of these opinions are deeply destructive and harmful but neither the American culture, nor the American executive doctorates show willingness toward searching for a way to fight against this subject. (Cohen, Henry. Op. cit. 2009, p.3)

2-4- Comparing the components of the rights of the freedom in spreading and promoting thoughts and opinions in the constitutional rights of the Islamic Republic of Iran and the United States of America

As the basis in the Islamic Republic of Iran is the holy religion, so the only limitation that the legislator can adopt must have a religious basis. The biggest religious limitation of the freedom in spreading and promoting thoughts and opinions is known as apostasy. The constitutional right of the United States of America looks at this matter in a different way than in the Islamic Republic. As the government in America is completely non-religious, so there would be no limitations in the religious opinion market, unless it is identified as something which can be harmful for the nation's security or public discipline. This is also true about other opinions.

Chapter 3

3- Comparing the components of the right of freedom in identifying the substance of speech in the constitutional law of the Islamic Republic of Iran and the United States of America

3-1- The comprehension of the right of freedom in identifying the substance of speech

We can divide different types of speech, according to its substance and meaning, into political, literature, art, business and religious. (Ansari, 2013, pp. 13-14) The advantage of paying attention to different types of speech is some legal systems which support some of these more than the others.

3-2- The right of the freedom in identifying the substance of speech in the constitutional right of the Islamic Republic of Iran

There is no specific rule related to the freedom in identifying the substance of speech in the constitutional rights of Iran and its regulations. No article in the constitutional law has paid attention to this. With reference to article 9 of the constitutional law of the Islamic Republic of Iran, the privation of religious freedom for everyone, in every group, with every position will be prohibited, even if it was according to the rules and

regulations. So in the constitutional law of the Islamic Republic of Iran, nation's rights are legislated in different forms and people's freedom is confirmed vastly as long as it does not harm the rights and freedom of others or the rules in society. Moreover, democracy and nation's governing would show people's society and political freedom by establishing the system and controlling the country's affairs by people's votes and rights. (Ramezani, 2006, p.200; Hashemi, 2000, c.2, pp.227-228)

For the members of the Islamic parliament as nation lawyers against the government, article 84 of the constitutional law and also article 75 of the interior regulation law of the parliament, have reformed to the lack of responsibility of the nation's political representatives in their expressions. These two articles have put immunity for each of the representatives, so that they would express their opinion freely. The legislator of the constitutional law has not predicted the immunity of aggression, which can be resulted in representatives' misusing and pretending ,and would prevent their presence in the parliament to express his opinion. This subject has been predicted in article 12 of the constitutional law and its draft, but

it was faced with the opposition of some of the Juris consult experts. They considered this as something redundant and in opposition with Islam. (Hashemi, 2000, c.2, 157-158; abbreviated expressions in the regulations of the constitutional law of the Islamic Republic of Iran, 1985, c.2, pp, 909-912 and 930-940)

3-3- The right of freedom in identifying the speech substance in the constitutional right of the United States of America

The first amendment of the America's constitutional law has not put any ideas in defining the speech substance. This article prevents the congress of making any laws that would result in putting any limitations in the freedom of speech or the press or the people's right to hold meetings and plead the government for justice. But according to the method of "extreme extension" the Supreme Court would usually make some regulations that are very extensive and changing them in speeches or lectures, with or without support, would be rejected. The government should not define the wrong doings so extensive to support the illegal lectures. The court would look through

every meaningful limitation of the freedom of speech. It makes the possibility of time and place and logical method according to the limitations, but it also confirms that those limitations should be used in the same way for all subjects and people and they should not be too extensive. (Cohen, 2009, p.21) Some researchers such as Halen and Richard have written that the freedom of speech is in political and some other subjects that have philosophical or religious meanings, but in practice the courts support economical subjects. (H.Fallon. jr. Richard. The Dynamic Constitution. P.54)

3-4- Comparing the components of the right of freedom in defining the speech substance in the constitutional law of the Islamic Republic of Iran and the United States of America

Different kinds of speech according to its substance and meaning can be political, literature, art, business and religious speeches. Apparently the legislator of the constitutional law of the Islamic Republic of Iran has not complied any texts defining the substance of speech. Of course it has defined some limitations that implicitly they are talking about identifying the substance of speech in

different articles of the constitutional law. This is also true for the constitutional right of the United States, even these constitutional law and common laws have been ratified with no definite limitations. But they cannot accept the executive procedure and the rule of extreme extension; and the court would pay attention to every meaningful limitation about the freedom of speech and make the possibility of the existence of time and place limitation with a logical procedure. The substance of the speech has also been limited in some cases. (H. Fallon. Jr. Richard. The Dynamic Constitution. P.54)

Chapter 4

4- Comparing the components of the right of the freedom in identifying the addressee of the speech in the Islamic Republic of Iran and the United States of America

4-1- The comprehension of the right of freedom in identifying the addressee of the speech

According to this freedom, a person who wants to explain his opinion, is free to choose his addressee. Different forms of speech to the addressee are divided into public and private speeches, sensitive speeches and even to different age groups of children. Public speech is the one which is done for limitless and indefinite people. In this type of speech,

we can spread his expression in oral or written form without asking for his permission; and private speech, vice versa, is a kind of speech which is done for limited and definite people. In this case, spreading this is related to be confidential and assisting personal territory and the receiver cannot spread it with the speaker's consent. About the speeches done for children or children can hear or watch them, some specific policies must be paid into attention according to the children's rights. (Ansari, 2007, pp.22-23)

4-2- The components of the right of freedom in defining the addressee of the speech in the constitutional law of the Islamic Republic of Iran

According to the private speeches, article 25 of the constitutional law of the Islamic Republic of Iran and also article 104 of the penal judge regulation issued in 2013, first of all inspecting and investigating postal parcels, telecommunication, audio and video, is prohibited and it is only used when necessary or when we want to discover a crime. Secondly, controlling people's telephones according to the note of this article is possible in two ways (1- when it is related to the country's security. 2- to administer justice according to the judge's determination.) (Karimnezhad, 1360, p.73) Also, article 16 of the establishment of the post company of the

Islamic Republic of Iran in 3/5/1366, has made punishment for those staff or employees or governmental or personal staffs, starting their job or continuing their duties, to investigate, confiscate or destroy personal parcels and letters, unless it is permitted by the law. In public speeches although the constitutional law of the Islamic Republic of Iran does not consider it well-authorized, but it was confirmed in article 69 implicitly.

In our country (Iran) the regulations of the supreme council of the Cultural Revolution which was inspired on 24/1/1389, the right of publishing book is given to each person that cannot be private unless it is against the law permission. Moreover, publishing a book in printing format or electronically is possible by paying attention to the regulations of this sanction and by controlling a board called "the supervising board of executing publishing book regulations" and "the supervising board on publishing children and teenagers' books". Each of these boards has at least five members and its members are chosen by the ministry of the Islamic culture and orthodoxy and are presented by the ratification of the supreme council of Cultural Revolution. (Ansari, 2007, pp. 90-91) Moreover, all the works that has been published according to this regulation, must receive the permission of publication from the secretariat of the supervising board

of executing book publication regulations. Also, for advertising and marketing for children according to article 57 of the electronic trade law, advertising and marketing children and teenagers under the legal age is transferred to the regulation which is not ratified yet. (Ansari, 2007, p.263)

4-3- The components of the right of freedom in defining the addressee of the speech in the laws of the United States of America

According to this right, a person who has decided to express his opinion, is free to choose his own addressee, too. According to the first amendment of the constitutional law of the United States of America, the congress should not legislate a rule that limits the freedom of speech or the freedom of press. The usage of this expression would make the government literally even more limited. On the other hand, if this expression would support some speeches and would not support others, there would be less limitation for the government. (Cohen, 2009, p.1) The supreme court of the United States of America has defined this legal text and identified its borders and limitations. There are major exceptional terms about the first amendment of the constitutional law of the United States of America, that the supreme council must define them as the judge of the constitutional

law, to guarantee the freedom of speech and press and some other lectures and speeches. Moreover, the supreme council believes that the first amendment must be less appropriate for some speeches. The supportive speeches in the first amendment of the constitutional law of the United States of America might be under some limitations because of children. Anyway, any limitation must be done without intruding the entered freedoms in the first amendment which has been presumed precisely according to the regulations. So, the government can prohibit selling goods to immature people if it is assumed harmful for them. (Like girlish or porn magazines) it does not matter if this is impudent or not for adults. According to this the government can prohibit saying impudent words from radio and television in the hours in which it is probable for children to hear or see them. Of course the government cannot prohibit it during the day, unless it is impudent or obscene. Of course this limitation is not mentioned in the internet. The constitutional law of the United States of America has moved forward in children's pornography and in order to eradicate misusing children, they have prohibited the use of child pornography even in private. (Cohen. Henry.op.cit.p.7)

4-4- Comparing the components of the right of freedom in identifying the

addressee of speech in the constitutional law of the Islamic Republic of Iran and the United States of America

The legislator of the constitutional law of the Islamic Republic of Iran has not explained about it explicitly in the text of the constitutional law. But in different articles, such as article 69 it is confirming the freedom of public speech implicitly. Also, the noble legislator had prescribed specific supports in article 25 of the constitutional law and article 104 of the penal judge regulations in which he had also done criminology. The common rules like article 57 of the electronic law and its executive regulation supports children, too. Unfortunately, the executive regulation has not prescribed it. This is accepted in the constitutional rights of the United States of America. The supreme had made especial support of the right of freedom in people's private territory. In addition to that group, video and audio in media, has some limitations for children's rights especially children's pornography.

Chapter 5

5- Comparing the component of the freedom in receiving the speech in the constitutional rights of the Islamic Republic of Iran and the United States of America

Today with the freedom of presentation and people's right in watching and listening to what is happening in the world all around us, countries have legislated some rules in their laws. (Judge ShariatPanahi, 2012, p.151) After the title of the freedom of speech, we can speak about the freedom of talking, writing and watching programs. According to that, in the first discussion, we will analyze the freedom of information, in the second discussion, the freedom of press and in the third discussion, the freedom of radio and television, all in two rights of systems in the Islamic Republic of Iran and the United States of America.

5-1- The components of the freedom of information in the constitutional law of the Islamic Republic of Iran and the United States of America

5-1-1- The comprehension of the freedom of information

Freedom of information and having accessibility to it is one of the rights which cooperate with the meaning of citizenship that is one the major subjects in cooperative democratized conversation. In fact, the more the quality and quantity of information is at hand for citizens, the more comprehensive and cooperative the democracy would be. (NamakDoostTehrani, 2004, p.2) Freedom of information is a term which was first used in

the United States of America but is to some extent confusing when it comes to its meaning. By the freedom of information, we mean the freedom of people in having access to the information available in public institutions and some private ones. (Ansari, 2008, p.25) Freedom of information and connections generally include all kinds of freedom of speech, talking, press, information ... and in its specific meaning it is "getting and publishing the thoughts and opinions by some tools and equipment rather than doing it orally." (TabatabaiMotameni, 1991, p.99) Amongst democratic basis, the process of freedom of information has been paid attention to considerably in recent years that is why it is called Democracy Oxygen. (The public's right to know principles of Freedom of Information Legislation, 1999) The right of public access to information or the citizen's capability in having access to information is known as the freedom of information. (Judge ShariatPanahi, 2012, p.151)

5-1-2- The components of the freedom of information in the constitutional right of the Islamic Republic of Iran

In the constitutional law of the Islamic Republic of Iran, no obvious expression of the freedom of information have been mentioned, but some authorities extracts the freedom of information by interpreting different articles

of the constitutional law. Some of the different and common rules and laws referring to the freedom of data are: Note 2 of article 3 of the constitutional law which refers to increasing the level of general awareness and article 69 refers to opening parliament regulations. This freedom in article 24 of the constitutional law confirms the provision of the freedom of speech. (Abbasi, 2011, p.143) In article 175 of the constitutional law it also mentions the freedom of speech in the media. Moreover, article 5 of the general route and procedure law of the media of the Islamic Republic of Iran issued in 1361 is one of the governing articles on programs to extend the growth and awareness of the society in different aspects as a public University. (Abassi, 2011, p.143) Articles 16-19 of this law are emphasizing on reflecting correct news from all over the world, on condition of not being in contrast with the army secrets, accusation to people, groups, ethical rules, etc. (TabatabaiMotameni, 1991, p.93) Also, article 2 to 5 of publishing law and having free access to the information issued on 4/11/2009 of the Islamic parliament have explained about this subject.

5-1-3- The components of the freedom of information in the constitutional rights of the United States of America

The United States ratified the law of the freedom of information in 1996 and extended the citizens' rights by interpreting the freedom of speech which also includes the freedom of information. This law has been modified twice so far. First, in 1996 as the freedom of having access to the electronic information which predicts having access to the documents and records in electronic form (Electronic freedom of Information Act Amendments, 1996). Then the law of clear government issued in 2007 made some modifications in the regulations of these two laws. (Ansari, 2008, p.107) In America, the right of access to the information is a human right that all people and organizations without considering their nationalities can have the access to the data available in public institutes, so the foreign subjects, residents, immigrants and refugees are also included. (Electronic Freedom of Information Act Amendments)

In note "A" of article 3 of the first chapter of the freedom of information law of America, every person's personal right to request and receive the information fast by the support of this law is guaranteed, if this request is according to some basic requirements and the law.

The motivated document must be explained logically in the request and according to the

rules, publication in time, place and procedures must be able to be followed. There is no limitation according to the nationality or residency of the applicant. Also, the expenses of presenting the information in the United States of America would decrease into zero whenever it is related to public interest. (NamakDoostTehrani, 2004, p.13). Moreover article 3 of the American conversation in the human rights that has been ratified by the organization of the American countries is mentioning this. (Stering Committee on the Role of Scientific and Technical Data and Information in the public Domain, 2003) The law of the United States of America has become the most effective and as a model for other countries to copy according to related experts.

5-1-4- The components of the freedom of information in international documents of human rights

Beforehand governments analyzed data exclusively and according to their goals, while nowadays we must share our knowledge to the world. This right has been paid attention to explicitly or has been interpreted and explained by the supreme courts. (NmakDoostTehrani, 2004, p.7) Also, this procedure is continuing in the countries which have recently started their democratic process and the ones who had started it

before. In other words, the supreme courts believe that the right of access to information which is on the authority of the government is the freedom of speech in the constitutional law. (S.P. Gupta, 1982, AIR (SC) 149, p.234. S) We can see the freedom of information after the end of the second world war in international system. The public association of the organization of the European Union announced in its first meeting in 1946 that: “the freedom of information is one of the basic rights of the human being and the foundation of all the freedoms that the European Union insisted on.” (Roger, 1984, p.28)

In this regard article 19 of the human rights and note 2 of the international treaty of political and civil rights, note 1 article 13 of child rights convention, article 10 of human rights European convention, article 13 of human rights American convention, article 9 of human right African treaty and article 6 of people’s responsibilities and rights announcements groups and organs of the society being issued in 1998 of the public meeting of the national organization, have all mentioned the freedom of search, education, speed of information and thoughts to all equipment without taking borders into account and also note 2 of the international political and civil rights treaties, note 1 article 13 of child rights convention, article 10 of

human rights European convention, article 13 of human rights American convention, article 9 of human right African treaty and article 6 of people’s responsibilities and rights announcements groups and organs of the society being issued in 1998 of the public meeting of the national organization, have all mentioned the freedom of search, education, speed of information and thoughts to all equipment without taking borders into account. (Hashemi, 2012, p.358) The freedom of information and the right of having access to the information is predicted in the constitutional law of most countries.

5-1-5- Comparing the components of the freedom of information in the constitutional rights of the Islamic Republic of Iran and the Unites States of America

The Islamic Republic of Iran and the United States of America are among the countries who have confirmed the freedom of information and connections implicitly. In the constitutional law of the Islamic Republic of Iran, there is no definite line explaining the freedom of information, but some experts by interpreting different rules in the constitutional law, could extract the freedom of information. Different rules and common rules referring to the freedom of information are: note 2 article 3 of the constitutional law

of the Islamic Republic of Iran to raise the public level of awareness, and article 69 is referring to the openness of the parliament's negotiations. This freedom is confirmed in article 24 and 175 of the constitutional law to provide the freedom of speech. Also, article 2 to 5 of the rule of free publishing and having access to the information issued in 4/11/2009 of the Islamic Parliament is talking about it. The United States ratified its rule of the freedom of information in 1996 and extended the right of citizens by interpreting the freedom of information. In America having access to the information is a human right that all people and organizations, without considering their nationality, can have access to the existing information of the public institutes. So foreign subjects, residents, immigrants and refugees have this right. What is seen from the freedom of information in these two countries shows that the freedom of information in the United States is clearer and more explicit and it is also more democratic.

5-2- The components of the freedom of press in the constitutional right of the Islamic Republic of Iran and the United States of America

5-2-1- Comprehending the freedom of press

For the freedom of the press we have twodefinitions according to the law. (Abassi,

2011, p.157) The freedom of press in its general term, is searching, gathering and providing news and information and public opinions freely, transferring and dispatching them, publishing newspapers freely and receiving and reading the press freely and playing the radio and television programs freely. In its specific term it means publishing free newspapers and other periodical publications without any limitations and supervisions before publishing it, not confiscating or closing them after being published, predicting precisely the regulations related to the legal responsibilities of publication and considering their violations and possible crimes in the supreme courts with the presence of the jury and it is strengthened by regulating the variety of publications both from political and style aspects and remaining their independency against wealthy and powerful authorities. (MotamedNezhad, 1998, pp. 24-25) The positive roles of the press can be abbreviated in the following terms: 1- Increasing the general knowledge of people. 2- Connecting the thoughts and improving the thoughts of the society. 3- Mobilizing the society against cruelty and corruption. 4- Analyzing the society's situation and finding the best solution. 5- Informing the board of governor

of people's desires. 6- Rejecting and banishing autocracy. (Hashemi, 2012, p.353)

5-2-2- The components of the freedom of press in the constitutional right of the Islamic Republic of Iran

In Iran with the constitutional revolution, the freedom of press was first known. In article 13 of the constitutional law newspapers were allowed to print useful and public utility texts. There were some negotiations about the government issues for public awareness and advisability of the country's matters and then according to supplementary article of the constitutional law, the freedom of press was investigated. Following that the national council meeting ratified the first law of the press in Iran in 1326, although it met a lot of oppositions in some revolutionary extravagant newspapers, by adaptation to the press law of France in 1881. Then according to the law "modifying a part of press law" issued on the third of Dey (December) 1321, newspaper publication was forced to follow the rules of Iran's press and in Iran it is concluded in press law before the revolution, by press bill issued in Bahman 1331. (Dr. Mohammad Mosadegh period) and press bill was issued in Mordad 1334. After the victory, in the glorious Islamic revolutionary in 1357, the press bill issued in the press bill of post-revolutionary time in the

Islamic revolutionary meeting (Mordad, 1358) and the press law issued in Esfand, 1985, was continued. It is important to mention that in the constitutional law of the Islamic Republic of Iran, according to articles 24 and 168, publishing the press freely is confirmed. (MotamedNezhad, 1998, pp. 24-25)

5-2-3- The components of the freedom in press in the constitutional right of the United States of America

The freedom of press in the United States of America was paid attention and was respected contemporary to the victory in independence wars for the colonial parts of this land in opposition to England's colonization in 1776. (MotamedNezhad, 1998, p.36) In article 12 of "law announcement" of the Virginia State in America, which was published in June of the same year, the freedom of press was guaranteed formally for the first time in the world. (Article 12-"that the freedom of press is one of the great bulwarksof liberty and can never be restrained but by despotic government.") In the independent announcement of the United States of America, which was published on 14th of July 1776 and the constitutional law of this country in 1787, there was no sign of the freedom of press. But this vacancy was filled by ratifying the first amendment of the

constitutional law of the United States of America. (MotamedNezhad, 1998, pp. 103, 108 and 36) In the American Convention of the human rights in the freedom of press, if anyone is criticized, satirized or accused incorrectly, the answer to it must be mentioned in the same media or press. According to the interpretation of the first amendment of the constitutional law of the United States of America that the freedom of speech is known important, it also includes the freedom of press.

5-2-4- The components of the freedom of press in the human rights international documents

In the history of the freedom of press in international documents “the announcement of the human and citizen rights” of the Great France Revolution (issued in 1789) in article 11, transferring and publishing the thoughts and opinions freely and the freedom of speech and writing and printing for everyone is well-authorized. (MotamedNezhad, 1998, pp.23-24) Because the press would not only have the right, but also have the commitment on publishing information and relating ideas that are surrounded by public interests and in return common people can receive these texts, too. (Older, 2002, p. 465) Also, in article 19 of the human right statement, the freedom of press is mentioned in note 2 of the

international, political and civil right treaty. (TabatabaiMotameni, 1991, p.358)

5-2-5- Comparing the components of the freedom of thought in the constitutional right of the Islamic Republic of Iran and the United States of America

In article 19 of the human right statement, note 2 of the international, political and civil right treaty refers to the freedom of press. In Iran following the long term discussions of the liberals against Ghajar despotic kingdom, the freedom of press was authorized by the Constitution Revolution. This was identified in article 13 of the constitutional law and article 20 of the supplementary of the constitutional law. By the glorious victory of the Islamic revolution in the constitutional law of the Islamic Republic of Iran, there are articles 24 and 168 that they emphasize the free publication. The freedom of speech in America was done contemporary to the victory of independent colonies against England colonization in 1770, as the natural right of each person. In independent statement of the United States of America on 14th of July 1776 and also in 1787 constitutional law, this country did not mention the freedom of press at all. But this vacancy was fulfilled in 1791 by ratifying the first amendment of the constitutional law of the United States of America.

5-3- The components of the freedom of media in the constitutional right of the Islamic Republic of Iran and the United States of America

5-3-1- The comprehension of the freedom of radio and television

Public media have important roles in reflecting different aspects of a nation and shaping its identity. These media would make the possibility of different votes and they support and promote democracy in the society. Among these radio and television's role is inevitable according to public interests as it is known as the "connection era". (RezaiiYabandar, 2003, p. 134)

Media system all over the world pay attention to ethic and they are supposed to fulfill the laws related to public service thoughts. To achieve this public service, they should be general and accessible to the public. Its superfluity is guaranteed by variation in different programs, their directions and addressees and must be independent in political power and personal interests. The media is not the equipment to achieve personal or systematic interests to serve the governor's political power; and according to this autonomy they can serve the public. (Atkinson, 2005, p.112)

5-3-2- The components of the freedom of radio and television in the constitutional law of the Islamic Republic of Iran

In Iran's constitutional law, article 175 mentions some points in the media before modifying it in 1368: "In public media (radio and television) the freedom of publishing and advertising must be according to Islamic rules..." that because of its illusion the constitutional law was changed. The media in the Islamic Republic of Iran has governmental, people and society dimensions, so it cannot act far from these three aspects. (Saedvakil and Askari, 2009, 447) But the publicity of the satellites resulted in the government's lack of controlling and paying attention to the free access to information at the beginning of the 1980s. In the Islamic Republic of Iran there were complete prohibitions against satellites. In 1373 the prohibition rule of using satellite equipment was ratified in the parliament. According to article 1 of this law, entering, distributing and using any equipment of satellite is prohibited, unless it is allowed by the law.

5-3-3- The components of the freedom of radio and television in the United States of America

Although the first amendment of the constitutional law of the United States of America authorized the freedom of speech,

radio and television are in less support than other media. The Supreme Court has mentioned two differences between radio and television and other media: Firstly, radio and television have great influence on people's lives in America, even this influence can be felt in people's personal territories; and secondly, its access, that radio and television are even in access of children. In order to control radio and television in some countries like the United States of America, just like cinema and press they are related to the private section, but in establishing it for the first time, a permission of an independent governmental organization known as "the governmental commission of federal relations" is necessary, and this commission would supervise the institutional way of performing.

According to the laws of radio and television in the constitutional law of the United States of America, radio and television is as free as the press, but it is not included in the free publication and prohibition of the pre-limitation of publication; and they have to get the permission from public authorities and follow the specific and predictable rules of the country and perform the commitment and duties in listening and watching (media) activities. As a result in the United States of America from the beginning of 1920 and

1930 all radio and television institutions are working privately and the owners and the managers' continual attempt to convince the supreme court of the congress of this country has been futile in the first amendment of the constitutional law. (MotamedNezhad, 2004, p.143)

5-3-4- Comparing the freedom of radio and television in the constitutional right of the Islamic Republic of Iran and the United States of America

Radio and television in the Islamic Republic of Iran are among the most favorite media that most people have access to, and it has governmental, people and social dimensions to be active on this basis. Iran's constitutional law has discussed in article 175 about the media, radio and television and the legislation of the freedom of speech and publishing the thoughts according to the Islamic rules and country's interests. But about the satellite if we put it in radio and television, it is prohibited completely by the ratification of using any satellite equipment in 1373. Radio and television activity came to their peak in 1950s in the United States of America; and television as the first source of news takes the lead from newspapers. In the constitutional law of the United States of America the first amendment of the constitutional law that

guarantees the freedom of speech, has shown less support in radio and television.

Finally, the supreme council came to the conclusion that radio and television have prominent influence in the lives of people in the United States of America and also it has easy access for the public even children, which is another attribute of these two powerful media which differentiates them from other kinds of media.

Chapter 6

6- Comparing the components of the freedom of internet in the constitutional right of the Islamic Republic of Iran and the United States of America

6-1- The comprehension of the freedom of internet

Internet must be known as the biggest system that has been performed, designed and engineered by human. Internet plays a prominent part in information literacy and motivating critical thinking and it is one of the strongest weapons to open a reciprocal way to publish information freely all over the world and encourage people to work together to fade some terms such as racism and using women and children to advertise or do business. (RezaiNezhad, 2001, pp. 25-30) With the internet

extension in today's world, new opportunities are made to guarantee the freedom of speech and these kinds of technology have made a relationship in which they can express their opinions and in this case the government censorship is limited. Particularly, in modern age of network connections, internet is a cheap, accessible equipment which has the ability to share thoughts, words, pictures and other information all around the world; and sometimes they are used to organize political activities. (Congressional research service, promoting Global internet freedom, 2013, p.1)

6-2- The component of the freedom of internet in the constitutional right of the Islamic Republic of Iran

In 1993 Iran was the second Middle East country connected to the internet and according to the statistics in December, 2012, the internet speed in Iran for domestic applicants have been in 164th position among 178 countries; and among Middle East countries only Egypt and Syria were less than Iran. Also, in the first half of 2013, Iran is one of the slowest countries in presenting high speed internet. The applicants of internet in Iran are suffering from their

government's filtering and the companies which boycotted Iran. Moreover, the procedures in internet are due to their registration of their personal information in the government. Because there are no definite rules and regulations, having access to the internet is according to the existing rules and regulations that the government has regulated and gave itself the right of it. But this regulation does not reveal the competence of the government, and it has basically a legislative identity which reveals the lack of competence of the executive power.

6-3- The component of the freedom of internet in the constitutional right of the United States of America

The World Wide Web (internet) is related to the 1960s that the army organizations of the United States of America invested in it for doing research projects to make a stable, distinguishable and error acceptable web. As the United States of America is the original home of the internet, it is natural that the rules and regulations in this country are more extended and important rather than other countries. In the United States of America the first amendment of the constitutional law is according to the freedom of speech and press and also the freedom of meetings which

surrounds internet and the freedom of internet.

According to the new problems that internet has raised the congress of the United States has legislated a new rule about it. This rule was ratified in 1980 by the United States congress as the "way of personal territory", to support the freedom of press more. According to this law the government is bound to have the permission before investigating or confiscating the papers of the publishers, newspapers or playing the programs on radio or television. This law would also support the ones who use the internet. (Mirshaki, 2005, p.37) Moreover, the law of the electronic connections of personal territory, issued in 1986 by the federal law, is about the e-mails in the United States of America. According to this law the government, internet service companies and employers are prevented from opening the parcels or e-mails without permission. The electronic telecommunication includes e-mails, pagers and cell phones, that the violation of these regulations have executive laws and penal. (Mirshaki, Hossein, internet regulations in the United States of America, the world of telecommunications and connections monthly magazine, no.18, Tir 2005, p.37)

6-4- Comparing the components of the freedom of internet in the constitutional

law of the Islamic Republic of Iran and the United States of America

The Islamic Republic of Iran connected to the internet in 1993, but it is not in a good rank according to the speed or quality. The internet was not mentioned in the constitutional law but some rules and regulations are ratified such as: the regulation of organizing the internet basis activities, internet crime rules, electronic trade rule, the fifth rule and the rule of establishing the ministry of the information technology and connection. The United States of America is the home of the internet, and according to its important role in internet and the first amendment of the constitutional law of the United States congress, it was legislated for the internet and known as the style of personal territory. This would not only support the freedom of media in general, but also helps the freedom of speech finding a more extensive meaning.

CONCLUSION

According to the divisions of necessity and circumstances in the components of the freedom of speech we have tried to compare the limitations existed in each law system and leave the judgment to the reader. In identifying some components it seemed the American legislator has more freedom and the limitations are defined according to time and

place. Some of the component such as the freedom in spreading and promoting thoughts and opinions are encountered with some problems in the Islamic Republic of Iran which does not exist in the United States of America and that is called apostasy. Some of the components of the freedom of speech were not pointed directly and explicitly in both countries, but there are some implicit rules that the components could be extracted, such as the components of the freedom in substance of speech. Most identified components of the freedom of speech in the international human right documents, are mentioned in both countries, but the way of their identification is different. For example, in the freedom of press in the constitutional right of Iran, there is a prediction system before the publication but in the constitutional right of America there is supervision after publication. Some components such as, the freedom of radio and television in Iran is governmental, but in America it is given to the private section that there are some differences in identifying them. Finally, to define these components more and better, we have to use the constitutional law of other countries and use the experience they have suffered for so long to achieve it.

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