



The Right to Free Education: Conditions, and Restrictions of the Government

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Abstract: Education not only plays a fundamental role in the development and progress of societies, but it also crucially improves the quality of life for individuals and develops their potential. The lack of education is considered a significant threat to a person's inherent dignity, and as such, access to education is widely regarded as a human right by scholars. National documents around the world reflect the importance of education, and in Iran, the government is obligated to provide free education at all levels and facilitate and expand higher education for all, according to the third clause of the third principle and the thirtieth principle of the Constitution. The results of this study demonstrate that the existence of laws is a crucial factor in guaranteeing rights, and public order is one of the tools that restrict individual freedoms. This study applies a descriptive-analytical method based on library studies that collected and analyzed data to investigate the conditions for implementing the right to education, the restrictions and supports of governments in responding to questions such as: What are the conditions for implementing the right to education? What are the limitations in realizing the right to education? And how will the government support the right to education? Effective solutions for removing obstacles and realizing the right to education for all segments of society have been proposed based on the results of this study, including special attention to primary education, development of schools in rural areas to prevent dropouts due to lack of higher education opportunities, enactment of necessary laws regarding individuals who prevent children from attending school, and adaptation of educational content to the needs of society.

Keywords: Right to education, Restrictions, Supports, Government, International law

1. Introduction

One of the theories that is discussed and debated in the foundations of public and administrative law is the theory of the state as a provider of public services. This theory is so credible that it is even referred to as a theory of legitimacy. According to this theory, if a government cannot provide public services in the best possible way, it loses its legitimacy (Gray, 2006). Referral services include all services that meet the public needs and are often considered part of their human rights. In the Constitution of the Islamic Republic of Iran, the right to education is recognized as one of the mentioned rights, and the principle of free education is emphasized. Article 30 of the Constitution and some similar principles determine the general policy direction of the system, and the aim is for the government to distribute the facilities it has in all proposed areas in the Constitution in a balanced manner in accordance with the law, and therefore it is free. Education should be provided as fully or partially as possible. In addition

to Article 30 of the Constitution, the principle of free education can be deduced from other principles, including the third principle, which, in addition to legal emphasis, is also necessary for ensuring suitable human resources in religious teachings.

Overall, education is a fundamental human right and a key component of sustainable development ([Savić, 2018](#)). It is the responsibility of governments to ensure that every individual has access to quality education, regardless of their socioeconomic status. Providing free education is a crucial step towards achieving this goal, as it helps to reduce inequality and promote social mobility ([Abd Elkhalek, 2021](#)). Governments have several responsibilities in providing free education. Firstly, they must ensure that there are enough schools and teachers to meet the needs of the population. This involves investing in infrastructure and hiring qualified teachers, as well as providing ongoing training and support. Secondly, governments must ensure that education is accessible to all, regardless of gender, ethnicity, or socioeconomic status. This involves removing barriers to education, such as fees, and providing support to disadvantaged groups. Thirdly, governments must ensure that education is of high quality, with relevant and up-to-date curricula, adequate resources, and effective teaching methods. Fourthly, governments must monitor and evaluate the education system to ensure that it is meeting the needs of students and society as a whole. Finally, governments must invest in research and development to continually improve the education system, adapt to changing needs, and prepare students for the challenges of the future ([West, 2015](#)).

This article aims to not only examine the requirements of free education but also to express opinions on the facilities and limitations of governments in promoting this right and to provide legal proposals for improvement by finding the dark and bright points of the legal system.

2. The right to free education

The right to free education is the entitlement of individuals to have access to free and compulsory primary education, accessible secondary education for all, as well as equal access to higher education. The right to education includes the right to receive guidance and counseling on education and professions from one side and pursuing and continuing education up to a specific age from the other side. The right to education and training is one of the fundamental human rights that has been mentioned in international and regional declarations and treaties, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and so on ([Albright & Bundy, 2018](#)). The Article 26, Paragraph 1 of the Universal Declaration of Human Rights defines the right to education as follows: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages ([Glendon, 1997](#)).

Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit." Some intellectuals believe that the right to education is one of the most fundamental human needs in society, alongside the right to health ([Rezaei Qala & Milani Bonab, 2015](#)). This right is so extensive that it covers various educational methods, including "learning information through primary and general education and practical specialties through vocational education, such as technical and professional education ([Rezaeizadeh & Kazemi, 2012](#)). Article 30 of the Iranian Constitution also states that "the government is required to provide free education and training for all citizens up to the end of the secondary level and to expand higher education facilities to the extent required by the country's self-sufficiency ([Tamadonfar, 2001](#))." Therefore, the concept of the right to education can be described as follows: The right to education is one of the most fundamental human rights that all human beings are entitled to, regardless of race, gender, or language, and no one can deprive anyone of it.

2-1. Foundations of the Right to Free Education

The right to education is an inherent entitlement belonging to every individual, serving as a catalyst for the realization of other human rights. It not only fosters self-assurance and self-esteem but also plays a pivotal role in achieving peace, progress, and the advancement of human rights. Within the framework of human security, this right is regarded as a means to escape poverty and holds significant significance for personal development. Hence, it should be universally accessible, ensuring that individuals can benefit from it according to their capabilities.

The right to education is not solely grounded in societal and civil demands but has deep-seated foundations that are natural, intrinsic, rational, and even divine in nature ([Kalantry et al., 2010](#)). In essence, the drive for learning and the quest for knowledge and awareness are ingrained in human beings, serving a profound purpose. This capacity and aptitude lead to human wisdom, equipping individuals with the tools to exercise their rights, such as the right to vote, freedom of thought, freedom of expression, and other associated liberties, especially when confronted with rulers and authorities.

"In the seventeenth century, Grotius postulated that natural rights are derived from human reason and nature, independent of religious beliefs. This perspective gained greater prominence through the works of Hobbes, Rousseau, and Locke ([Rapaczynski, 2019](#)). Prior to this era, natural rights were thought to stem from divine will, but as time passed and after the Renaissance, the concept of natural rights increasingly relied on reason and continued its scientific existence" ([Tabatabai Motmani, 2015](#)).

"In the late eighteenth century, the theory of natural rights provided philosophical support for the wave of revolutions against tyranny and autocracy. Manifestations of this theory can be found in the French Declaration of the Rights of Man and of the Citizen, the United States Declaration of Independence, the

constitutions of various post-colonial states, as well as in the principal documents of the United Nations concerning human rights" ([Habibzadeh, 2009](#)).

During the 19th and 20th centuries, influenced by the belief that natural rights were inadequate to address contemporary human needs, the positivist rights theory emerged. Advocates of this theory, such as Jeremy Bentham and John Austin, argued that legal rights find their source in human-made laws, allowing for flexibility and adaptability to contemporary issues. In contrast, natural rights were perceived as possessing pre-established and unalterable rules. However, following World War II, the concept of natural rights experienced a revival. Nonetheless, it can be asserted that "the most enduring foundation of modern human rights is the principle of the inherent value of humanity" ([Qari Sayyed Fatemi, 2003](#)).

In general, the basis of any natural right resides in innate talents, which serve as evidence for that right. For instance, the right to education or the right to think is inherent to humans, as a being devoid of the power of thought cannot conceive of the right to engage in intellectual pursuits ([Khalily & Ahmadi Tabatabai, 2016](#)).

Motahhari asserts that inherent and natural rights stem from the fact that the system of succession, with its clear vision and focus on the ultimate goal, guides beings towards the hidden perfections within them. Each natural talent serves as the foundation for a corresponding natural right, accompanied by a natural document. For instance, while a human child possesses the right to study and attend school, a lamb does not possess such a right. This distinction arises because the capacity to acquire knowledge through study is inherent in humans but not in lambs. The system of creation has not bestowed lambs with this apprenticeship document in their essence. Similarly, rights such as the right to think, the right to vote, and the right to exercise free will exist ([Khalily & Ahmadi Tabatabai, 2016](#)).

The right to education, considering its evolutionary and philosophical nature, does not necessitate regulation and consensus. The inclusion of the right to education in international human rights declarations and national constitutions does not imply the establishment of this right; rather, it underscores its importance and insistence. National governments and educational organizations, within the limits of their resources and capacities, create conditions that enable maximum flourishing and enjoyment of this vital human right for all members of society, including citizens and foreigners, irrespective of gender, ethnicity, race, religion, and so forth ([Rezaei Qala & Milani Bonab, 2015](#)).

2-2. Backgrounds of the right to free education

The right to education finds mention in international and regional declarations and treaties such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural

Rights, and the Convention on the Rights of the Child. Article 26, paragraph 1 of the Universal Declaration of Human Rights outlines the right to education as follows: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit" ([Brown, 2016](#)). Some thinkers regard this right, alongside the right to health, as the most fundamental human need in society ([Rezaei Qala & Milani Bonab, 2015](#)).

This right encompasses a wide range of educational methods, including the acquisition of knowledge through elementary and general education, as well as practical skills through vocational training such as technical and professional education ([Arghavani Pirsalami & Dehghan, 2017](#)). Moreover, this right is not limited by age and applies to all citizens under the jurisdiction of governments without restrictions. Even the principles established by the United Nations for the elderly emphasize their access to suitable apprenticeship and educational programs, as well as cultural, spiritual, and recreational resources within society. The right to education is widely regarded as the most fundamental human right today, as it contributes to the development of human essence, spirit, intellect, and innate nature, while also facilitating the realization of other intellectual and spiritual rights.

In addition to its global significance, this right is also acknowledged at the national level. Numerous countries worldwide recognize the right to education as a fundamental and legal right, explicitly mentioning and affirming it in their constitutions. The Constitution of the Islamic Republic of Iran also emphasizes the right to education, viewing it as a prerequisite for achieving other human rights and as a key factor in human development, which fosters conditions for an exemplary society ([Bakhshzadeh et al., 2021](#)).

The second clause of the third principle mandates that the government must utilize all available resources to ensure free education at all levels and promote higher education. Furthermore, Article 30 of the Iranian Constitution stipulates that the government is obligated to provide free educational facilities for all citizens until the completion of secondary education, and to expand access to higher education in accordance with the country's self-sufficiency. Hence, when defining the concept of the right to education, it can be asserted that education is among the most fundamental human rights, applicable to all individuals irrespective of their race, gender, or language, and no one can deprive them of this right ([Tavana, 2017](#)).

3. The nature of the right to education

Regarding the nature of rights, two perspectives are present:

1. The theory of exercised will or choice regards the right as a "guaranteed will." In this context, the essence of the right resides in the existence of a free will that can influence other wills (([Qari Sayyed Fatemi, 2003](#))).
2. The theory of interest and benefit posits that the right is a protected interest by the legal system, referred to as a "guaranteed benefit." Essentially, it is the legal system that establishes the relationship of rights and obligations between the rights holder and the obligated party ([Qari Sayyed Fatemi, 2003](#)). It appears that, among these two theories, the theory of guaranteed benefit is more suitable for analyzing the nature of the right to education. This is because the right to education can be claimed and legally it is a benefit ensured by the legal system. However, there is also a belief that the theory of exercised will can be utilized to elucidate the nature of welfare rights, including the right to education. According to this perspective, the right to education obligates the government to provide educational facilities, while the rights holder also possesses the freedom and discretion to exercise that right ([Qari Sayyed Fatemi, 2003](#)).

Accepting this analysis, it becomes evident that the nature of welfare rights can be explained using both theoretical frameworks of choice and benefit, although the theory of benefit offers greater clarity ([Qari Sayyed Fatemi, 2003](#)). Regarding the right to education, it is evident that both theories have the capacity to explain and justify the nature of this right.

4. Requirements for the Implementation of the Right to Education

4-1. Accessibility

As a first step, the government is obligated to ensure the availability of necessary educational facilities. This involves establishing a sufficient number of schools in different areas to prevent anyone from being unable to receive an education due to a lack of schools in their place of residence. Furthermore, there should be an adequate number of qualified teachers nationwide. The government bears the responsibility of providing educational materials, which may vary depending on the economic conditions of each country. In addition to the fundamental requirements like school buildings, books, and teachers that all countries should fulfill, economically capable countries need to provide more advanced resources, such as technology-related equipment, to enhance students' learning. Overall, the existence of education entails three distinct responsibilities for the government:

1. Education as a civil and political right necessitates the government's support for the establishment of schools that respect freedom of education and freedom in education.

2. Education as an economic and social right requires the government to offer free and compulsory education to all children in need.
3. Education as an individual right calls for the government to consider diversity and pluralism in education, particularly concerning minorities and indigenous peoples ([Ansari, 2014](#)).

4-2. Acceptability

Acceptability represents another vital aspect to fulfill the right to education. It means that there must be minimum guarantees concerning the quality of education. Education can only fulfill its primary function if it meets appropriate quality standards. Merely having classrooms is insufficient; there must be useful and adequate educational books for students, competent and capable teachers, a desirable and healthy learning environment that adheres to health and hygiene standards, suitable teaching methods, and a curriculum that covers subjects relevant to the community's needs. These criteria determine the quality, competence, and acceptability of an education system, provided that it maximizes the benefits for children. Cultural acceptability should also be taken into account. In regions where ethnic, religious, or racial minorities reside, aligning educational content with the specific culture of those groups is highly important. Neglecting this aspect may result in opposition from parents regarding their children's education. Examples of cultural acceptability include teaching in the language chosen by the individual or allowing freedom to choose the type of education. Section (c), the initial part of Article 5 of the "Convention against Discrimination in Education" emphasizes granting the right to engage in specific educational activities, such as managing schools for national minorities and permitting the use or teaching of their specific language (subject to the conditions mentioned in the same section) ([Ansari, 2014](#)).

4-3. Flexibility and Adaptability

Education must evolve alongside the changing needs of society and students. Nowadays, tools such as the Internet and information exchange through it have captured students' attention, aligning with the realization of a global village. Considering that one of the objectives of education is to integrate children into society, it is crucial to acknowledge that a successful education system should progress in line with the community's needs and be adaptable. Education should possess the flexibility to align with the changing needs of dynamic communities and populations, addressing the requirements of students in various social and cultural circumstances ([Ansari, 2014](#)).

5. Government Support for the Right to Education

The involvement of governments is necessary to secure and ensure social and economic rights, such as the right to education or the right to work and enjoy these rights for all individuals. This is because only the government possesses the capability to provide the necessary resources and access to these rights.

As a result, the role of the government in the social and economic aspects of people's lives has expanded ([Sell, 2003](#)).

"The government serves as a guarantee for civil and political rights, as well as the provider of economic, social, and cultural rights" ([Tabatabai Motmani, 2015](#)). If governance is meant to safeguard human rights, it must prevent the neglect of these rights whenever and wherever necessary, thus acting as a preventive measure against despotism and autocracy within the political and military establishment. This is based on three principles: the existence of a constitutional law, the separation of powers, and the rule of law ([Ryan, 2017](#)).

In order to ensure and uphold rights and freedoms within a system, certain conditions need to be established ([Tabatabai Motmani, 2015](#)). Firstly, the governmental political structure must be democratic. This requirement is emphasized in international human rights documents as a means to guarantee these rights. A democratic government acknowledges human rights and their inseparability. However, there are individuals who reject even this minimum standard and hold the belief that the democratic system is flawed because it is founded on the people's opinions as the source and origin of rights. They view any system that does not consider legislation as solely derived from God as polytheistic ([Javadi Amoli, 2010](#)).

Secondly, the separation of powers - the theory of separation of powers addresses the distribution of power among the three branches of government and prevents power from being concentrated in one place. It safeguards the fundamental rights and freedoms of the people and protects against the usurpation of authority by rulers. Totalitarian and dictatorial regimes contradict the granting of power to an individual or group that contradicts freedom. According to this theory, the governing powers in society establish a balance of power by monitoring and controlling each other, which leads to the respect for the rights of the nation. For instance, during the process of constitutionalism, absolute power was restricted by another power, making it subject to the rule of law. This allowed other elements to enter the political sphere, and as a result, absolute authority delegated some of its powers to institutions like the parliament ([Hajarian, 1998](#)).

Thirdly, constitutional law - the power held by the government exposes it to autocracy. To prevent the violation of people's rights, a superior institution must assume the responsibility of guaranteeing these rights. The formulation of a constitution is a suitable solution in this regard. With the advent of constitutionalism and movements advocating for constitutional law, which are synonymous with democracy and the pursuit of freedom, the people demanded governments based on constitutional law to limit the power of rulers and ensure their rights and freedoms. The constitution, by defining the

government's structure, limitations, and exercise of its powers, institutionalizes the rule of law and necessitates compliance from both the people and the rulers. Particularly, the separation of powers and the mutual control of powers promise the realization of people's freedom and the determination of the nation's rights in the face of unrestricted governmental authority. The constitution inherently declares that rulers are not the owners of authority, but rather its servants ([Sell, 2003](#)).

Throughout the course of human history, rulers have exercised their will, surpassed the boundaries of law and established their authority for countless years. However, with the advent of the rule of law, the principle of governance has shifted, making everyone, including rulers, subject to the law without any exceptions. Consequently, in societies with legislatures, the exercise of governance is exclusively carried out through the legal process ([Habibzadeh, 2009](#)).

In addition to being a fundamental human right, the right to education plays a vital and indispensable role in realizing other fundamental rights of individuals. Therefore, it has received support and protection in numerous international and regional documents, both in general and specific terms. The protection of human rights encompasses various activities, including implementation, monitoring, and decision-making processes in cases of human rights violations. The right to education is among the human rights that also entail guarantees. Institutions responsible for monitoring and safeguarding human rights include those established under the United Nations Charter and those based on human rights treaties ([Khalily & Ahmadi Tabatabai, 2016](#)).

Recognized as a human right and enshrined in the constitution, the guarantee of this right in the Iranian legal system holds significance. According to Article 9 of the Iranian Civil Code, "International covenants concluded between the government of Iran and other states, in accordance with the constitution, shall have the force of law." Consequently, international human rights documents such as the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child, to which Iran is a signatory, are considered integral parts of Iranian domestic law, binding and enforceable. The guarantee of the right is also acknowledged within the Iranian legal system as a right enshrined in the constitution ([Tabatabai Motmani, 2015](#)).

6. Limitations on Governments Regarding the Right to Education

The inherent dignity of human beings necessitates the identification of a set of rights and freedoms, which are not absolute or unrestricted. These rights may come into conflict with each other, making it impractical to exercise and uphold all of them simultaneously. Therefore, rights are not absolute ([Qari Sayyed Fatemi, 2003](#)). In exceptional cases like the right to freedom of thought, which is an entirely internal matter, the mere external manifestation of this right gives it meaning. Thus, in consideration of conflicts and social necessities, it becomes necessary to limit individual freedoms when required

([Markazi Malmiri, 2015](#)). In other words, if we emphasize an individual's authenticity and impose limitations on the rights and privileges granted to them, we acknowledge that in certain situations, it becomes necessary to restrict or even deny individual freedoms and rights in order to establish public order ([Katouzian, 1998](#)).

The imposition of limitations on rights and freedoms is an accepted practice (as indicated by the conditions for imposing limitations in Article 29 of the Universal Declaration of Human Rights, acknowledging the nature of rights as restrictive) ([Qari Sayyed Fatemi, 2003](#)). The question at hand is the extent to which governments can and should exercise their authority in limiting the rights and freedoms of individuals.

The importance of answering this question lies in the fact that governments, wielding power and authority, have the ability to define the boundaries of individuals' fundamental rights and freedoms. By invoking concepts like public order, national security, or the greater good, they can create justifications for infringing upon people's rights. To prevent such abuses, it is crucial to establish clear limits on government authority and criteria for restricting rights, thus safeguarding against potential misuse of power. Two approaches can be taken in this regard: firstly, defining rights in a manner that eliminates any possibility of conflict. This entails presenting a precise and narrow definition of rights that excludes cases where rights may clash, thereby averting conflicts. The second approach involves not providing an explicit definition of rights, but rather imposing limitations during their application.

When it comes to restricting rights, as mentioned in declarations and agreements, the guiding principle is prohibition unless justified. Limitations on rights should be considered exceptional circumstances and applied accordingly. Article 29 of the Universal Declaration of Human Rights is one of the most significant documents addressing justified limitations on rights. It states: (a) Every individual has responsibilities towards the community, which alone enables the complete and free development of one's personality; (b) In the exercise of their rights and freedoms, individuals shall only be subject to limitations as prescribed by law, solely for the purpose of ensuring the due recognition and respect for the rights and freedoms of others, as well as meeting the legitimate requirements of morality, public order, and the general welfare in a democratic society.

(c) These rights and freedoms must never be exercised contrary to the purposes and principles of the United Nations.

The above declaration acknowledges limitations on individuals' rights and freedoms that satisfy three conditions. The absence of any of these conditions renders the limitation invalid and contradictory to the declaration, thereby ensuring its specific enforcement.

6-1. Legal Impediments to the Right to Free Education

The fundamental principle of the rule of law ensures the protection of rights and freedoms by placing limitations on their exercise ([Markazi Malmiri, 2015](#)). These restrictive laws should be transparent, accessible to all, and devoid of arbitrariness, irrationality, or discrimination. The boundaries of individual rights extend to the rights of other members of society. Hence, to prevent misinterpretations and occasional misuse, this law, originating from the collective will, accurately defines the scope of individual actions based on justice rather than the subjective interpretations of government officials and agents ([Ghazi Shariat Panahi, 2011](#)).

6-2. Legal Restrictions for Safeguarding the Rights and Freedoms of Others and the Common Welfare

Despite the provisions stated in the aforementioned declaration, there are uncertainties and differences of opinion in interpreting its articles. Among these issues is how to address potential conflicts between maintaining public order and security, and individual liberties. This is because all these conditions, provisions, or norms are broad, ambiguous, and subject to interpretation ([Markazi Malmiri, 2015](#)). Public order acts as a limiting factor for individual freedoms. The wider the reach of public order regulations, the greater the government's capacity to intervene in social matters.

6-3. Legal Limitations in a Democratic System

The existence of the law plays a vital role in safeguarding rights. However, if the governing laws are not established by a democratic government, they can be exploited by powerful institutions to undermine people's rights. Human rights declarations and covenants emphasize that limitations on rights and freedoms should be established within a democratic system as an essential requirement.

Human rights standards are upheld through laws issued exclusively by the government. Therefore, the presence of a democratic system is indispensable for upholding individual rights. However, no specific political or economic model has been identified as a necessary prerequisite for the realization of human rights.

There are certain indicators that signify the democratic nature of a political system. These indicators can be institutional, such as granting the public the right to oversee governmental decisions and acknowledging civil and political rights, including freedom of expression, minority rights, and freedom of assembly and association. Alternatively, they can be structural, such as adhering to the principle of separation of powers or widely permitting party activities ([Zarei, 2004](#)).

The Covenant on Economic, Social, and Cultural Rights recognizes that limitations on the rights outlined in the Covenant can be imposed by law, to some extent aligning with the essence of these rights, and solely aimed at fostering the welfare of the public within a democratic society. Additionally, it explicitly

states that none of the provisions in this Covenant can undermine or curtail the acknowledged rights and freedoms beyond what is specified in the Covenant.

The Covenant emphasizes that these limitations are intended to advance the collective welfare. Given that the Covenant builds upon the declaration and seeks to ensure broader rights stated in the primary document (Universal Declaration of Human Rights), the objectives outlined in Article 29 of the Declaration will contribute to the promotion of the general welfare. The initial paragraph of Article 4 in the International Covenant on Civil and Political Rights anticipates and permits the restriction of rights and freedoms in exceptional circumstances, provided that such measures do not violate other obligations under international law, do not discriminate based on race, color, sex, language, religion, political or other opinions, national or social origin, and do not result in a situation where the rights and freedoms recognized in this Covenant are limited.

7. Restrictions on the Right to Education in Iran's Legal System

Occasionally, governments encroach upon people's liberties under the pretext of safeguarding national security. Conversely, some individuals, by excessively interpreting freedom, endanger the overall public security. The ninth principle of the Iranian Constitution aims to strike a balance between the concepts of independence and freedom and prevent such abuses. It explicitly states that no individual, group, or authority has the right to undermine Iran's political, cultural, economic, and military independence and territorial integrity in the name of exercising freedom. Furthermore, no authority has the right to curtail lawful freedoms under the guise of preserving the country's independence and territorial integrity, even if done so through legislation and regulations. The Constitution of the Islamic Republic of Iran imposes restrictions on fundamental rights. Article 40 represents one of the factors that limit rights and freedoms: "No one can exercise their rights in a manner that causes harm to others or infringes upon public interests".

The principle of the abuse of rights, discussed in Article 40 of the Constitution, primarily applies to civil law. It acknowledges the illegitimate nature of causing harm to others and sets limits on individuals' exercise of their rights to prevent harm or damage to others. In the context of social life, it is crucial to recognize that the proper use of legal rights is necessary for collective living. It should be within the boundaries that justify granting these rights, avoiding any excessive behavior.

Article 79 of the Constitution establishes provisions for exceptional circumstances, anticipating limitations on rights and freedoms. During times of war or similar emergencies, the government is authorized, with the approval of the Islamic Consultative Assembly (parliament), to impose temporary and necessary restrictions. Individual rights and freedoms hold significant importance, and even in

emergency situations, the imposition of limitations is subject to specific conditions such as parliamentary approval and the temporary nature of these restrictions.

Regarding the duties of the Supreme National Security Council, the second paragraph of Article 179 of the Constitution pertains to the coordination of various activities, including political, informational, social, cultural, and economic aspects, related to general defense and security measures. The objective is to safeguard national interests, protect the Islamic Revolution, ensure territorial integrity, and preserve national sovereignty. In fulfilling this legal obligation, the council has the authority to impose restrictions on rights and freedoms. While the Constitution explicitly mentions these limitations, other constraints are referenced in international documents, as mentioned earlier. Since Iran has accepted and committed to implementing these international instruments, the same standards must be observed within Iran's legal system. In addition to the general limitations imposed on rights and freedoms, specific restrictions apply to certain rights due to conflicts that may arise among the various rights enshrined in international instruments.

For instance, Article 18(4) of the International Covenant on Civil and Political Rights adopted in 1966, Article 13(3) of the International Covenant on Economic, Social and Cultural Rights adopted in 1966, and Article 5(1) of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief adopted by the United Nations General Assembly in 1981, recognize the freedom of parents to provide religious and moral education to their children according to their own beliefs. Simultaneously, children have the right to freedom of thought, conscience, and religion, as well as the freedom to seek, receive, and impart information and ideas. Considering these rights, it becomes evident that conflicts and clashes can occur. Parents who intend to educate their children about moral and religious matters may face situations where their children seek information that contradicts their parents' personal principles and beliefs. Therefore, in order to reconcile these rights and minimize their interference, it is necessary to establish limitations through a careful balance and adjustment of each right. This approach aims to ensure the best possible guarantees for both rights ([Qari Sayyed Fatemi, 2003](#)).

For this reason, in Article 14 of the Convention on the Rights of the Child, after recognizing the freedom of thought, conscience, and religion for the child (first paragraph), it considers the right of parents and legal guardians to guide the child in the exercise of their rights as honorable. Additionally, the second paragraph of Article 13, following the recognition of the child's right to freedom of expression, imposes certain limitations on the exercise of that right. However, these limitations are restricted to cases explicitly stated in the law or deemed necessary for respecting the rights and reputation of others,

safeguarding national security, public order, public health, or public morals. One example of respecting the rights of others can be the right of parents to choose the education of their children.

Conclusion

The right to education is one of the fundamental human rights that all individuals, regardless of race, gender, or language, are entitled to, and no one can deprive them of this right. This right has a broad concept and includes all personal rights and welfare rights stated in the Universal Declaration of Human Rights and the two Covenants. The right to education is a welfare right that is realized through supportive measures and interventions by the government for all citizens. This right has a dual nature: it is an affirmative right that requires government intervention and a negative right that requires non-interference from the government in its limitation. The education system in any country plays a significant role in education and upbringing. Considering the role of education in the economic well-being of families and the welfare of society, the responsibility for the provision, control, and guidance of education is entrusted to governments. In the Islamic Republic of Iran, according to the third paragraph of Article 3, Article 30, and the first paragraph of Article 43 of the Constitution, the government is obligated to provide education at all levels and foundations for the nation.

The right to education, in addition to being one of the fundamental human rights, is vital and essential for realizing other fundamental rights of individuals. Therefore, it has been supported and protected in many international and regional documents, either generally or specifically. The protection of human rights includes all activities carried out in the implementation and monitoring of human rights, and decisions are made when human rights are violated in relation to them.

The government has a responsibility to provide school supplies as part of the conditions for the right to education, and this responsibility varies depending on the economic conditions of different countries. In addition to the basic necessities such as school buildings, books, and teachers, which are the responsibility of all nations, countries with favorable economic conditions should also offer more advanced facilities, such as technology-related equipment, to students.

The guarantee of rights within Iran's legal system is considered a fundamental human right and is enshrined in the constitution. The Constitution of the Islamic Republic of Iran imposes certain limitations on the fundamental rights of individuals, including Article 40, which restricts certain rights and freedoms. Moreover, Article 79 of the Constitution anticipates limitations on rights and freedoms in exceptional circumstances. Public order serves as a mechanism to restrict individual freedoms, and

the broader the scope of public order laws, the greater the potential for government intervention in social affairs.

The existence of law plays a vital role in ensuring rights; however, if the governing laws are not established by a democratic government, they can become tools in the hands of the ruling power to violate people's rights.

According to the Constitution, the theory of violating rights, primarily applied to citizenship rights, focuses on the illegitimacy of causing harm to others and permits individuals to exercise their rights as long as it does not result in harm and damage to others. In social life, it is important to recognize that the use of legal rights is essential for societal well-being, and efforts should be made to go beyond the mere recognition of rights and actually implement them.

Recommendations

To overcome obstacles and ensure the right to education for all segments of society, the following effective measures are proposed:

1. Give special attention to primary education, ensuring it is provided at a higher level in terms of quantity and quality.
2. Expand schools in deprived rural areas to address the issue of school dropouts due to the absence of higher educational opportunities.
3. Establish and enforce necessary laws to address individuals who hinder children's education.
4. Adapt the educational content to align with the societal needs.

Limitations

Among the limitations is the fact that although the right to education is acknowledged in the Constitution of the Islamic Republic of Iran and holds a special and accepted position within the country's legal system, the general population does not fully benefit from this right due to inadequate guarantees and proper implementation of the law.

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References

- Abd Elkhalek, A. M. A. (2021). Education for Sustainable Development: A Critical Analyses. *International Journal of Economics and Finance*, 13(6), 181-181.
- Albright, A., & Bundy, D. A. (2018). The Global Partnership for Education: forging a stronger partnership between health and education sectors to achieve the Sustainable Development Goals. *The Lancet Child & Adolescent Health*, 2(7), 473-474.
- Ansari, B. (2014). *The right to education (the child's right to education in the international human rights system)*. Shahr Danesh Institute of Legal Studies and Research.
- Arghavani Pirsalami, F., & Dehghan, M. (2017). .The constitution and human rights in the legal system of the Islamic Republic of Iran. *Islamic Revolution Research*, 6(1), 33-59. https://www.roir.ir/article_62933_fb45e3d84c09d668124f16fed6479df3.pdf
- Bakhshzadeh, O. A., Sabet, M. G., & Entekhabian, O. (2021). The Right to Education and Study and Women's Labor Rights in Iranian Jurisprudence and Law and the UNESCO 2030 Document. *Journal of Educational Psychology-Propositos y Representaciones*, 9.
- Brown, G. (2016). *The Universal Declaration of Human Rights in the 21st century: A living document in a changing world*. Open Book Publishers.
- Ghazi Shariat Panahi, S. A. (2011). *Essentials of constitutional rights* (44th edition ed.). Mizan publishing house.
- Glendon, M. A. (1997). Knowing the universal declaration of human rights. *Notre Dame L. Rev.*, 73, 1153.
- Gray, C. B. (2006). Theory and Philosophy of Law in Maurice Hauriou's Institutionalism. *Rechtstheorie*, 37, 193.

- Habibzadeh, M. J. (2009). Rule of law in criminal matters and its compliance with the Universal Declaration of Human Rights and Islamic standards. In *Human rights (concerns and views of Iranian jurists and jurists* (First edition ed.). Islamic Human Rights Commission of Iran.
- Hajarian, S. (1998). *Confluence of republicanism and constitutionalism", New Choice: Sociological analyzes of the second Khordad inciden*. Tarh e No.
- Javadi Amoli, A. (2010). *Philosophy of human rights* (5th edition ed.). Esra Publishing House.
- Kalantry, S., Getgen, J. E., & Koh, S. A. (2010). Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR. *Hum. Rts. Q.*, 32, 253.
- Katouzian, N. (1998). *Philosophy of Law (Definition and Nature of Law)* (First Edition ed., Vol. 1). Sahami Enteshar.
- Khalily, A., & Ahmadi Tabatabai, M. R. (2016). The Relation Between Justice and Liberty in Shahid Motahhari's Viewpoint. *Contemporary Political Studies*, 7(20), 117-135. https://politicalstudy.ihcs.ac.ir/article_2502_42abe44cc91ffa9ea1d192f50cab5c23.pdf
- Markazi Malmiri, A. (2015). *Rule of law basics, concepts and perceptions* (second edition. ed.) [a]. Islamic Council Research Center.
- Qari Sayyed Fatemi, S. M. (2003). *Human rights in the contemporary world, the first section an introduction to theoretical issues (concepts, foundations, Qamlro and sources)*. Shahid Beheshti University
- Rapaczynski, A. (2019). *Nature and politics: Liberalism in the philosophies of Hobbes, Locke, and Rousseau*. Cornell University Press.
- Rezaei Qala, H., & Milani Bonab, A. (2015). Entitlement to the right to health services, health and education in developing countries. *Strategy Quarterly*, 4(1), 122-133.
- Rezaeizadeh, M. J., & Kazemi, D. (2012). A Review of "Public Service" Theory and in its Underlying Principles in the Constitution of Islamic Republic of Iran. *Jurisprudence and Islamic Law*, 3(5), 23-46. https://law.tabrizu.ac.ir/article_2091_9c4370960a5f0698ea46eec0af3c3cb5.pdf
- Ryan, A. (2017). Liberalism. *A companion to contemporary political philosophy*, 360-382.
- Savić, I. (2018). Education for sustainable development and human rights. *Handbook of Lifelong Learning for Sustainable Development*, 243-256.
- Sell, S. K. (2003). *Private power, public law: The globalization of intellectual property rights* (Vol. 88). Cambridge University Press.
- Tabatabai Motmani, M. (2015). *Public freedoms and human rights* (6th edition ed.). University of Tehran Publishing Institute.

- Tamaddonfar, M. (2001). Islam, law, and political control in contemporary Iran. *Journal for the Scientific Study of Religion*, 40(2), 205-220.
- Tavana, M. A. (2017). Cultural Citizenship in the Constitution of the Islamic Republic of Iran. *The International Journal of Humanities*, 24(2), 92-109.
- West, A. (2015). Education policy and governance in England under the Coalition Government (2010-15): academies, the pupil premium and free early education. *London Review of Education*, 13(2), 21-36.
- Zarei, M. H. (2004). Good Governance, Sovereignty and Government in Iran. *Legal Research Quarterly*, 7(40).



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