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Studying Freedom of Information in Iran

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ABSTRACT

Background: Right of information is one of the fundamental rights of each human. This right indicates that any human has right of access to the information which is related to him/her and affects his/her life. Study of limits of freedom of information is one of the important issues which have been presently discussed in different legal systems of the world and in international documents. **Objective:** Although principle of freedom of information has been expressly accepted in Constitutional Law of Iran, this freedom is not absolute and exceptions have been exerted on it. **Results:** This research which has been conducted with analytical –descriptive method based on library data studied right of free access to information and its exceptions in Iran legal system. **Conclusion:** finally dealt with its shortcomings and suggested some points for improving this principle in Iran local law.

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INTRODUCTION

Unfortunately, name of Iran has not been included in list of the countries enacting freedom of information law despite global approach to freedom of information and right of access to information. In Constitutional Law of Islamic Republic of Iran, concept of freedom of expression has not been expressed as a public right. What is available in this regard is implication of recognizing this freedom officially. Freedom of information law is not perfect yet and has some defects and problems. In addition, another main problem which is available in Iran is interpretation of two important and key words “national interest and security”. Despite the rules and principles which are available in this regard and discussed in this study, it has been applied excessively. These two words are strange to laws of Iran and cause executive problems.

Goal of this paper is to mention defects, shortcomings and generally mention all of the problems which may deprive Iranian people with natural and fundamental right toward the government and present strategy using the available local and international resources for reducing damages and protecting freedom and right of public access to information.

On this basis, the present paper which was conducted with descriptive –analytical method based on library data sought to answer this question: what position does right of information have in Iran and how are this fundamental right and its execution supported?

On this basis, hypothesis of this paper is based on the sentence that freedom of information in Iran has challenges and barriers and the rules and methods should be revised and amended.

On this basis, the present paper has dealt with position of freedom of information in Iran laws by studying generality of freedom of information, concluded its shortcomings by analyzing a challenging example in Iran law and suggested points for improving this principle in local law of Iran.

Freedom of information:

With a historical study on record of free information flow, we notice that the first experience of legislation in the field of information freedom was found in Sweden in 1776. The purpose of enacting this law which was first called freedom of the press was to create an open society in which even documents such as letters of heads of other countries to vice president should be also surprised by the public, the rule which remains in force up to now (Clark & Sikkink, 2013).

In addition, Colombia (enacted in 1888), Finland in 1919(it was revised and changed in 1951 and also 1999), USA (1966) and after it, Denmark and Norway in 1970, France and the Netherlands in 1978, and Canada, Australia and New Zealand in 1982, Canada (1983), Japan (1999), Poland and India (2002), also the countries which have recently revised their Constitutional Law or codified new constitutional law have expressly recognized citizens’ right of access to governmental information (J. Stiglitz, 2002).

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Freedom of information means right and freedom of people to search for, gain access to, receive, collect, express and transfer information, news and beliefs which government and other associations and authorities hold and control (Lor & Britz, 2007).

This right requires democracy, accountability of authorities and effective participation of people in management of public affairs. This freedom is way of guaranteeing freedom of thought, expression and press and it has been identified and supported as one of the human rights in constitutional law of countries and international documents (Abbasy, 2011).

Freedom of information is the term which was first forged in USA and has confusing content to some extent. Perhaps, it is thought that this term means freedom of all kinds of information but this is not true. Law of some countries has more accurate title of this freedom which indicates its content. For example, France has used title of freedom of access to administrative documents (Lor & Britz, 2007) and Canada has used title of access to information.

Right of access to information is result of information freedom and in other words, it is freedom of framed information. Right of access to information means that each of the society members at any time can demand for access to information which is kept in one of the public and sometimes private institutes and that institute can reject his request based on the definite reasons (J. E. Stiglitz, 2003).

Right of access to information available in governmental institutes is regarded as one of the main ways of freedoms of expression and press because it is regarded as one of the most important legal means for preparing necessary and accurate information for exerting the said freedoms.

Position of Freedom of Information in Iranian laws:

In Islamic Republic of Iran, different principles of Constitutional Law and different ordinary laws have accepted freedom of information. Paragraph 2 of the third principle of Constitutional law refers to obligation of Islamic Republic of Iran to elevate public awareness level and principle 69 refers to openness of the session negotiations.

Principle 24 of Constitutional Law also leaves publication and press free in mentioning materials.

Principle 175 of Constitutional Law refers to fulfillment of freedom of expression and opinions in the Islamic Republic of Iran Broadcasting Organization.

Article 5 of law regarding general policy and principles of Islamic Republic of Iran Broadcasting Organization Programs enacted in 1982 stipulates that one of the general principles governing these programs is to help expand awareness and growth of society in different fields as a public university.

Articles 16-19 of this law also emphasizes on reflection of true news from all over the world on the condition of no contrast with military secrets, accusation of people, groups and institutions, ethical principles etc (TabatabaeiMotameni, 2009).

In our country, bill of information publication and free access was enacted by the Parliament on 14 May 2008 but some of its articles were criticized by the Council of Guardians and finally it was enacted by Expediency Discernment Council of the System on 22 August 2009 after negotiations about the bill between the Majlis and the Council of Guardians and rejection by the Council of Guardians. In article 2 of this law, it has been stipulated that any Iranian person has right of access to public information unless the law has prohibited. Article 10 of this law also stipulates that each one of the public institutes should publish public information including performance and its balance sheet using computer equipments and in a guidebook as far as possible.

Governmental Secrets in Iran:

Legal condition of governmental secrets in Iran can be criticized and studied from two viewpoints: on the one hand, governmental secrets laws and regulations are silent; on the other hand, they contain the regulations which are criticized and should be reviewed. In other words, there are some gaps in legal system of Iran about governmental secrets from one viewpoint which should be recognized and suitable rules should be suggested for removing them. From another viewpoint, shortcomings of the available laws and regulations should be solved and corrected.

The major gaps which are evident in governmental secrets support system are as follows:

A- Lack of comprehensive law

In legal system of Iran, there is no comprehensive law about governmental secrets. At present, different categories of governmental secrets are classified based on Governmental Confidential Documents Disclosure And Publication Punishment Law enacted on 18 February 1975 and Bylaw For Keeping Governmental Confidential Documents And Classifying And Specifying Type Of Documents And Information enacted on 22 December 1975 by Council of Ministers, Islamic Punishment Law and Armed Forces Crimes Punishment Law enacted on 30 December 2003. Governmental Confidential Documents Disclosure and Publication Punishment Law only defined confidential documents and predicted some criminal punishments for disclosing them. Bylaw For Keeping Governmental Confidential Documents And Classifying And Specifying Type Of Documents and Information also objected to the part of principles and rules governing governmental secrets which it has

mentioned in its title i.e. way of keeping governmental secrets, classifying them and specifying type of secrets while the above cases are regarded only as part of law not all of it in a comprehensive law of governmental secrets.

Note 3 of article 26 of armed forces crimes punishment law has declared that classification and change in classification of documents, negotiations, decision and information and manner of keeping the classified documents will be based on the instruction which has been prepared by General Staff of Armed Forces and enacted by Commander in Chief. Considering that the said law supervises on the armed forces and military information and military general institutes are excluded from requirements of freedom of information, they are not discussed here. But it is necessary to note that the above instruction should not be classified and if it is not published in public domain, it should be given to the armed forces which are required to observe it, otherwise, a person who has performed the contradictory actions without knowing provisions of that act cannot be punished.

B- Unlimited term of classification

One of the other gaps of the above regulations is prediction of term for classification of information. Article 4 of Bylaw for Keeping Governmental Confidential Documents and Classifying and Specifying Type of Documents and Information has referred to change of classification or exclusion of the governmental secrets from classification but it has assigned this case to each one of the organizations. Considering mysticism culture which has prevailed in Iran as in other countries, it is not so difficult to predict what the concerned organizations will discern. In addition, note 3 of article 26 of Islamic Republic of Iran Armed Forces Crimes Punishment Law has only mentioned change of information classification and didn't speak about their exclusion from classification.

C- No determination of the information which cannot be classified

One of the important regulations of governmental secrets law which is predicted for preventing obstinacy of the authorities who classify governmental secrets is to declare that some information cannot be classified. In legal system of Iran, there is no legal text or special bylaw in this field. This caused public institutes not to give the information which they have produced or received with one of the four classification seals to the citizens.

D- Lack of regulations about right of citizens' access to governmental secrets

In the present system, there are no regulations about right of citizens' access to governmental secrets which have been classified as governmental secrets.

Information classification doesn't prevent access of citizens to them but the citizens should have access to the classified information by predicting special regulation and making necessary arrangements while there is no special rule in legal system of Iran. In article 3 of governmental confidential documents publication and disclosure punishment law, the term "the person is not qualified for knowing it" has been used and in note of article 6 of Bylaw For Keeping Governmental Confidential Documents And Classifying And Specifying Type Of Documents And Information, the term "the person who shall not sight the confidential document "has been used. But it is not clear who is qualified for knowing the classified information or who shall sight the confidential document or be informed of its provisions, if the citizens can be regarded as qualified for knowing the classified documents or how it can be found that a citizen shall be informed of the classified information or not.

E- Lack of regulations about un systematic classifications

For making classification of governmental secrets systematic and increasing carefulness and awareness of the authorities who take such measure, it is necessary to predict regulations about penal, civil and disc plenary liabilities resulting from the unsystematic classifications. This legal strategy prevents the authorities who classify information from abusing their power invested with them. In the present regulations of Iran, there is no special text in this regard.

F- Not predicting special authority for handling complaints of people about issues of governmental secrets

Citizens may request for access to the information which has been classified as governmental secrets but their requests may be rejected without unjustifiable reason but the concerned authorities may not pay attention to this request. In such cases, a special organization or commission has been established in some countries for hearing disputes arising out of interpretation or enforcement of governmental secrets law and view of this organization or commission is binding for the institutes and authorities classifying or keeping governmental secrets but the citizens have right to refer to the Ministry of Justice (Ansari, 2008).

Conflict or no conflict between freedom of information and privacy in legal system of Iran:

Support of Privacy in Case law of Iran:

In legal system of Iran, privacy has not been expressly supported. Like position of legal system of Islam, position of Iran case law toward privacy is reductionist: rights and freedoms which are supported as privacy have been supported implicitly and in the context of other legal rules of Iran though imperfectly.

Islamic fundamentals of legal system of Iran, Constitutional law, Islamic punishment law, criminal procedure, civil procedure, laws and regulation of mail, telephone, internet communication, press law are among the laws and regulation which have supported some instances of privacy impliedly or expressly.

International Covenant on Civil and Political Rights which Iran government has joined is the only source which expressly emphasizes on support of privacy in legal system of Iran (Ansari, 2011).

Islamic fundamentals of legal system of Iran:

It is true that privacy has not been expressly supported in the laws but principle 167 of Constitutional Law and article 3 of civil procedure have obliged the judge to pass the award by referring to authentic Islamic sources or religious decrees. Therefore, it can be claimed that what is observed for support of privacy in authentic Islamic sources or religious decrees and some of which was studied in the first section of this book indirectly entered legal system of Iran and can be argued and cited in judicial proceedings.

Principle 167 of Constitutional Law stipulates that:

The judge is obliged to find award of each claim in the codified laws and if he doesn't do so, he shall pass the award by relying on authentic Islamic sources or religious decrees and cannot refuse to hear the claim and pass the award on the pretext of silence or breach or brevity and conflicts of the codified laws.

It has been stipulated in Article 3 of Civil procedure enacted on 16 April 2000:

Judges of the courts are obliged to hear the claims, pass the appropriate award or settle the disputes based on the laws. In case the case laws are not perfect or express or conflicting or there is no law in the brought case, they shall pass the award by relying on authentic Islamic sources or the authentic decrees and legal principles which are not contradictory with legal rules and cannot refuse to hear the claim and pass the award on the pretext of silence or breach, brevity or conflict of laws, otherwise, it will be recognized as refusal of the right vindication and they will be convicted to its punishment.

Fortunately, there is no difference of opinion about protection of privacy by referring to authentic Islamic sources and decrees (Ansari, 2011).

Constitutional Law:

Unlike Constitutional laws of the countries which have supported privacy clearly and as a special principle, Constitutional Law of Iran has no special text which has supported privacy under this title. If we classify privacy into personal privacy, location privacy, information privacy, communication privacy and physical privacy, in Constitutional Law of Iran:

Right to privacy has not been identified as a fundamental right;

Personal privacy has not been supported expressly and implicitly.

Among the places which privacy is accepted by international law and comparative law, principle 22 has only referred to property and house and workplace privacy has not been mentioned unless the word job is extensively interpreted.

Freedom of information has not been reflected in principle 24 of Constitutional law except restrictively and exceptions of this freedom are disruption of Islam fundamentals and no disruption of public law. Breach of privacy with publication and press can be hardly regarded as disruption in fundamentals of Islam or public law.

Privacy of personal data has not been considered in any of the principles of Constitutional Law.

In principle 25, exceptions of this freedom have been referred without expressing freedom of communication and privacy of communication about the most common communication means has been supported. This principle is one of the most important principles of Constitutional Law which has clearly supported communication privacy.

No special reference has been made to physical privacy and physical privacy can be subject to supports of Constitutional Law only by interpreting words prestige and life mentioned in principle 22 of Constitutional Law.

Principle 22 of Constitutional Law has prohibited any search and many instances of privacy breach can be regarded as search.

The word "law" which has been mentioned in principle 22 and has been announced safe against attack is a qualitative and interpretive word and right to privacy can be regarded as a part of it with a dynamic interpretation.

In principles 14 and 20 of Constitutional Law, observance of human rights of all people has been emphasized.

As mentioned in the previous discussions, right to privacy has close relationship with magnanimity and integrity of humans and is regarded as one of the most important human rights which have been mentioned in international documents.

In the principles of Constitutional Law which privacy is supported, this support has been subjected to exceptions among which law order is considered more than other exceptions but the laws which can impose exceptions have not been described. National security which is one of the most important exceptions of privacy has not been considered in the mentioned principles unless we regard it subjected to public law and in this case, only principle 24 has referred to it.

In this manner, it is found that Constitutional Law of Iran has not applied the term privacy like Constitutional Law of France but privacy can be regarded as supported by Constitutional Law through

interpretation. As French Council of State has declared by interpreting some principles of Constitutional Law in 1995, privacy has been implicitly supported in Constitutional Law of France. Other countries which were similar to Iran or France or announced privacy as supported by Constitutional Law like France with new interpretations of some principles of Constitutional Law and reflection of this support in judicial procedure of the supreme courts or included freedom of information and right to privacy in them by revising their Constitutional Law. Some of these countries have enacted ordinary laws in the field of privacy support in addition to above actions.

Necessity of expressing privacy support in Constitutional Law not in other (ordinary) laws should be noted. Enactment of the ordinary laws which supports privacy doesn't make us free of need because Constitutional Law of each country is regarded charter of fundamental rights and freedoms supported in that country and because many legal thinkers regard freedom of information and privacy as cornerstone of other fundamental rights, these cannot be mentioned in Constitutional Law. For this reason, we see that although Article 9 of Civil Act has expressly supported private life in French law, this important right should be reflected in the Constitutional Law and finally, French Council of State fulfills this requirement by interpreting law.

It was mentioned that Constitutional Law of Iran has mentioned only qualitative and interpretive words in the principles relating to privacy and has required expansion of this case through ordinary laws. For this reason, it is necessary to refer to ordinary laws for understanding and interpreting these principles to first specify if these principles have been enacted or not and second if these laws have supported privacy (Ansari, 2008).

Discussion: Challenging Instances of Freedom of Information in Iran:

Openness of negotiations of the Council of Guardians:

According to Constitutional Law, the Council of Guardians assumes different duties. Since this council shall compare laws with Islamic Law and Constitutional Law and returns the laws which lack these characteristics for revision to the Majlis, it performs work of the second Majlis de facto. This caused some writers to regard our legislation system as unicameral (Hashemi, 2001). This council assumes duties such as interpretation of Constitutional Law and supervision on election. These duties are usually performed by an authority which is regarded superior to other forces and in other countries; they are performed by the institutions such as Constitutional Law court. Apparently, codifiers of the draft Constitutional Law have requested the Council of Guardians to do this duty as chapter 10 of this draft had selected title of the Council of Guardians of Constitutional Law for it (Hashemi, 2001). According to these duties, work of this institution is completely open unless acts of non-open sessions of the Majlis are sent to the Council of Guardians and in this case, it is evident that negotiations of the council are also regarded confidential. Openness of negotiations allows the representatives to have access to argumentations and documents of the Council of Guardians and for this reason, it helps correct the acts and accelerate legislation trend. Participation of high authorities in sessions of the Council of Guardians and their explanations help recognize the subject and remove the shortcomings of the council. It is necessary to note that requirement of the Council of Guardians to present arguments and then openness of negotiations has considerably contributed to transparency of legislation trend and reduced effect of political leanings on performance of legal duties (Wolfe, 1994).

Regarding duty of legislation, openness is one of the evident principles. In principle 69 of Constitutional Law, openness of negotiations of Islamic Consultative Assembly has been expressed and openness of sessions of the Council of Guardians based on the said principle for informing the people has been concluded from the issues which relate to their destiny. Regarding the duties which relate to Constitutional Law court, procedure of other countries indicates openness. This subject has been very important particularly for the issues which are recently mentioned in the field of political duties of the supreme judges. Even in some countries, a chapter has been mentioned as openness in law of Constitutional Law court. Principle of openness is one of the primary compulsory principles in election. As confidentiality of votes should be kept, openness of procedure and process of election should be also guaranteed (Pedram, 2000).

Despite considerable importance of openness about supervision on competency of the volunteers for participation, two important subjects should be considered.

Rehabilitation right (principle 22) and presumption of clearance (principle 37):

At time of hearing competency of each election candidate, there may be issues and subjects of which publication defames personality of the election candidate. Therefore, openness of negotiations by the Council of Guardians is contradictory with rights of the volunteers at time of dealing with competency of the election candidates. According to some theorists, this conclusion can be rejected in two forms. Firstly, when a person announces his candidacy for participation in election of distinctive fundamental legal institutions such as Islamic Consultative Assembly, President or constituent assembly, he shall accept its instruments, results and outcomes. When each election candidate knows that result of investigating his competency will be notified to the public, he will have the choice if he participates in election as candidate. Secondly, accurate public notification of personal conditions and circumstances of each election candidate (which are obtained through negotiations by the

Council of Guardians to investigate competencies) will allow the people to recognize the candidate better and more and select him more carefully.

Right of competition (inferred from principles 19, 20 and 26 of Constitutional Law

Focus of information relating to an election candidate in an organization means that special persons are informed of all information relating to all election candidates. The said condition causes to take advantage of this information against other election candidates during election competition. In this case, some candidates will be incapacitated for equal political completion. Public disclosure of election candidate competence causes public access to information of all candidates and prevents from violation of equal competition right.

As mentioned above, circumstances of the duties which the Council of Guardians assumes show that its activity should be fully open. This case facilitates access to documentations and arguments of the Council of Guardians. In the present project, negotiations will be published in the official gazette and some higher authorities should attend sessions of the Council of Guardians for ensuring transparency and openness. It seems that if correspondents of media and representatives of civil organizations can attend these sessions, this goal will be achieved better.

Scheme of this law can provide the opportunity for applying principle of openness on other governmental institutions and realization of the freedom of information. As the first step, one can start with the instructions which are directly selected by the people or interfere in legislation process. The institutions such as the Constituent Assembly, Council of Ministers, Expediency Discernment Council of the System, Cabinet, its specialized commissions and local commissions of Islamic Consultative Assembly should be gradually subjected to openness. Public hearing in commissions of legislation assemblies are of the common traditions in most countries in the world. This subject also holds true for other institutions which are not the same as these institutions but they have legislation in their agenda such as High Council of Cultural Revolution and Administrative High Council and the like and their work should be fully transparent (Ansari, 2011).

Conclusion:

In legal system of Iran, different principles of Constitutional Law have implicitly emphasized on necessity of freedom of information because execution of some important principles is subject to identification and observance of the said freedom. Realization of the sixth principle of Constitutional Law which has emphasized on management of the country affairs with reliance on public votes, the third principle of Constitutional Law which has obliged the government to apply all of its facilities to realize public participation of people in determination of political, economic, social and cultural destiny and creation of proper administrative system and removal of unnecessary organizations and the eighth principle of Constitutional Law which has recognized public supervision on the government as calling people to goodness and preventing people from evildoing have strong relationship with freedom of information. Development plans and other regulations which have emphasized on creation and reinforcement of necessary mechanisms for public supervisions on performance of government or anti-corruption measure or response of government have not found suitable executive strategies due to negligence of freedom of information.

It seems that the following factors should be considered for realizing the said goals:

- Elements of this freedom like information and public institutes and applicant for access to information are considered in their main sense.
- Access to information is recognized as right of people and presentation of information is the duty of public institutes.
- In a long-term plan, laws and regulations relating to information shall be coordinated with fundamental principles of freedom of information law.

In addition, some principles and rules governing governmental secrets have been mentioned critically and they should be corrected. The major shortcomings are as follows:

First shortcoming: ambiguity in subject domain of law

Governmental Confidential Documents Disclosure and Publication Punishment Law has used the word "documents" instead of "information". This is in favor of freedom of information because it limits domain of governmental secrets and expands domain of freedom of information. In fact, governmental documents are part of the information which can be classified as governmental secrets and are special compared with information and include limited domain of information. However, article 21 of Bylaw for Keeping Governmental Confidential Documents and Classifying and Specifying Type of Documents and Information has mentioned verbal information as subjected to governmental secrets regulations and has expanded domain of governmental secrets. The said article says: information means the knowledge which is given to the authorized persons in formal sessions. As mentioned above, that the information can be classified is not contradictory with freedom of information but it should be specified that verbal declarations of people can be classified. How can verbal declarations be classified?

In regulations of the countries in the world, the term "governmental secrets" has been used for naming laws and it seems that it is preferred to use it over the available titles considering comprehensiveness of this

title. Governmental secrets mean all information which is available in writing, verbally, as document, map, cliché, film, microfilm, tape recorder, CD and the like and their disclosure is contradictory to interests of the states of government or country and special administrative interests.

Second shortcoming: failure to observe principle of proportion of duties and powers with classification ranks

In Governmental Confidential Documents Disclosure and Publication Punishment Law and its executive bylaw, managers of the governmental apparatuses were allowed to classify any information which they consider to damage basis government and fundamentals of government irreparably or endanger public interest and national security or disorder organizations' affairs disorder and execution of their main duties or disruption of local affairs of an organization or contradiction with administrative interests of that organization as governmental secrets. On this basis, a less powerful manager classifies the information of which disclosure may damage basis and fundamentals of government irreparably into completely confidential with seal while a low-ranking manager cannot perform such important case.

To classify information legally and based on classification condition, it is necessary to restrict powers of the managers in different levels of government for information classification. For example, powers of the less powerful managers such as directors general of departments or managing directors of governmental companies are limited to use of confidential seal and powers of higher-ranking managers such as heads of organizations and vice ministers should be limited to use very confidential seal and only higher-ranking managers such as ministers and vice-presidents can use confidential or completely confidential seal.

Third shortcoming: abundance of classification ranks

Although article 1 of Governmental Confidential Documents Disclosure and Publication Punishment Law has classified governmental documents into two secret and confidential documents and has reflected one of the most developed principles of codifying governmental secrets, unfortunately, Bylaw For Keeping Governmental Confidential Documents And Classifying And Specifying Type Of Documents and Information has expanded this classification into four classes of completely secret, secret, very confidential and confidential. Aside from the issues which can be mentioned for contradiction of article 1 of the bylaw with articles 1 and 8 of the said law, this abundance of ranks has provided the opportunity for proration of mysticism culture in public institutes of Iran due to failure to observe principles of coordination between duties and powers and classification ranks. At present, even the least important information can be classified with confidential seal and not be given to the citizens and also by virtue of article 1 of the said bylaw.

Fourth shortcoming – ambiguity in classification rules

The rule which has been applied for specifying governmental secrets is incompatible with principles and rules of codifying governmental secrets law. Article 1 of Bylaw for Keeping Governmental Confidential Documents and Classifying and Specifying Type of Documents and Information declares that secret and confidential documents are classified into four classes based on the carefulness of their protection while irreparable damage of basis and fundamentals of government, endangerment of public interest and national security, disruption of organizations affairs and execution of their main duties or disruption of local affairs of an organization or contradiction with administrative interests of that organization as governmental secrets classification rules have been mentioned in rest of this article and in section of classification. Aside from the shortcoming which can be stated in the mentioned article because the above rules are not exact and clear, it should be said that prevailing criterion for classification of governmental secrets in laws and regulations of other countries and also governing principles of codifying governmental secrets law is the damage rate and governmental secrets are classified based on the rate of damage which their disclosure may cause in security of country or management of public institutes' affairs.

Fifth shortcoming: no observance of separability principle

Article 2 of Bylaw for Keeping Governmental Confidential Documents and Classifying and Specifying Type of Documents and Information has reflected principle of separability principle reversely. According to this principle, in case special information has been classified as governmental secrets and an applicant has access to a part of information, his application should be investigated and in case that part alone is not regarded as the governmental secrets, it should be separated from the classified information and given to the applicant. In other words, because governmental secrets are exceptional to freedom of information, they should be considered sufficient in their interpretation and execution. Article 1 of the bylaw has stipulated that if different documents are in different classes, the file or letter to which the mentioned documents are attached will be archived as the most important class of those documents. It means that the strict order and restrictions of the higher classes have been applied to the low classes.

Sixth shortcoming: lack of regulations about exclusion of governmental secrets from classification

In article 4 of the bylaw, change in governmental secrets class or their exclusion from classification has been transferred to an instruction which each one of the organizations should prepare based on type of duty and nature of work. While some information has been classified as governmental secrets according to principles and rules, they should be automatically excluded from the classification after expiry of the term predicted in the law

and governmental organizations should be obliged to study the classified information every year to exclude them from exclusion if the reasons for classification are precluded. In addition, each one of the citizens and officials of the government in foreign law is entitled to ask organization or commission of governmental secrets or governmental unit in which the classified information is kept to exclude the information which they have classified without reason or the information of which classification basis has been removed from classification. In case the above administrative officials don't give convincing answer to these requests, right of access to court has been also predicted.

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