




Obstacles to the Realization of the Civil Right to Protest Against Public Law Norms from the Perspective of Deliberative Democracy

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Civil protest against public law norms is one of the complex yet impactful factors influencing the governance of society in contemporary times, requiring consideration of citizens' needs on one hand and the legal considerations of the political system on the other. In this regard, addressing the obstacles to the realization of the civil right to protest against public law norms in general and proposing solutions for its realization in light of Iran's domestic laws can foster a balance between civil protest rights and public law norms. This study aims to answer the question: What are the obstacles to the realization of the civil right to protest against public law norms, utilizing the perspective of deliberative democracy? The results show that while public law norms are essential for the governance of a society, they must evolve in response to the changing needs of citizens, adjustments in the formulation and drafting of regulations and laws, and the creation of conditions for the influence and participation of citizens in the laws governing society. Specifically, regarding Iranian society, it can be stated that utilizing the constitutional framework and the discourse of the Islamic Revolution to recognize fundamental rights and freedoms as foundational discourse principles, alongside implementing the Citizen's Charter based on citizens' actual demands, plays a significant role in the peaceful realization of the civil right to protest, without the exclusion or fundamental transformation of public law norms. The descriptive-analytical method and the theoretical framework of deliberative democracy are used in this study.

Keywords: *Civil Protest, Public Law, Citizen Rights, Deliberative Democracy.*

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1. Introduction

Protest has been an important part of the process of governing societies from ancient times to the present day, but with the growth and expansion of democratic thought, the development of citizen rights, and the increasing importance of the people's opinion in governance and lawmaking, it has gained even more attention. Protest in the political and social spheres, whether individual or institutional, such as the use of

political party platforms or the appeal to mass media to criticize political representatives, leaders, or administrative and professional laws, targets specific individuals or institutions and its potential for change is confined to this domain. However, civil protest, when it leads to changes or transformations in the field of public law norms—meaning the fundamental principles of society or political systems—first encounters a severe legal reaction, whether from the judicial system or security and political institutions (Jafari Langaroudi,



2008; Movahed, 2013). This is because the target of protests against public norms is the constitution and the legal and political system of a country, whose absence would equate to the collapse of order, security, or political systems within a society. Public law norms, due to their non-suspendable nature, are given particular attention in every society, and laws have been established to protect them. In some legal and political systems, even a simple protest or criticism of leaders or representatives may be seen as a violation of public law norms and the security of citizens, prompting action against the perpetrators (Rasekh, 2009; Tabatabaei Motameni, 2010). However, in democratic systems, where political parties and civil institutions play an important role in political arrangements, civil protest is carried out peacefully and with consideration for citizen rights and regulations that allow for non-violent and corrective actions.

Thus, the civil right to protest in any society requires laws and mechanisms that both allow citizens to express their demands and ensure that those who violate or ignore the existing laws are held accountable, preventing the violation of the rights of other citizens. At the same time, these laws and regulations, which may even have criminal implications, serve the protection of the political system and the rule of law in every society, which may not always be in the best interest of the public (Daneshpazhuh, 2012; Hosseini Ameli, 1998; Jafari Langaroudi, 2008). This is because public law often includes justifications for combating protests against constitutional laws and other established laws, so that political systems can be preserved and opposition minimized (Daneshpazhuh, 2012; Hosseini Ameli, 1998; Jafari Langaroudi, 2008). Therefore, reconciling protest with legal norms may initially seem difficult; however, over time, the form and implementation of public law in any society change and require consideration of new relationships and laws, under which citizens can express their protests while also reforming the political system in ways that incur minimal costs for change.

In this context, this study recognizes the necessity of civil protest as a right and emphasizes that its implementation in society requires a model that respects fundamental norms of maintaining order, security, and the rule of law while utilizing peaceful mechanisms. The study addresses the obstacles to realizing civil protest against public law norms, with references to the

application of this approach within the legal framework of the Islamic Republic of Iran.

2. Theoretical Framework: Deliberative Democracy

The idea of deliberative democracy is primarily associated with Jürgen Habermas (1929), a philosopher and political theorist from the Frankfurt School. Habermas's thought centers on defending the project of "modernity" and his theory of "communicative action." His philosophical ideas quickly entered the political and social sphere, stirring both support and opposition. Specifically, Habermas is concerned with freedom and emancipation and aims to free individuals from the constraints of wealth and power. In simpler terms, Habermas seeks to highlight the public sphere and create a space for communication and dialogue, where individuals can participate in a free and open environment. In this regard, deliberative democracy offers an opportunity for citizens to express their views on existing problems, including flaws in the political and governance spheres (Habermas, 1999, 2013).

Habermas aims to remove coercion and pressure from the communicative space and establish an equal status for presenting viewpoints to reach moral and rational consensus. The solutions proposed for the ideal society in Habermas's framework are rooted in reasoning and deliberation about public issues, resulting from the interaction of minds and ideas. The rationality derived from this process ultimately leads to the formation of public will. Thus, Habermas's movement shifts from a demand for change to peaceful coexistence. In his thought, consensus and communication occur through language and its interactive function. In this context, interaction is based on equality, dialogue free from domination, and relationships that are intersubjectively shared and legitimate in the world. The goal of interaction and dialogue is to promote consensus among individuals. The outcome of relationships based on dialogue is the claims that emerge in the consensus-building process. Therefore, protest in an equal, peaceful manner, free from force and domination, is a central feature of deliberative democracy and the realization of citizen rights (Habermas, 1999, 2013).

Additionally, Habermas's ideal society seeks to transcend personal and private interests and to solve public issues through negotiation and dialogue. In this domain, people's private matters are somewhat

sidelined to focus on collective action. In the ideal society according to Habermas, discourse and dialogue prevail, and with societal progress, forms of coercion—whether through wealth or power—are eliminated or reduced in influence. The ideal discursive state is considered the highest standard of truth. Given the importance of dialogue, communication, rational consensus, equal and free citizens, and criticism without repercussions, such as those proposed in deliberative democracy, the present study seeks to identify and propose solutions for overcoming the obstacles to realizing civil protest as a right, based on this theoretical framework (Habermas, 1999, 2013).

3. Public Law and Its Elements

The nature of public law lies in its characteristic of "unequal demand," which arises from the relationships that this branch of law aims to regulate and define their boundaries and order. This evident imbalance inevitably influences the legal expression of these relationships. Public law norms are formulated in a distinct way compared to the binding norms of private law (known as general law), which govern individual relationships. Thus, the authenticity of public law stems from the existence of rules that, in comparison to general law, are exceptional in nature (or disregarded by private law). Therefore, despite this reality, it must be concluded that legal relations in public law are structured unequally between the governed and the governors, with the balance of these relations tipping in favor of the governors. In any case, if the relationship between individuals or society and the state represents public law, the formulation of laws should not be solely oriented towards the interests of the ruling power. The alignment of citizens with the law reflects the state's respect for the rights of its citizens in a consensual and inclusive framework and the state's commitment to its people. Therefore, one of the fundamental issues in the lack of realization of civil protest against public law norms, from the perspective of consultative democracy, is the inequality between citizens and the political system and, consequently, the lack of consensus in this regard.

It is also accepted that in public law, "the first tangible reality is the existence of a political and administrative power in contemporary societies, and even in all societies. This sociological reality naturally leads us to distinguish between the realm and functions of the rulers

on the one hand, and the realm dedicated to the ruled on the other hand." However, this should not be used as a pretext for disregarding citizens' rights in various fields or justifying the permanent dominance of a minority over the majority (Aghabakhshi, 2008; Javadi Amoli, 2005). The political system has no objective other than ensuring the interests and desires of the citizens. It seems that reconciling public interests with the interests of the political system is a difficult task, and utilizing institutional and organizational capacities, accepting referendums, embracing changes in laws, including the constitution, and reconciling the interests of the people with changes and transformations are part of a process that can minimize this inequality, as permanently eliminating inequality is impossible. In any case, the main distinction between public and private law is that private law deals with contractual relationships between parties of equal standing, while public law governs the relationships between parties in a hierarchical context, where one party holds governing power over the other. Therefore, in the domain of public law, the state uses its sovereign tools to pursue public objectives, whereas in private law, individuals, through contracts, seek their private benefits, marking the distinction between the two.

4. Barriers to Realizing Civil Protest

To realize civil protest against public law norms from the perspective of citizens' rights and to develop a foundational approach for enabling the right to civil protest while maintaining the fundamental structure of society, several significant topics need to be addressed, which are referred to as barriers in this context.

4.1. Lack of Moral Consensus on Imperative Rules

Achieving consensus on norms and values between the people and the political system is vital and crucial. If the administration of society deviates from these shared norms and there is no agreement between the parties, the grounds for civil protest against public norms (in case of weak or ineffective laws) will not be possible. For this reason, public law rules should not be formulated in a way that prevents the people from participating and playing a role in them. To address this barrier, it is crucial to balance the actions of governmental powers by establishing oversight over the performance of one

branch by other branches and creating networks of inter-branch oversight, ultimately leading to a balance in the functioning of public power and preventing the abuse of power. In other words, people should be able to achieve some form of alignment and moral consensus with the political system through their participation and oversight, allowing them to consider themselves partners in the formulation and subsequent acceptance of public norms governing society (Aghabakhshi, 2008; Madnian, 2012; Maqsoodi et al., 2021). To achieve this goal, safeguarding individuals' fundamental freedoms from government encroachment, establishing solid and logical foundations for the organization of constitutional law, and structuring governance in a way that fosters an ethical consensus between citizens and the political system is essential. Otherwise, any authoritarian regime, under the pretext of establishing order and security, may consider itself the permanent guardian of public norms and prevent changes that would benefit the people. From this perspective, even public norms, justified by the need for maintaining order and security, are only acceptable if they reflect the consent of the people in their formation and continuation.

Another way to overcome the lack of moral consensus is to create a mechanism for public participation and oversight over governance. Oversight of the performance of political and judicial institutions ensures public trust and provides a foundation for establishing civil protest in peaceful ways, without conflict or violence. Moreover, it yields results such as the establishment of democracy. Oversight over the functioning of government and non-governmental institutions is the result of growing public trust and support for the right to oversight and greater transparency in society, ensuring the right to self-determination, and should be designed to secure citizens' right to choose, not to limit it. Otherwise, it will only result in the negation of democracy. For instance, Articles 106-110 of the Constitution address the role and position of councils in overseeing the power of institutions and agencies. The preamble of the Constitution of the Islamic Republic of Iran also emphasizes that the constitution guarantees the negation of any form of intellectual and social despotism and economic monopoly and seeks to break free from the authoritarian system by entrusting the fate of the people to their own hands, as shown in the principles related to councils in the constitution. Administrative

decentralization and citizens' participation in governance through local councils are essential human rights, based on the principle of self-determination. According to this principle, people directly participate in the administration and direction of society through their involvement in councils.

Therefore, creating a framework for overseeing the functioning of governance itself contributes to the growth of citizens' rights awareness in society, which can influence the attainment of their rights. A key element of citizens' rights is equality, participation, and the right to self-determination, which are fundamental to modern citizenship and have long been a focus of legal and political schools of thought. To implement the role of the people in forming an "ethical consensus," there is no alternative to peaceful participation and intervention by the people in the formulation or critique of laws. The foundation of this approach can be observed in the discourse of the Islamic Revolution. As Imam Khomeini (RA) rejected despotism and dictatorship, he considered entrusting affairs to the people as the way to confront it. He said: "Islam has not allowed us to be dictators. We follow the opinions of the people. Whatever the people vote for, we follow. We have no right to impose something on our nation...". Based on this perspective, the formulation of an "ethical consensus" with individual and institutional participation of the people in various matters is a way to reform public law norms in a peaceful manner, avoiding fundamental changes or intellectual and structural stagnation (Javadi Amoli, 2005; Maqsoodi et al., 2021). Freedom of expression, belief, and thought, particularly the right to criticize public officials and laws proposed by them, is a constructive factor in building an ideal society and a link between the people and the government, enabling them to reach an ethical consensus on shared norms.

4.2. *Neglecting Fundamental Freedoms*

Thought is of no value unless it is expressed, as thought is a part of human innermost and hidden inclinations. It takes shape and is tested when it is expressed through various means such as speech, writing, behavior, and so on in the external world. Therefore, activating thought and belief, which is a fundamental human right, should not be obstructed, but it should not be done in a way that threatens public rights and the foundations of social governance. Based on this perspective, both

international and domestic regulations have set limitations to protect public order, health, or morality, which, in turn, may restrict freedom of expression.

The right to freedom of expression is one of the most important and fundamental human rights and falls under civil and political rights, commonly referred to as the first generation of human rights. It has been emphasized and affirmed in many international and regional documents. Among the most significant are the "Universal Declaration of Human Rights" and the "International Covenant on Civil and Political Rights." The "International Covenant on Civil and Political Rights" provides a definition of freedom of expression, stating: "Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression." Additionally, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union recognize freedom of expression, with the European Court of Human Rights repeatedly affirming it as one of the foundational pillars of a democratic society (Abbasi, 2016; Movahed, 2013).

From a jurisprudential perspective, the importance of freedom of expression is also acknowledged, which can eliminate obstacles to civil protest and provide a framework for reforming public rules if necessary. In the same vein, freedom of expression is considered one of the legal freedoms addressed in the body of human rights. This means that individuals should not be persecuted for holding opposing opinions, whether in religious or political matters. They should be able to express their opinions freely and, if necessary, promote them to gain support from like-minded individuals. In this regard, the use of new tools, such as media, social networks, and platforms for the views of experts and elites, should be considered crucial in enabling civil protest. This is because creating widespread restrictions and rejecting modern communication tools would only create a gap between the people and the political system. For the practical realization of the right to freedom of expression in today's media landscape, both public rules and citizens' rights must be considered interactively. Specifically, the criterion that allows for a balance between public rules and civil protest can be framed as follows: freedom of thought and expression should be guaranteed for both government opponents and individuals, unless they intend to engage in subversive activities. This approach is also reflected in Islamic

jurisprudence. According to this perspective, which forms the basis of political jurisprudence and legislation in Islamic systems, respect for the rights of others and the rulings of Sharia create boundaries for individual freedoms.

The support for civil protest to amend public rules for the benefit of the public in jurisprudence is structured in a way that it does not infringe upon the rights of others. The scope of infringement upon others' rights may vary depending on the conditions of each society. Based on this jurisprudential view, it is said that: freedom of expression is a natural right that all human beings equally enjoy by virtue of their humanity. Within this context, they are permitted to express and communicate their ideas, provided that such expressions do not violate the rights of others or societal values (Abbasi, 2016; Ghari Seyyed Fatemi, 2015). Therefore, freedom within the realm of citizenship always requires respecting the rights of other members of society. For example, when determining the limits of expression, citizens should not burn sacred books or insult the beliefs and convictions of others under the pretext of freedom of expression.

To realize this principle and acknowledge the right to protest against public rules (while respecting the rights of other citizens), the Constitution addresses it in various articles. For instance, the freedom of the press is stated in Article 24, which reads: "The press and publications are free to express their views, unless they violate the foundations of public rights or Islam. The law specifies its details." Another approach is the use of the capacity of political parties and institutionalized approaches. According to the Constitution, Article 26 pertains to political parties, stating: "Parties, associations, and political organizations with recognized religious abilities are free, provided they do not violate the freedom, independence, Islamic principles, national unity, or the constitutional order of the Islamic Republic." This institutional approach can offer an opportunity for fundamental freedoms and the evaluation of public rules for the benefit of all. Freedom and criticism, above all, serve to improve human life, and laws cannot be regarded as unchanging and absolute simply because of their public nature. In this regard, implementing a law titled the "Charter of Citizens' Rights" with strong support for civil protest to improve matters is an essential necessity for today's Iranian society.

4.3. *Failure to Consider Changes and Social Customs*

One of the fundamental considerations in protesting public law regulations, which are relatively fixed and enduring, is recognizing the changes and transformations that are primarily related to alterations in the components of citizens' rights and the evolving practices of individual and collective demands. In other words, the primary obligation in the realm of citizens' rights is to accept changes, and the obligations of citizens' rights can be examined. Citizenship is generally a concept subject to change, dependent on societal conditions and public demands. Therefore, the fixed perception of citizens' rights is essentially a violation of those rights. This is because, in the process of drafting laws, even with respect to public regulations, the idea is put forward that regulations on subject matters are based on customs and the traditions of the people. Therefore, the ruling of law and custom by legislators is to affirm custom and habits. What the customs of people and citizens' behavior, in their dealings with the conditions they face, imply should be taken into account and inferred. Here, based on the notion of consultative democracy, a kind of "customary understanding" is needed. That is, the Islamic system, in order to support the right to civil protest for reforming or changing the shape of public regulations or mechanisms to realize them in favor of the public, must consider the principle of customary understanding. Customary understanding (a compromise between public demands due to social and political changes, accepted by the Islamic government) is discussed. Custom not only aids in understanding the meanings of individual words and concepts (verbal custom) but is also effective in interpreting and explaining evidence and inference from Qur'anic verses, hadiths, and examples. Some legal scholars have even referred to this method of applying custom as "customary understanding" or "customary consensus." (André de & Pierre, 1997; Daneshpazhuh, 2012; Maqsoodi et al., 2021). Therefore, the specific application of customary understanding involves recognizing individual and social relations and providing legal solutions to overcome existing challenges. Customary understanding, in this sense, is a strategy for drafting laws based on temporal and spatial considerations, with the most important condition being the preservation of legal foundations and discipline,

which, of course, requires flexibility and the avoidance of rigidity and doctrinism that can be seen in other legal principles.

In this context, considering the conditions for change and flexibility is the foundation for creating new laws, which specifically manifest in the area of citizens' rights, including the right to civil protest. This means that the public's demand for the acceptance of their requests and the effectiveness of these requests in laws and regulations serves as the basis for customary understanding.

If "customary understanding" reaches a consensus on an issue, the need to address it, both in terms of resolving related issues and in considering it as one of the citizens' rights, becomes important. This is because it can create considerations related to citizens' rights based on changes in public regulations and establish a new procedure. Here, we can also refer to the discourse of the Islamic Revolution, where Imam Khomeini (RA), while understanding the circumstances of the current era, states: "The preservation of the human system is an absolute duty." Based on this, any policy or activity that disrupts the system in relation to natural resources is prohibited. This general ruling reflects attention to civil protest as a citizen's right in light of the changes of time and custom, which, if overlooked, would leave citizens' rights in the Islamic system incomplete. Therefore, both Articles 23, 24, 25, 26, and 27 of the Constitution, as well as the principles related to citizens' rights in Article 50, require extension to the arena of civil protest, as an entry point for citizens' influence in the administration of affairs.

4.4. *Lack of Adherence to a Government and Political System*

Disregarding sovereignty and leaning towards an anarchistic approach plays a significant role in the failure to realize civil protest for critiquing and reviewing public law norms. Therefore, whenever civil protest is considered necessary for citizens, the considerations related to the existence of a government, law, and coercive power must also be addressed. On the other hand, "freedom is a legal order and a responsible act." Freedom consists of two aspects: first, that a person is not exposed to violations, transgressions, or interference from others; and second, that they can do whatever they wish as long as it does not harm the rights of others.

These two aspects arise from mutual behavior among individuals in society, where all individuals equally enjoy freedom. In such cases, the law determines the extent of individual freedom: what a person can do and what they cannot do. In legal terms, it defines the rights and privileges an individual has in relation to others, and the duties they owe to others. Thus, each member of society adheres to a system that is necessary for social life. The key point is that the limit of freedom is justice: unlimited freedom is a form of oppression and injustice, meaning an infringement on the rights of others. Reasonable freedom exists within the context of justice and the rights of others (Motahhari, 1980; Movahed, 2013).

Now, by understanding the meaning of freedom, we can define civil rights (public freedom), which refers to "a set of rights that provide individuals with independence and self-management in various aspects of personal and social life, which is considered essential for the growth of human personality and the elevation of human dignity and value."

Given these points, since resolving conflicts between public rights and the government's rights is necessary, it is essential to have a legal government to protect citizens' rights, establish order and security, and create conditions conducive to the growth of human values. Individuals must also comply with existing laws. Thus, public rights, citizens' freedoms, and the acceptance of laws in various aspects in a manner that is just and based on citizens' consent can serve as a safeguard for peaceful coexistence among citizens and even facilitate civil protest.

In Islamic perspectives, the same view is upheld with the acceptance of governmental laws. The existence of a government for regulating relations among individuals is considered necessary. In other words, these rights are highly dependent on the capacity of the government and its representatives, as governments or states are the ones that define their limits and provide the guarantees for their enforcement. For example, the acceptance of laws aimed at preserving citizens' beliefs and ideas, while ensuring order and security in society, also supports the right of each citizen to hold a belief different from others, which is protected by law.

In this regard, the principle of religious freedom allows individuals to have beliefs, or not, in religious matters, express and teach them, and publicly act upon their beliefs. In this context, it is important to distinguish

between freedom of religion and freedom of thought. While freedom of thought lacks outward manifestation, religious freedom entails certain external actions and expressions, such as performing religious ceremonies, engaging in religious education, and practicing religious duties in all aspects of life. However, in many countries, religious freedom is subject to limits and regulations established by law to maintain public order. For instance, the government would not permit religious ceremonies of minorities to offend public sentiments. Therefore, the necessary condition for realizing civil protest is the existence of a government, and without it, there can never be a framework for the public to influence the reform and modification of public laws (in form). Laws such as security must always exist, but the manner in which they are implemented varies based on the consent and will of citizens in each society.

In this regard, Article 24 of the Constitution, while restricting freedom of expression to publications and the press, states: "Publications and the press are free to express their opinions, unless it is detrimental to Islamic principles or public rights. The details of this are determined by law." Thus, first, the Constitution acknowledges the foundation of freedom of expression and the press; second, this freedom is not absolute or unrestricted, as it has two constraints: Islamic principles and public rights; and third, the details of this are outlined in regular laws. Therefore, in order to identify the fundamental elements for the right to civil protest, it is essential to utilize the capacity of the Constitution and move forward in favor of citizens' rights so that, in its light, public law elements can be advanced for the benefit of the public without threatening the foundations of society, such as security, order, and law.

5. Conclusion

Civil protest, as a well-known method for raising public demands in a society or political system, has difficult boundaries and, at the same time, is a double-edged sword. Ignoring or presenting it in unreasonable ways can lead to irreparable costs. For this reason, defining the scope and framework for recognizing the right to civil protest, particularly against public law norms, is a complex issue requiring dual considerations of civil rights and the laws of the political system. In this study, considering consultative democracy, consensus on ethics, and agreement on laws are presented as an

approach for civil protest aimed at reforming public laws for the benefit of citizens. From this perspective, obstacles to civil protest may include: lack of ethical consensus between citizens and the political system, disregarding fundamental rights and freedoms for citizens, and ignoring changes and transformations in society and citizens' demands, all of which fall under the domain of civil rights. However, in outlining an ideal model, public law norms, including the maintenance of order and security, the rule of law, and adherence to it, should not be ignored in the name of civil protest. In the proposed approach, based on ethical consensus stemming from consultative democracy, the acceptance of government and political systems is a principle, and what can demonstrate the legitimacy of civil protest is the citizens' right to present their demands and prevent the domination of the state in the form of individual or institutional despotism, which itself leads to the disregard of civil protest. Nevertheless, realizing this right, within the framework of respecting public law principles in Iranian society and specifically in the Islamic Republic of Iran, requires avoiding subjective considerations in law enforcement and creating conditions to address changes and citizens' demands in line with new developments and needs. From a suggestive perspective, it should be noted that the drafting of a charter on citizens' rights, which can have an executive dimension and create ethical consensus and agreement on laws between citizens and the political system, is essential and should not be confined to creating a charter without executive guarantees, such as the existing Charter of Citizens' Rights.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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