



Legislative Policies in Cyberspace with Focus on the Constitution in the Islamic Republic of Iran

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Abstract

Internet as a modern phenomenon of the contemporary world has caused the development of human societies. The sovereignty must regulate the relations between individual citizens in the cyberspace. Undoubtedly, the scope of the people authorities and freedoms in the cyberspace is completely different from those of the real space. The maintenance of privacy, the prohibition of pornography, protection of copyright, etc., require the limitation on the users' scope of activity. The Constitution explicates the outlines of the citizens' rights and freedoms. The question that arises is whether the current laws can respond to the challenges of cyber space or do we need legislation in this area? It seems that The question that arises is whether the current laws can respond to the challenges of cyber space or do we need legislation in this area? the rules of self-regulation cannot regulate the relations of people of the nation in this space. By enacting a comprehensive law, appropriate to the society's culture and ethics, and in accordance with the unquestionable principles of the Constitution and the protection of public rights and freedoms, action should be taken. In this case, blind adaptation of the laws of other countries should be avoided.

Keywords: Constitution, legislation, comprehensive law, rights and freedoms, Internet.

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Introduction

In the contemporary world, virtual space is a focus for human daily activities. Sending messages, sharing files and images, watching clips and movies, exchanging information, etc. are just some of the events that take place through the Internet. Rights cannot be indifferent to these events. Protection of values, morals and protection of rights and freedoms of citizens requires that the legislator acts to regularize it by establishing rules. In recent years, laws have been passed in the field of electronic commerce, computer crimes, etc. In the light of the aforementioned laws, the legislator, while explaining the dos and don'ts, obliges the citizens to follow them. However, it should be noted that the Internet is more complex than other means of communication. The involvement of important hardware and software factors has increased its complexity. The Internet cannot be compared with other mass media and means of communication (such as radio and television). Preventing the disruption of public order, national security and comfort, supporting moral, cultural and social values, the rights and dignity of others, etc. are among the reasons for the need to manage cyberspace. In this regard, the necessity of explaining the general policy and framework for cyber space management is essential.

Different countries have acted in a different way in this field: some apply the policy of filtering websites, and some have simply banned children's pornography, and another group has given priority to privacy. In our country, there are not many rules regarding the use of the Internet in schools, government offices, free access to information, privacy, copyright, etc. Although the criminalization of some actions is useful, it does not provide a general framework.

In this research, the detailed analysis of legislative policies in cyberspace with an emphasis on the principles of the constitution, raises questions that whether the current laws can respond to the challenges of cyberspace or do we need legislation in this area?

Regarding the research subject, limited research has been done; Among them, we can refer to the books on the jurisprudential legal position of filtering in virtual media from the perspective of Khamasa religions written by Rozbahani and human rights and internet translation by Zamani and Bahram Lo. These books have examined the issue of the Internet and virtual space in a general way and have refrained from explaining the rules surrounding the system that governs it. Also, in the field of articles, many articles have been written about virtual space. Among them, we can refer to the article "Legislation in cyberspace: the approach of international law and Iranian law" written by Ziaee and Shakibnejad; Also, the scope and territory of privacy in cyberspace written by Fathi and Shahmoradi and finally pointed to the article explaining the policy

of virtual space in the Islamic Republic of Iran written by Farhani, Mirtrabi and Golshani. In these writings, only the virtual space has been explained in the field of issues such as filtering, the presentation of general policies in the virtual space, and the principles of managing this space in general, and the solution in Iranian law has been avoided. In addition, in the aforementioned articles, the challenges of virtual space have been examined in a scattered and brief manner, but the present research, with an analytical-descriptive approach and using library resources such as (books, articles, etc.) and also using the most important existing resources, while analyzing New perspectives on the management of virtual space have explained the challenges in it. In addition, possible legislation in this field has been analyzed with emphasis on the principles of the constitution.

The purpose of this article is to evaluate the feasibility of legislation in cyberspace, focusing on the principles of the Constitution in the Islamic Republic of Iran. This article examines the challenges and opportunities related to the formation of appropriate laws in the cyberspace according to the legal and ethical principles of the Islamic Republic of Iran. The issue under consideration is the feasibility and provision of legislative solutions that are in harmony with the principles of the Islamic Republic of Iran's Constitution and can respond to the challenges and complexities of cyber space.

This article uses the following theoretical framework to investigate the feasibility of legislation in cyberspace with an emphasis on the principles of the Constitution in the Islamic Republic of Iran:

1. Cyber governance theory: This theory examines the challenges and opportunities related to cyberspace governance and regulation. The theory of cyber governance seeks to provide different models for the management and governance of cyber space. This theory believes that cyberspace should be governed by a multi-layered and participatory governance system. This governance system should include governments, international organizations, the private sector and civil society (Firouzabadi et al., 2019, p. 34).

2. Cyber law theory: This theory examines the legal and ethical foundations related to cyber space. The theory of cyber law seeks to explain the rules and regulations governing cyber space (Qajar, 1391, p. 223).

3. Principles of the Constitution of the Islamic Republic of Iran: The Constitution of the Islamic Republic of Iran, as a national covenant, provides a general framework for legislation in all fields, including cyber space. Principles related to freedom of expression, right to access information, privacy and public order are among the principles related to this issue.

The hypothesis of this article is that the feasibility of legislation in the virtual space, in compliance with the principles of the Islamic Republic of Iran's

Constitution, can help promote the rights and freedoms of citizens in this space and also deal with its challenges and dangers.

This article uses analytical-descriptive method to investigate the issue. In this method, first, information and data are collected through library and documentary sources. Then, the collected information is analyzed and finally, using logical reasoning, the results and findings of the research are reached.

The present article consists of two parts: in the first part, the management of cyberspace and in the second part, we examine and analyze the areas of legislation in cyberspace.

1. Conceptology

In this section, some basic concepts related to the topic of the article are mentioned:

Privacy: There are several definitions of privacy. Some of these definitions include: the right to be alone; - The limited access of others to humans and the ability to prevent unwanted and uninvited access to humans; - Secrecy and hiding some things from others; - control over personal information; - Protection of character and dignity; - The right to the world of intimacy and human dignity (Foord, 2000, p 16). Also, in a comprehensive definition, the privacy of the realm of life is known as the privacy of the life of each person who, typically or customarily or with prior notification, expects others not to access information about that realm without his consent, or not to enter that realm or look at that realm. or not to monitor or in any other way not to assault him in that territory. (Ansari, 1387, p. 28) Also, the Executive Regulations of the Law on Publishing and Free Access to Information have introduced privacy as a realm of a person's personal life "who expects others to use it without his prior consent or notification or by law or judicial authorities." do not violate; Such as physical privacy, entering, watching, listening and accessing personal information of a person through a computer, mobile phone, letter, residential house, car and that part of privately rented places such as hotels and ships, as well as what is required by law, private professional activity. Every natural and legal person is considered; such as commercial documents and inventions and discoveries.

Virtual space: Virtual space is a virtual environment where information communication and data exchange are done through computer networks. This space includes the Internet, social networks, websites and other online tools through which people communicate and share information. (Mohammadi, 2019, p. 23).

Limits of government involvement: The limits of government involvement refers to the extent and manner of government participation and supervision in the lives of citizens. These limits should be determined by respecting the rights

of citizens and fundamental rights of individuals. The limits of the government's involvement in various fields can include laws to protect human rights, ensure public security, regulate markets and issues related to cyber space. These limits should be such that they protect the freedom and privacy of individuals and at the same time guarantee the role of the government in providing public services and maintaining order.

Citizens' rights and freedoms: Citizens' rights and freedoms refer to a set of rights and freedoms that are recognized in the constitution and other laws of the country and enjoyed by individuals. Citizenship rights are: a set of rights, powers and privileges of individuals or groups of people who have citizenship (nationality) relationship with the government of a country and the fulfillment or benefit of all or part of them is conditional and bound to fulfill citizenship duties and Adherence to the general laws and regulations of the mentioned country.

Cyber law theory: This theory examines the legal and ethical foundations related to cyber space. The theory of cyber law seeks to explain the rules and regulations governing cyber space. (Qajar, 1391, p. 223).

2. Management of virtual space

It is meant to manage the virtual space, applying solutions around filtering, establishing rules about this space, limiting the access of citizens, etc. (Ruzbahani, 2013: 86). Analytical review of virtual space management raises questions that firstly, what is the need for virtual space management? Secondly, what system (model or structure) should be followed in the management of virtual space?

2-1. Necessity of virtual space management

Virtual space has special and unique features. This space is full of multidimensional images, news, information, sites and scientific databases. Citizens communicate with each other without visual contact. One of the manifestations of the government's sovereignty is the establishment of law and the provision of guarantees for the violation of the law. There is no doubt that cyberspace, despite its many advantages, has many problems such as the possibility of privacy violations, information disclosure, moral deviations, publication of lies, deception of citizens at the social level, and threats to the security and independence and territorial integrity of the country at the national level. The legislator should reduce the occurrence of possible problems by applying measures, while providing opportunities for citizens to use the said space. This is done through virtual space management.

Undoubtedly, governments have independent and permanent sovereignty. Their commanding ability to control affairs originates from public power. The power of the government is not obtained from an external institution (Abbasi,

2013: 50; Madani, 2014: 74). The government's sovereignty is a bridge between public order and international order that connects them to each other (Gorji Azandriani, 1388: 16). The transnational and global nature of the Internet cannot be an obstacle to its control by the government. Protection of other rights and freedoms Citizens require the legislator to manage it.

One of the authors believes that mass media play an important role in public awareness. Many political analysts use these media to inform people. Preventing the activities of the mentioned media causes deviation and corruption of the society. In the meantime, a group is looking for their monopolization and dictating their opinions. Some do not tolerate criticism and are against freedom of expression. Both groups lead the society to decline (Hashmi, 2012, Vol. 1: 268).

Since the beginning of the Internet, there have been many opinions. One of the most important ideas is whether the Internet can be controlled and managed? In America, internet regulation became more intense during the presidency of "Bill Clinton". The ruling party at that time sought to provide a framework for global e-commerce. The result of these measures was to turn the Internet into a fully controlled environment. According to Clinton's view, the Internet was very important and should be run by the private sector in order to protect freedom on the Internet. There is no need to establish rules and regulations around the Internet. Markets can play a central role in this regard. In this case, the biggest role should be given to the government as much as possible (in the matter of intervening and regulating issues related to the Internet). (Savin, 2013: 8-9)

China (in terms of volume and number of restrictions) is the first country in the world to block websites. In this country, the Google search engine refuses to provide some internet services and search results (at the request of the Chinese authorities). These results can be studied outside of China. Also, the pictures of massacres (related to some historical events) cannot be seen in the past years. Chinese authorities use technology to control cyberspace. On their cell phone monitor is software that tracks the spread of political rumors. China has employed a large number of people to manage cyberspace. The process of filtering sites started in 1996 and intensified in 2002 (Ruzbahani, 2013: 86).

In our country, the need to manage virtual space can be deduced from many principles of the constitution:

In the preamble of the constitution, under the title of means of mass communication, it is mentioned that these means should serve the spread of Islamic culture in the direction of the evolutionary process of the Islamic revolution, and in this context, they should benefit from the healthy interaction of different ideas and The spread and promotion of destructive and anti-Islamic traits should be avoided. Since radio and television in the Islamic Republic of

Iran are state-owned (Article 44 of the Constitution) and a provision has been made for that in the Constitution, it seems that this Importantly, it can be extended to virtual space as well.

In the first paragraph of the third principle, the government is obliged to use all its facilities for the development of moral virtues based on faith and piety and to fight against all manifestations of corruption and corruption. Because nowadays the virtual space has become a platform where people spend hours of their time in this space and due to the ease of access and the availability of common and possibly unethical content that is possible If it has a side effect on the growth of moral virtues and faith and piety of people, it can also be considered as a basis for the necessity of legislation in the virtual space in such a way that the government is obliged to fight against it.

The second paragraph of the third article of the constitution considers the promotion of public knowledge in all fields by using the press and mass media and other means among the duties of the government. In this paragraph, it is emphasized the need to inform people about public information. The government is obliged to raise the level of awareness and information of citizens through mass communication means. Protecting the values in the society and maintaining the physical and mental health of citizens is one of the duties of rulers in democratic societies. Undoubtedly, citizens' absolute enjoyment of public rights and freedoms in this space may lead to depriving other citizens of their freedom. The legislator should draw the general framework of exercising the rights and freedom of citizens by relying on the constitution.

The seventh paragraph of the third principle, which expresses the provision of political and social freedoms within the limits of the law, is another task of the legislator, which must be done in order to prevent the conflict and conflict of the interests of individuals and the need to respect the rights and freedoms of other members of the community and in In order to ensure public order, take steps to establish a law in this field. It seems that virtual space is more important in this field due to having more special conditions and complexities than real space economic independence in the name of freedom. There is no doubt that the Internet can become a tool for the possible misuse of foreigners in the exercise of cultural, political and economic domination. Considering the events of recent months in the country, this matter has a more concrete basis. In these days, it was observed that to what extent it is possible to conspire against the national security, public order, independence and territorial integrity of a country in the context of cyber space. Training on arson, making explosives, how to deal with the security and law enforcement forces tasked with ensuring public order are all of the things that can be considered as the basis of the necessity of legislation in this field. Finally, the government should Political authority should protect the

freedom, independence, unity and territorial integrity of the country. Another important point in this principle is that legitimate freedoms cannot be taken away by laws and regulations in general, but they can be limited. This point is necessary from the point of view that if we consider the Internet as a right, as in some countries the Internet with a certain bandwidth is considered a right, then the legislator cannot enact this freedom in general. not to drop, but it can limit them according to the value system of the society.

Another principle is the twenty-first principle of the constitution, according to which the government is obliged to create suitable conditions for the development of a woman's personality and the restoration of her material and spiritual rights. Unfortunately, it can be seen that the virtual space has become a tool to weaken the family and women through the promotion of indecency and immoral and obscene issues. The management of this space by the government is necessary to preserve values and sanctities. It should be noted that in the tenth principle of the constitution, the family is considered the fundamental unit of the Islamic society, and the laws and regulations must be based on Islamic law and ethics to protect the sanctity of the family and the stability of family relationships.

Also, the twenty-fourth article of the constitution governs the freedom of publications and the press. The two principles that disturb the foundations of Islam and public rights are not a condition for securing this freedom. Since today the Internet is also one of the important and widespread and high-speed means of transferring the contents of publications and the press, it can be another basis for establishing rules in this field. Regarding people's access to information and its dissemination in cyberspace, it should be noted that removing and filtering messengers such as Telegram can be considered a violation of freedom of information and people's right to access information. Some systems expand the interpretation of things such as public order, national security and public security and limit citizens' access to information, while the aforementioned titles are vague and open to interpretation (Mohsani, Hashemi, Javaid and Abbasi, 2018: 349-350).

Finally, in the virtual space, there is a possibility of violation of citizen's rights, insult, violation of citizens' dignity. Many principles of the constitution emphasize the protection of values. Among these principles are the principle of inviolability of life, property, and people's rights (Principle 22 of the Constitution), prohibition of any kind of surveillance (Principle 25 of the Constitution), prohibition of insulting the honor and dignity of people (Principle 39 of the Constitution), prohibition of harm to He mentioned non-violence and encroachment on public interests (Article 40 of the Constitution). There is no doubt that the government can protect people's rights by establishing laws in

cyberspace and guaranteeing implementation.

2-2. Virtual space management mechanisms

Inferred from the principles of the constitution (the above-mentioned principles), the management of cyber space is not only the right of the government, but also its duty. The government is obliged to oblige the citizens to obey the laws while explaining the frameworks. The question that is raised in this case is, what methods does the government use in this case? The theory of self-regulation, the interpretation of current laws, the establishment of laws in special cases, and comprehensive legal proposals are among the views raised in this matter, which we will explain below.

Here, the point that needs to be made is the theoretical foundation of the analysis of the challenge of the government's intervention in the virtual space and confrontation with privacy, which can be explained in three contexts and methods of legal theory, philosophical-ethical theory and technological theory.

1. Legal theory: In this theoretical foundation, legal principles and fundamental rights of individuals are placed as the basis of analysis. These principles include constitutional rights, civil rights, human rights and other rights defined in a specific society. According to this theory, any intervention of the government in cyber space must be in accordance with legal principles and follow the basic rights of individuals. Also, the right to privacy as a basic and important right in this theoretical foundation is more emphasized.

2. Philosophical and ethical theory: In this theoretical foundation, philosophical and ethical principles are analyzed. This theory includes values and moral principles of society, respect for human rights, and individual values. What should be examined here is how government intervention in cyberspace can be consistent with the moral principles of society and avoid violating human rights and privacy.

3. Technological theory: In this theoretical foundation, issues related to technology, digital security, and the effects of technology on individual rights are examined. This theory deals with how to balance the needs of national security and personal security in the digital world and the role of the government in protecting these two.

According to each of these theoretical foundations, it will be possible to analyze the challenges and confront the government's interference in the cyber space with the preservation of privacy. In any case, creating a balance between security needs and individual rights is one of the challenges of this conflict, which requires other researches and setting precise standards. (Firouzabadi et al., 2019, p. 76).

The proposed approach for cyberspace management is a hybrid approach that takes advantage of all three legal, philosophical-ethical and technological

theories. In this approach, the legal principles and fundamental rights of individuals, the philosophical and moral principles of society, and the issues related to technology, digital security, and the effects of technology on individual rights must be carefully examined. Then, according to these three categories of principles, a framework for the management of cyber space should be developed which, while protecting people's privacy, also provides the security needs of the society. The combined approach has comprehensiveness, balance and efficiency. It also faces challenges such as complexity, need for expertise and high cost. Therefore, considering the complexity and dynamics of cyber space, it is difficult to choose a single approach to manage it. Cyberspace management is a complex and challenging issue. A hybrid approach, although it has many advantages, also brings challenges. To solve these challenges, it is necessary to conduct more studies, create specialized institutions and allocate sufficient resources.

2-2-1. Self-regulation rules

Self-regulation means delegating authority to the private sector. In fact, self-regulation means lawlessness. Instead of establishing a law in the field of the Internet, the government asks the Internet providers to apply some restrictions and conditions in their contracts with users. In this way, the government grants its authority to the private sector while preventing it from entering the legislative sphere. It seems that the performance of the government in this method is similar to regulatory governments in public law. This means that the government does not directly intervene in many matters, but only regulates in various fields. Self-regulation methods have advantages: the self-regulation model is a flexible model that can be adapted to progress and technology. In addition, it does not impose any costs (compared to law enforcement) on the government or executive institutions. Users also have a high motivation to accept it (Idrisi and Safadoost, 2013: 40). Such an approach is acceptable from a social point of view. This means the voluntary application of desirable rules in the field of cyberspace. Internet service providers want users to fulfill those obligations by providing contractual templates. The rules contained in the contract between Internet service providers and Internet users should not be unilateral and in favor of the Internet service provider company. These rules should guarantee the freedom of users as much as possible (Marsden, 2011: 48)

In practice, with the ever-increasing growth of the Internet and virtual space, the application of self-regulation regulations faced difficulties: with the growing number of Internet service users and the increase in the bandwidth of users, security risks and challenges such as user responsibility were raised. In 1997, only 14 million households had Internet service. While in 2007, at least 200 million households benefited from such services. Such a development can be

compared to the cycle of drug distribution among people. After presenting the interesting version of the product among the users, its more interesting version appeared (Marsden, 2011: 48)

The absolute application of self-regulation rules has disadvantages. This method cannot meet the needs of the society and it has some drawbacks:

a) The possibility of violation of citizens' rights is very high due to the lack of guarantee of proper implementation. Self-regulation cannot be a tool to prevent the sending of unsolicited Internet advertisements, the sending of Internet junk mail (spam) or the prohibition of Internet gambling.

b) Citizens are not properly aware of the scope of their rights and freedoms. There is a possibility that they may inadvertently violate the privacy of others or ignore the copyright of authors or access prohibited sites. Undoubtedly, the use of private contracts between users and Internet service providers cannot reduce or eliminate these problems.

Article 71 of the Constitution has given the authority to enact laws in general matters to the Islamic Council. Considering the importance of virtual space and its use in society and the inadequacy of self-regulation rules, it is necessary to use rules to manage this space

2-2-2. Extending the provisions of the laws to new phenomena

Among the views that have been presented about the management of virtual space is the extension of related laws to virtual space. According to this point of view, the new law is avoided and the existing laws in that case will also be applied. To clarify this issue, we mention some examples:

First example: In the United States, there is the "Privacy of Electronic Communications" Act of 1986. Although the said law was created before the emergence and expansion of the Internet, experts also use it in the field of electronic communication through the Internet. According to the said law, electronic communication is "any transmission of signs, signals, writing, sounds, data or information in whole or in part by wire, radio, electromagnetic, electronic photo or optical system". In the laws of this country, it is possible to violate the privacy of a partnership agreement by relying on the court order and in order to conduct criminal investigations (Tripathi, 2020: 12).

Second example: In Australia, there is a law (law passed in 1992) regarding the broadcasting of programs (television programs), the provisions of which are also applied to the Internet. This law was amended in 1999 and extended to the transmission of Internet content. These reforms were in response to the concern of the Australian community about children. In the explanatory notes of this law, it was stated: The concern of the government and society is about the contents and programs that are broadcasted online. Especially when it comes to the ease of access to things like pornography or other things that are

inappropriate for children. The purpose of the lawmaker is to provide a suitable framework for online programs through the Internet. These reforms were aimed at accomplishing three things: (a) providing a means to handle complaints related to certain Internet content; (b) to limit access to some Internet content that is likely to cause crime to a reasonable person and (c) to protect and protect children from inappropriate Internet content (Brian, 2008: 45).

The extension of general and mother laws to the field of virtual space, although it has advantages, but it is not without problems; Some issues in the mentioned laws cannot be adapted in cyber space. Some of the issues in the Internet field are not seen in the existing laws. Although this view has been modified to a large extent compared to the previous view self-regulatory rules), problems caused by the lack of law can be seen in some cases.

2-2-3. Establishing rules

The inadequacy of the current laws brings to mind the idea of a new legal situation. The global nature of the Internet indicates that this phenomenon does not just cross geographical boundaries, but also enters domains such as culture, beliefs, etc. This is despite the fact that data and information exist on the Internet all the time and everywhere, and there is no convergence regarding their control. In terms of ideology, many countries do not have the same beliefs as other countries.

Some believe that governments should distance themselves from traditional models in the matter of legislation in cyber space. Legislation should be based on its unique characteristics. In this regard, they should consider non-legal rules, social norms, the transnational nature of the Internet, etc., and traditional concepts (which appear in time and place) do not flow in this case (Rezaei and Babazadeh Moghadam, 2013: 58).

In 2002, the European Union established a directive on privacy and electronic communications. The above-mentioned directive stipulated that: sending spam, faxes and telemarketing is not possible unless the recipient's consent is declared beforehand or his consent can be inferred in advance. Many member countries of the European Union have enacted laws regarding spam. Austria, Denmark, Finland, Germany, Greece, Italy, Belgium and Spain can be mentioned from this country. In England, there is a 1990 Computer Misuse Act that can be effective in dealing with spam. According to the said law, unauthorized access to computers is prohibited, including sending spam. In general, it can be said that dealing with spam requires a global effort to deal with it. In some countries, although there is a law regarding spam, users should look for ways to reduce spam. Anti-spam software is not effective. Governments should take necessary measures regarding spammers and the costs that citizens bear to deal with spam; be imposed on them. Among these solutions is determining the cost of sending

each message through email (Schwabach, 2005, 275).

In establishing a new law in the field of virtual space, the principles of the constitution should be taken into account. One of the authors believes that man has no choice but to respect the rights and freedoms of others. In order to observe the social order and respect the rights of others, restrictions can be placed on the freedoms of individuals. The absolute freedom of man is nothing but the destruction of his mind and body (Latfi, 1389: 152).

of law. According to the aforementioned principle in all public affairs, decision-making should be according to the law. Based on this principle, public, military and national authorities must act according to the law. This principle causes the decline of autocracy and tyranny of rulers. In addition, performing administrative actions according to the law guarantees comprehensive rights and judicial security (Hashmi, 2012, Vol. 1: 317). Some believe that the Iranian legislator seeks to follow the international custom in the virtual space, but at the same time takes into account the rules of domestic law (Jaafari, 2018: 127-126). Some believe that in the feasibility of regularizing the legal system in the cyberspace, a distinction should be made between law and moral teachings. In moral teachings, it is only forbidden to do some things, while the law has content and guarantee of legal implementation. The rule of law principle requires that legal dos and don'ts be included in legal texts along with the content (for example, performance guarantee). It should be noted that in this context, formal and substantive requirements related to the principle of rule of law should not be neglected. It should be noted that the law must also have characteristics such as being fair, wise, orderly and moral. The guarantee of the implementation of the violation of the constitution is only the prevention of the action and nothing more (Qajarlu Qionlu, 2011: 226-226).

It should not be thought that the introduction of a new law in the field of the Internet is not without problems. Undoubtedly, legislation in this space brings problems: in many and different parts of the contemporary world, the laws governing the Internet are different from other parts. Legal rules are binding rules that apply in certain parts of the world. It must be accepted that the same rules do not apply to the Internet in terms of territory. The Internet can be considered as a satellite. Internet related issues connect the rules of several countries and regions. So that it is possible that something has specific legal rules in one country and other legal rules apply to it in another country (Consalvo, 2013: 149).

Some people have raised objections to the rule of a country's domestic regulations on cyber space. From their point of view, the activities in cyber space are not only done in one country. Equality of sovereignty of countries requires that we have such a right for other countries. The principle of the rule of

internal laws causes the destruction of the ruling space on the Internet. Such a principle is in conflict with the international nature of the Internet. The sovereignty of the internal laws of the countries in their geographical territory does not mean its sovereignty in the virtual space (Rajabi, 2016: 299). However, it should be noted that the specific complexities governing Internet and virtual space issues should not cause the country's internal sovereignty to be forgotten. Since the internet monopolists become a source of attack on the territorial integrity and national security of the country, even the most democratic countries take measures to fight against the attacks, and the importance of these cases is based on the preference of the internal sovereignty of the states-countries. It is its own territory.

There is no doubt that governments have rules and regulations regarding internal affairs and apply them to citizens and people. In some cases, they conclude and adhere to international treaties. In the domestic laws of the countries, it is possible to implement foreign laws in the field of domestic courts with the help of conflict resolution rules. It seems that in the field of virtual space, the legislator can use such an approach, and the existence of legislative challenges cannot create an obstacle in the direction of managing virtual space through the establishment of a new law.

3. Fields of legislation in virtual space

Different countries have not acted in the same way in the field of virtual space legislation: some countries have enacted laws regarding issues that have not been considered in other countries. Obscenity, privacy, copyright of government offices, schools, etc. are among the areas of law enforcement. The analysis of these issues can be useful in terms of possible legislation and adaptation by the Iranian legislator. We will mention the aforementioned items below.

3-1. Pornography

In recent years, pornography has been one of the most important challenges in America. Compared to other countries (such as Wales and Canada), this country has seen significant changes. In 1996, the Law on Limiting Child Pornography was approved. According to the said law, it is a crime to create images through computers and computers in order to explicitly encourage children to engage in sexual behavior. State and federal laws prohibit child pornography. Several states of this country, after the decision of the Supreme Court, started to enact several laws in this field. The Supreme Court of this country emphasized that the intervention of children in the field of pornography should be considered a serious issue. The Supreme Court of the United States emphasized the fact that the use of children in pornography causes physical and mental harm to them. Obtaining financial gain through child pornography, distribution of films about

sexual activities of adolescents or sexual abuse of children is a crime and prohibited. In the "Osborne v. Ohio" case, the court ruled that banning child pornography is a means to protect children from exploitation (Akdeniz, 2008: 95). The aforementioned law stipulated: "pornography is not only the production of images, but the creation of any description or mental image in children, such as photos, videos, images or anything else, and anything that leads to their presence in sexual activities." The aforementioned law was not limited to the production of pornography, but included distribution, production, description and promotion, etc. Also, indecent photos and the use of adults in child pornography and the depiction of children in pornography were considered crimes (Akdeniz, 2008: 97).

In England, in 1994, the Child Protection Act of 1978 was amended to include computer-generated images, and child pornography on the Internet was banned. In 1995, child pornography became a public concern and legal measures were taken to protect children in this regard. Some were prosecuted in certain cases. In 1994, child pornography was criminalized and the said crime was considered one of the examples of sexual crimes that directly harms children (Akdeniz, 2008: 18).

Regarding filtering, it should be noted that filtering sites faces problems. This filtering is done by software and machines, and human thoughts do not play a role in it, there is a possibility of mistakes, there is a possibility that the existing content of a scientific site will be considered obscene and they will attempt to block it. Also, filtering considers all users as a single person and does not consider discrimination. It is possible that the contents are misleading for one person and suitable for another person (Ruzbahani, 2013: 22).

According to Article 10 of the Constitution of the Islamic Republic of Iran, all laws and plans should be aimed at facilitating family formation, strengthening family relationships based on Islamic law and ethics, and protecting the sanctity and sanctity of the family. Undoubtedly, mere criminalization is not enough in the field of pornography. Children and families should engage in their work and activities in a safe environment. Internet should not be a platform for sexual-social deviations of children.

One of the professors believes that Madaqah in many principles of the constitution, such as the fourth principle and the preamble of the constitution, indicates the importance of religious values in the constitution. The Guardian Council also prohibits what is against Islamic standards. There is no doubt that these values form the basis of Islamic government and sovereignty is bound to it in all cases (Katouzian, 1377: 354-353).

3-2. Privacy

possible without the concept of freedom of speech. In the light of the

aforementioned right, citizens should be able to express openly and openly about public institutions. The ability to participate in the debate is an absolute right, and since the advent of the Internet, this right has gained new dimensions. The nature of the internet is such that any person can express opinions contrary to the views of others. Also, some rebels express their views about their opposing government through the Internet. Although the Internet is considered a refuge for political opponents, the possibility of exercising the right to freedom of expression in an absolute manner (without any restrictions) in some cases violates the privacy of other citizens. Accordingly, when a person in a public place expresses content that causes offense to others or makes an inappropriate display in public; This act is considered a crime. People are free to express their opinions in their privacy, but if said privacy becomes public and public; If it leads to hatred, freedom of speech is limited (Hick, Halpin and Hoskins, 2013: 283).

In Japan, privacy is recognized as one of the basic rights. Such a right is derived from Article 13 of their constitution. According to this principle, people have the right to demand happiness. The Personal Information Protection Act was passed in 2003. The right to protect privacy is approved and protected by Article 13 of the Constitution of this country, and the Personal Information Protection Law of 2003 also includes privacy. Accordingly, companies that process personal data are obliged to maintain privacy (Komkai, 2020: 25)

Canada's anti-spam law came into effect in July 2014. The mission of the said law was to support unwanted business and encourage the growth of electronic business and trust in the online market. The aforementioned law prohibits sending unsolicited electronic messages without the consent of the recipient. Said consent can be express or implied. Implied consent exists in cases where there is a history of business activity between the parties. The legislator considered a center called Spam Reporting Center to deal with unsolicited commercial electronic messages. The Canadian Radio and Television Commission and the Privacy Commissioner are authorized to investigate this matter under appropriate conditions (Teresa, 2020: 62).

Article 23 of Iran's constitution prohibits inquisition. According to this principle, no person can be impeached because of having a particular opinion. Prohibition of inquisition refers to the state where the thought is inside a person. Spreading misleading thoughts is not allowed. There is no doubt that there is no problem in scientific discussions between high-level people in a suitable environment (e.g. universities). Expressing scientific content for people with low knowledge and ignorance of scientific topics will not be logical and rational (Najafi, 1379: 455). Some believe that violating the privacy of famous people is possible when the public interest requires it. In the case of famous political

figures (considering their role models in the society), maximum efforts should be made to protect their privacy (Zhakarian, Javar, and Batahai, 2019: 136).

There is no doubt that the free flow of information is one of the characteristics of a democratic society. In spite of this, it is necessary to provide explicit rules regarding the employment information of people that is not obtained due to employment, the publication of judicial notices in cyberspace, the announcement of students' grades, hidden cameras, etc. (Mohsani, 2014: 88).

On behalf of the citizens, the government has a legislative position and acts on behalf of the entire society and has the right to create harmony and balance between the freedom of ideas; In such a way that the thought of one citizen does not violate the thought of other citizens (Zoler, 1389: 175-175). In the field of virtual space, the legislator is obliged to create a balance between the freedom of citizens to obtain information and the violation of privacy. The law should also be aimed at protecting the public interests of citizens so that the exercise of rights by citizens does not harm other citizens (violation of privacy) (Principle 40 of the Constitution).

3-3. Copyright

From the point of view of many film producers, publishers, writers, etc., virtual space is like a nightmare for the intellectual property of their productions. The emergence of technology has made it possible for people to visit their products. Their productions are accessible not only to one person, but to any person at any time through the Internet. People can save productions on the Internet instead of referring to the original file through a hard disk. In the United States, according to the Digital Copyright Act of 1998, copyright infringement and its cloning are considered crimes. Many producers create sites in the virtual space and do not allow people to use and access the content unless they pay for it. This is based on the idea that it is not fundamentally fair that people can access anything at any time (Robert, 2001: 23).

There is a network copyright law in China. In 2000, an interpretation was provided regarding the said law. This commentary consisted of 10 articles and determined damages for copyright infringement on the Internet. In 2001, China's copyright law was amended. Copyright infringement on the Internet was added to it. In any case, this law only includes three articles regarding the Internet and did not provide a solution for copyright disputes on the Internet. In 2003, amendments were made to the said law. The maximum amount for the damage caused as a result of digital copyright infringement was determined, and the minimum amount for said damage was removed, and the civil liability was determined for bypassing the technology. According to the subsequent amendments, criminal liability was considered for copyright infringement,

with the condition that the publication of copyrighted works is considered illegal publication and distribution from the point of view of the Internet. Also, according to the amended copyright interpretation of networks, online republishing and selection of works (with the exception of software, movies and novels), before July 1, 2006, does not constitute copyright infringement. There is no doubt that the relevant provisions of the Chinese Supreme Court are applicable to any lawsuit or claim. In China, the basic element of actions that lead to copyright infringement is "copying". This concept is expanded when "linking and searching" are combined (Brian, 2008: 18).

In France, according to the law that was approved in 2009, this permission was granted to the Internet service providers, who download illegally without respecting the copyright; be denied internet connection. Also, based on another law that was submitted to the parliament of this country in 2009, the government of this country is given permission to apply measures such as filtering and blocking against immoral websites. Also, according to the law that was approved in 2001, France stores the internet activities and internet posts of customers and users for up to one year; Also, the police of this country was given the possibility to check the messages of the citizens with the aim of discovering and proving the crime (Zittrain, 2003: 79).

Protection of intellectual property rights and copyright is a matter of course. According to Article 22 of the Constitution, the rights of individuals are inviolable. The government is obliged to protect these rights. Copyright laws cannot be responsible for the violation of this right in cyberspace. This is despite the fact that according to Article 71 of the Constitution, the Islamic Council can enact laws within the limits of the Constitution. This is achieved by establishing special laws regarding the violation of intellectual property in cyberspace.

3-4. Government employees

One of the important issues in cyber space is monitoring the performance and writings of employees in cyber space. In this regard, the Tokyo court declared: it is inevitable for companies to monitor employees' emails. There are no instructions regarding the use of electronic devices by employees, and they are required to use these devices only for work purposes. The instructions of the Ministry of Labor, Welfare and Health as well as the Ministry of Economy, Trade and Industry explain the possibility of precise and specific monitoring of employees. The aforementioned instruction speaks of the necessity of employees' explicit consent to monitor them (Komukai, 2020: 261).

In America, in some companies and government offices, the access of employees and crews to pornography sites is limited. Also, all employees are required to use the original versions on their computers. In some cases, the

owners of some offices or companies order computers that can only be used in the field of work and it is not possible to access other things (Zittrain, 2003: 670).

In these countries, employees are prohibited from doing non-professional activities during office hours. These restrictions are only cases that the employees have suffered due to their jobs, and its philosophy is to apply administrative discipline. Employees are obliged to use all their abilities in order to achieve the goals of government departments and refrain from doing actions unrelated to their jobs. Such a rule provides a narrow interpretation of the concept of freedom. In the tenth paragraph of the third article of the Iranian constitution, the government is obliged to establish a correct administrative system and eliminate unnecessary organizations. The requirement of such a thing is to establish rules regarding the restriction of access of administrative staff to unrelated websites while performing their duties.

3-5. Schools

In America, according to the Children's Internet Protection Act approved in 2000, people under the age of 18 are prohibited from accessing some media. Schools and electronic school libraries that use the government budget are obliged to follow these regulations. Many schools and libraries see this law as limiting and filtering internet sites. Based on this, if the content that is searched on the Internet does not match the educational content; School authorities are obliged to limit children's access. Filtering and screening some predefined words depends on their recognition and it is also possible to limit access to some content such as (gay). It should be noted that although the right to freedom of expression is a right guaranteed in the US Constitution and any attempt to limit it must be based on a valid reason and be consistent with the government's goals, but in these cases, restricting children from accessing the Internet is consistent with this goal. Based on this, the content related to pornography is filtered. Of course, according to the aforementioned law, texts are not filtered; Only images are restricted and prohibited. It is also necessary to filter inappropriate images for minors. There is no doubt that although the access of children and persons under the age of 18 to the Internet is limited according to the said law, this authority has been given to school authorities or other competent persons based on good faith and the fulfillment of other legal goals (conducting research and scientific research). In special cases, try to fix the filter (Conn, 2002: 13-14).

Many of the laws that deal with children, their civil and criminal liability can be seen in our laws; It has a supportive face. In order to protect them, the legislator tries to enact laws against adults. Considering the role of the Internet

in the intellectual development of children, it is appropriate to approve protective regulations regarding the Internet.

According to the 10th principle of the Iranian Constitution, all laws and planning should be aimed at facilitating family formation, strengthening family relationships based on Islamic law and ethics, and protecting the sanctity and sanctity of the family. Undoubtedly, mere criminalization in the field of pornography is not enough. Children and families should engage in their work and activities in a safe environment. Internet should not be a platform for sexual-social deviations of children. Establishing rules regarding the access of children and adults through username and password can be effective.

There is a law entitled "Child and Adolescent Protection Law" approved on 2/23/2019. According to paragraph 6 of article 10 of this law, making available or presenting content with obscene effects is a crime and punishable. Also, according to paragraph seven of the same article, it is a crime to use children and adolescents to prepare, produce, reproduce, display, sell and store obscene and vulgar audio-visual works. Paragraph eight of the same article considers the import, export, reproduction, publication, supply, transaction, and uploading of obscene content or works of children and adolescents to be punishable by the sixth degree of the Islamic Penal Code.

Conclusion

According to the analysis carried out in this article, it is concluded that the current laws in the Islamic Republic of Iran are not able to respond to the challenges of cyber space and the need for new legislation in this field is felt. Due to the complexity and rapid changes in cyber space, the current laws are not able to adequately protect the rights of citizens in this space

Paying attention to the following makes this result clear:

1. Dynamics of cyberspace: due to the rapid growth of technology and continuous developments in cyberspace, the current laws cannot keep up with the dynamics and numerous challenges of this space.

2. The need to guarantee the rights of citizens: the increase of social, economic and cultural activities in cyberspace requires up-to-date laws guaranteeing the rights of citizens.

3. Existing legal restrictions: current legal restrictions in many areas, including privacy and pornography, are insufficient and do not respond to the legal principles of society, especially in cyberspace.

The proposed solutions to respond to the challenges of cyber space in the Islamic Republic of Iran are:

1. Revision of the existing laws: due to the complexity of cyber space, we need to revise and update the existing laws in order to guarantee the rights and

freedoms of the citizens.

2. Use of technology: It is very important to use new technologies to monitor and prevent violations in cyber space.

3. Coordination between institutions: effective coordination between judicial, executive and regulatory institutions in the formulation and implementation of new laws can increase the effectiveness of these laws.

With these solutions and paying attention to the principles of the constitution, it is possible to strengthen the legal settings and the rights of citizens in the virtual space in the Islamic Republic of Iran.

Also, in order to balance between human rights, especially the right to free access to information, and necessary restrictions in cyber space, there is a need to determine clarity in conflicts and legal measures. This balance should be such that, on one hand, the rights of citizens are preserved in cyber space, and on the other hand, security matters and social rights are also protected. Also, in order to use the experiences of democratic countries, it is possible to use the successful examples and their shortcomings in the implementation of laws related to cyber space. This information can be known as models for determining effective solutions and measures in order to maintain the optimal balance between human rights and necessary restrictions on the Internet.

The fundamental solution for the issue of legalization in cyberspace is to create a comprehensive system of cyber governance. This system should be developed taking into account the principles of the constitution, the characteristics of cyber space and human rights. This system should include laws, regulations, institutions and mechanisms necessary to manage virtual space. This system should be in such a way that while protecting the rights and freedoms of the citizens, the security and social needs of the society are also provided. Also, in terms of laws and regulations, this system requires the formulation of a comprehensive law on cyberspace with a new approach based on the needs of the society and updating the existing laws related to cyberspace.

Creating a comprehensive system of cyber governance is a fundamental solution to solve the challenges of cyberspace in the Islamic Republic of Iran. This system can be such that while maintaining the rights and freedoms of the citizens, the security and social needs of the society are also provided.

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