

# The Status of Public Interest in Iranian Administrative Law

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## Abstract

Since the 18<sup>th</sup> century coincided with constitutionalism movement and the idea of democracy maturity, public interest theory as the main characteristic of the modern states have emerged. Thereby, in the modern administrative law, mechanisms of the achievement of the public interest, in line with the government's interaction with the people have been the main official objective. In Iranian administrative law, public interest is a new argument. According to the policy of decentralization, privatization, and the project of downsizing of government in the Enforcement Law of General Policies of Article 44 of the Constitution and the Law of Civil Service Management, as well as the use of new public management ideas in legislate the Law of Civil Service Management, it can be said that Iranian lawmakers need crossing the old concepts of the administrative law and seek to create a situation in which the interests of citizens are more appropriately provided in the field of administrative law.

**Keywords:** Public Interest, Good Governance, Modern Administrative Law, The Law Of Civil Service Management

## Introduction

Undoubtedly, administrative law is considered as the continuation of political issues and changes of approaches in the bases of public law affect on the administrative law as well (Rezayizadeh, 2006). Affected by changes in the ideas of the philosophy of law followed by tendencies towards the idea of the public interest, the authors have also sought to create new structures in the administrative law with regard to the principles of a good government. The idea of public interest in administrative law was first proposed by a French lawyer called Marcel Waline (Ansari, 2002). Basing the interests of citizens in the administrative decision-making and active participation of people in decision-making process in the light of administrative discretionary power is of the new concepts recently reached in the official customs.

Public interest, which incorporates a broader meaning than the concept of public service, refers to a set of behaviors that obligate an organization to not only address the needs of citizens in the public affairs, but also to behave in such a way that benefits the citizens through administrative decisions. Thus, the public interest would be staged above the public service. In a report in 2012, Faculty of Law of the University of California proclaimed the public interest can include a complete set of substantive law. These rules may consist of the claims of civil rights, poverty law, consumer law, environmental law, the law of employee and employer, the immigration Act, or even the election law. In addition, this can include public activities in order to improve the development of economic integration, public-private projects in the field of financial support for housing, environmental protection, and important schools (School of Law, 2012).

With respect to constitutional approach and Parliament orientation, most authors believe that public service accounts for the dominant theory in Iranian administrative law. However, paying attention to the recent decisions of Parliament: basing privatization and decentralization in administrative decisions, and making organizations accountable for their application indicates new approaches of Iranian lawmaker in the administrative affairs, suggest to be considered as a big step in the reform of administrative system. The current status of this theory in Iranian administrative law was of the most important issues that this research tried to address.

### **The Theory of Public Service and Iranian Lawmaker Approach**

Some writers of public law maintain that the development of the idea of public interest is due to the promotion of the duties and functions of governmental organizations in the modern age and this issue is mainly influenced by the material resources and information that available to the governments at the present time (Loughlin, 2010). Before the modern era, information resources were very limited, and the governments were often satisfied with the military offices, the judiciary, and the police in public affairs. However, today, a wide range of economic and social activities have been undertaken by governments. On this basis, Iranian administrative law, which is influenced by the material progress, has created great changes in the literature in recent years.

Article 3(12) of Iran's constitution requires "true and fair establishment to economy based on Islamic standards to create welfare, eliminate poverty and deprivation in the areas of nutrition, housing, work and health, and generalize insurance" as one of the government's duties. Also, Article 29 of this Act considers taking benefits from social security and medical care as national services and supports that the government is required to provide for everyone through public revenues. Moreover, according to Article 30 of the constitution, provision of the means of free education and higher education to the point of self-sufficiency of the country is considered as one of the functions of the government. Article 25 of the Law of Civil Service Management knows the directors and executive officers as public servants. Hence, the prevailing view is that Iranian administrative law is based on the theory of public service (Emami, 2008). Yet, the new approach of legislator in the field of administration in the last few years has been so that a sign of change and tendency towards Public interest theory can be observed.

### **New Approaches to Iranian Administrative Law**

The role of the government and to emphasize the reduction of government involvement in the 20-Year Perspective Document for Iran's 2025 and the Enforcement Law of General

Policies of Article 44 of the Constitution, and the presence of some new concepts in the writings of the authors of administrative law, as the principles of good governance, the rule of law, the principle of honesty in official practices, and respect for the public interest caused the government to approve a bill that makes innovations with regard to Iranian administrative law in addition to removing the deficiencies in the current law.

Accordingly, on May 10, 2005, Management and Planning Organization made this reform by sending a bill to parliament by the cabinet as a "bill of civil service management". The bill was based on the two theoretical models of good governance and new governmental management, emphasizing the rule of a free market principle in the public sector. After sending the bill to the Parliament and many reviews on it, it was ultimately decided that the project of downsizing the government and making reforms commensurate to the legal framework and the facts regarding Iran be performed.

Accordingly, in the second chapter of the Law of Civil Service Management (from article 13 to 24), the two elements of privatization and decentralization were introduced as the main strategies of Iranian administrative system.

### **Good Governance in Iranian Administrative Law**

Today's Iranian administrative law requires applying fundamental and structural changes in the government organization and in particular determining the exact size of the government. Of course, this does not mean that the size of the government should be shrunk as much as possible for the implementation of the theory of public interest, but logical interactions between the government and the public must be established (Novin, 2007). In this theory, it is not fundamentally important for the government to be big or small, but the purpose of observing the right size for it is to provide a suitable platform for implementing the principles of equality, justice, procedural fairness, transparency, official accountability, the right for equal treatments on equal terms, decentralization in administrative decision-making, informing people of the trend of administrative operations, and ultimately increasing citizens' participation in the process of official decision-making.

### **Privatization and Reduced Government Involvement**

In the Law of Civil Service Management, major efforts have been made to properly determine the size of the government. Hence, the legislator has revised some of the concepts presented in the law. For example, in the definition of a government institute in Article 3 of Public Audit Act, it had been stated, "Government institution is a specific organizational unit created under the law and supervised under one of the three powers, which is not regarded as a ministry." However, in Article 2 of Civil Service Management Act, it is stated: "Government institution is a certain organizational unit created by law and have legal independence that performs part of the duties and functions undertaken by one of the three powers and other legal authorities." The independence of the three powers of governmental institutions and the legislator's interest to develop non-governmental institutions mentioned in Article 3 represents changes in the legislator procedures toward public services.

In addition, Article 13 of the Law of Civil Service Management represents "the social, cultural, and service affairs are enforced through the development of cooperative and private sectors, non-governmental organizations, public institutions, etc. by observing principles 29 and 30 of Iran's constitution". Since, according to the experience of the years following the Islamic Revolution, the ineffectiveness of governmental agencies in providing public interest had become clear to the legislator, the infrastructure affairs was assigned to the private sector in

Article 14 of the Law of Public Service Management, while the government only plays a role as an observer in such projects.

The principle in infrastructure is focused on the direct involvement of the private sector and the government interference in these affairs is contrary to the principle and requires the approval of the Council of Ministers in this field. In addition, in Article 15, all the government economic affairs have been granted to the non-governmental sector with the observance of Article 44 of the constitution and the approved policies on this principle.

### **Decentralization in the Decision-making System**

Iran is considered one of the extensive states. However, on the basis of articles 6 and 100-104 of the constitution, the administrative affairs of the country's different areas have been transferred to people's elected councils. Accordingly, in Article 16 of the Law of Civil Service Management, the legislator knows the institutionalization of the decentralization system to increase productivity and establish product system (principle of management efficiency) and thus determines granting authority to local managers and preventing the concentration of decision-making to be of the main administrative strategies.

Article 4.2 of administrative reform plan approved by the Supreme administrative Council on May 5, 2002 has assigned the duties of inherently local and regional aspects exclusively within the competence of local authorities and prevented the central authority of any interference in the affairs.

Although the adoption of such rules will be effective in the context of administrative law, still the idea of decentralization has not been established even within senior government officials of Iran. For example, provincial travels of the 9<sup>th</sup> and 10<sup>th</sup> governments can be noted. Although approval of the provisions in these trips to different parts of the country could solve the problems of the country's different areas as a temporary solution within a limited time interval and thereby compensate for the shortcomings and weaknesses of the local authorities, but when such an approach becomes part of the administrative procedure in the long run, in a way that the implementation of any great plan or project requires the Cabinet to travel across the country to and approve any regulations in this area, this can have unpleasant consequences for Iranian administrative law.

### **People's Involvement in the Administrative Decision-making Process**

Unfortunately, Iranian people do not have an active participation in the country's administrative system as they do in the modern administrative systems in the decision-making process. However, recent developments in Iranian administrative law can promise the very optimistic approach of the citizen's dignity and public participation in decision-making. For example, in the 7<sup>th</sup> administrative reform program of the Supreme Administrative Council adopted in 1381, somewhat weak signs of public centrality in administrative decisions could be observed. Article 2-7 of this Act it is read: "The principle objective followed in decision-making is citizens and clients' satisfaction. Thus, in cases of conflict of interest, attention to and respect for the public interest would be the criterion of action. Executive agencies are servants of and accountable to the public and should compensate the damages occurred to people."

The emphasis on the role of people have gone so far as in Article 3-7 of the mentioned Act stating continuation of governmental employees' services and their promotion have been known to be subject to the people's satisfaction. Although the decisions of the Supreme

Administrative Council are not based on a high sanction, the very idea of public participation in the decision-making process can be promising for appropriate legislation in this area. Meanwhile, according to Article 25 of the Law of Civil Service Management, managers and governmental employees are considered to be public servants and are required to sign the Code of Administrative and Ethics stated in Article 25 from the very beginning of employment. The Code of Administration and Ethics approved by the Social Commission of Ministers Council on February 10, 2011 has required all the employees to offer their allegiance to the Code in the inauguration at the beginning of the public services. In Article 2-6 of this decree, it is stated: "Citizens and clients' comments, suggestions, and feedback should be noted as a precious source for the improvement of performance and look to them with a logical view."

### **Responsibility and Accountability**

To promote and develop accountability and implement democratic practices more appropriately, the corresponding structure should be decentralized, public participation become more prominent, and free transparent flow of information be provided (Zarei, 2001).

In Iran's legal system, particularly in the constitution, the accountabilities of the country's political authorities, including those of the Leader to the Assembly of Experts, Presidency to the Leader and the Parliament, ministers to the President and Parliament as a model of political accountability have been mentioned. Also, some cases can be found in the constitution and other laws mentioning the need for the accountability of administrative authorities. With reference to Article 126 of the constitution, the President should undergo a direct responsibility for planning and budget, administrative, and employment affairs. Thus, in addition to being a political authority, the President has been introduced as the first responsible person for the country's administration. Moreover, each minister as a political person is considered as a high-ranking administrative authority as well since have the responsibility for the staff of a ministry (Motamani Tabatabai, 2008).

Therefore, Article 87 and 88 of the constitution that referred to accountability and possibly interpellation the President and Ministers not only merely incorporate their political responsibilities, but also imply the need for their administrative accountability with regard to their dual political and official roles.

In the traditional model the organizational hierarchy, a minister is known as the first accountable person to the authorities mentioned in the constitution and all the important administrative decisions are legally taken by him. In this model, the employees who might have had efficient roles in the decision-making process often remain hidden without accountability (Zarei, 2006). That is why we should seek for plans to make accountable the officials lower than the minister. By considering the same old pattern of accountability, Article 92 of the Law of Civil Service Management has required "immediate managers and supervisors to be responsible for monitoring and maintaining healthy relations their employees in the performance of their duties and should be held accountable for their performance ."

Furthermore, several cases requiring administrative officials to be accountable to the public can be outlined. Article 122 of the constitution has regarded the President to be responsible to the people, Leader, and the Parliament. Before the revision of the constitution, it was as follows: "The President is responsible to the people within his powers and duties and the process of investigating the violation of these responsibilities will be determined by law." As this principle implies, responsibility and accountability to the public is of the cases that the President as an administrative authority is required to have. Of course, the enforcement

mechanism for this model of accountability is not clear. In Article 26 of the Law on Civil Service Management, it is stated: "Executive institutions are required to familiarize people with their rights and duties in interactions with executive institutions and promote public awareness in this regard through the media, especially radio and television and thus provide them with the necessary information properly."

### **Rule of Law**

The fact that the rights and duties of citizens to the government must be clear finds a particular situation in the administrative law, since we face it with the concept of official discretionary powers. In administrative law, on based the requirements of public affairs and the specific requirements of this part of the law, certain powers and competences should be delegated to an official authority, all of which may not be predicted all in the past passed laws. This way, an official decision may be taken under the discretionary power with inadequate information beforehand. The related questions include: Who are the executives endowed with such authorities? How is the official discretionary power applied? To what extent does the scope of such authorities continue? And on what basis is the type of monitoring done over these actions? These are the issues associated with the concept of the rule of law in the area of administrative and executive affairs.

The purpose of granting such authority to an administration is the identification and determination of the public interest from among the options and the constraints ahead according to time and place conditions. However, the mechanism of appropriate determination of the relationship between the discretionary powers of official authorities on the one hand and the fundamental rights and freedoms of citizens in the light of the principle of the rule of law on the other are the biggest challenges in this field.

In response to this problem, it can be said that law plays a dual function in relation to the scope and control of the discretionary powers in the rule of law theory, thus, turning into a tool to limit the exercise of governance by the administrative authorities on the one hand and suggesting a mechanism for the free enforcement of the law by appealing to authorities on the other hand (Malmiri Center, 2006).

Timely notification of the decision taken by an organization and granting enough time to those influenced by that decision to claim are of the cases that can be used as a solution in this area. In this respect, Article 26 of the Law on Civil Service Management states: "Executive institutions are required to familiarize people with their rights and duties in interactions with executive institutions and promote public awareness in this regard through the media, especially radio and television and thus provide them with the necessary information properly."

In these cases, however, it is not always hoped for the law to be determining as the last solution to provide the correct interaction between the fundamental rights of citizens and official discretionary powers. For this reason, lawyers believe that in such situations, the presence of an efficient judicial supervision can be an effective agent for the interaction between the two above-mentioned categories (Hadavand, 2010).

### **Conclusion**

In modern administrative law, the mechanisms to achieve the public interest in line with the interaction between people and the government account for the major objective of an organization. Of course, today lawyers do not like attaining this goal in any way and believe



an organization is bound to a set of principles and rules that their observance is extremely important as an administrative goal.

Although clarification of decision-making and information of the citizens of administrative decisions, accountability and responsibility of the decision taken, and compensation of the possible loss, compliance with decentralization in the method of decision-making, and approval of people's direct active participation in the official decision-making are an introduction to ensure the public interest, their observance in democratic administrative law has become so important that despite their instrumental functions, they are considered as an independent objective and fulfillment of public interest completely depends on them.

The development of the idea of good governance, during which a government, whether big or small is committed to have a constructive interaction with people and implement the idea of participative management will play an important role in achieving the public interest in turn.

According to the policy of decentralization, privatization, and the project of downsizing of government in the Enforcement Law of General Policies of Article 44 of the Constitution and the Law of Civil Service Management, as well as the use of new public management ideas in legislate the Law of Civil Service Management, it can be said that Iranian lawmakers need crossing the old concepts of the administrative law and seek to create a situation in which the interests of citizens are more appropriately provided in the field of administrative law.

Nevertheless, lack of transparency of the administrative decision and institutionalization of people's participation in decision-making process and limitation of the financial and managerial strengths of local institutions compared to the central authority can be considered as the most essential disadvantages of today's Iranian administrative law. Therefore, it can be said that the public interest theory is of the new issues in Iranian administrative law and the legal mechanisms to achieve this goal have not been established as they should and require a more democratic legislation in this area.

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