

State Commitments for Public Service Provision in Iranian Legal System

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Abstract

Public service theory is the most important basis for administrative law. Services like free education and physical education, social security, health and hygiene services, insurance, supplying basic needs such as housing, food, clothing, hygiene and so on are considered within the framework of these principles. About principles governing on public services, we can find some of them obviously in the constitution text, like equality and freedom; but other principles like continuity, conformity and priority of public services could be extracted indirectly from the constitution principles. We can deduce equality and continuity principles or continuity of public services from constitution principles. Primacy principles and public services conformity are not included in any of the constitution principles.

Keywords: public services, state, the constitution principles, conformity principle, compatibility principle

Introduction

Theory of public service is created for the necessity of providing public services in social life, and over time many changes have been accepted. Different definitions of public services provided; and the common point of all these definitions is providing basic needs of the community. So you can say public services are activities which public or private institutions doing to meet public needs under the supervision of public figures, and in this idea, administrative law is reflected as the law governing on public service, which underlies the legitimacy of power and the state and the competency of the state survival is related to it.

In Iranian law, the notion of public service is one of the main principles of bureaucracy existence. And the philosophy of the state is providing public services. This concept is summarized in the constitution, mainly in principles 3 (The Islamic Republic targets), 29 (social security, health care, insurance, etc.), 30 (free education), 43 (meet basic human needs, housing, food, etc.), 44 (triple economic sectors and economic system). You can also identify the traditional concept of public service and traditional the state functions in principle 57 (Three branches of the ruling), 71 and 58 (legislature), 61, 156 and 159 (the

judiciary), 143 and 176 (Army, Supreme National Security Council). This article attempts to recognize and explain the state's commitment to providing public service according to the constitution of the Islamic Republic of Iran.

First topic: the meaning and history of public service

In this context, we describe the concept of public service (Speech I) and also the history of public service (Speech II).

First Speech: The concept of public service

The concept of public services is of strategic concepts and fundamental public rights. Because of, the concept of public service does not only less than the concept of public authority; but also these two concepts side by side, constitute two undeniable bases of the public rights.

According to Leon Dogi, public service is activity of public utility which is essential for the realization and development of social interdependence and continuously is provided under supervision of governors. Also, the public service is defined as any action which must be regulated, provided and controlled by the state, because it is essential to achieving social cohesion and development, and its nature is so that it's supplying properly is possible only by the state.

Second Speech- public service history

The state has undertaken in the past few tasks, and its responsibilities have been limited in cases like, defining the country's borders, against foreign invasion, and providing internal security and creating systems for addressing grievances. But now with the development of democracy and thoughts justice, the state as the servant is responsible (the welfare state) and responsive and the source of countless social and economic services.

The welfare state not forming, under any circumstances, for example to spend some welfare services provided by the state agencies, but it's formation and evidence requires a series of economic and political structures, which only would realize in industrialized countries, having free economic system.

Liberalism, as a result of changing in the thoughts in the twentieth century under the influence of socialism, say that impartiality or lack of the state intervention in providing freedom is not sufficient and insist on this matter that just by regulating social relations and organizing collective life, together with the state, can achieve to this goal. Therefore, the state should seriously put efforts to regulate social and economic relations, to abuses, injustices and deficiencies in community wiped out. And minimum life standards and public welfare indispensable for human dignity to be provided for anyone, and so it was that new definition of the state presented, and its qualifications and duties, in addition to governing affairs, including economic, social and culture tasks, so that the state can provide real equality, social justice and welfare for citizens.

Second topic - the legal system governing public services

The legal system governing public services is very diverse and numerous. However, we can outline a number of common rules relating to creating, organizing and deleting public services, type of public service and public service practices.

First Speech - creating and organizing public service

The first clause-creating public service

According to the constitution principles of Iran Islamic Republic, creating public service and taking it by the state, is within the competence of Parliament, which can be offer by state (bill) or be a plan of parliament members. The reason that the constitution explicitly put creating these services on Parliament

approval is that, it would be, in fact, exceeding the private sector and as a result, to restrict individual freedoms, especially the freedom of trade, industry and labor.

Second Speech - organizing public service

According to the one general principle, always after creating public services by legislator and defining its general principles, the executive authorities should organize or adjust its service internal organization, also conditions and its activity. Because the administrative authorities are responsible for managing public services, and have right to decide on agency and department organization, in terms of functions and power division among the organization various units. In addition to the state, each minister has competency to organizing services, when law decide to create public service, and about mandatory public services assigned to local units, organizing public service is required. If public service organization adopted by the minister's council of law or regulations, directors should organize their affairs within its domain.

Article 138 of the constitution says: "council ministers have right to lay decree and its regulations for performing office tasks and ensuring implementation of laws and regulating administrative institutions, in addition to cases that Council of ministers or the minister in charge of the implementation of law enforcement regulations.

Second Speech – how to managing public service

All public services not manage in one way, but depending on the type and quality of service are different. Some of them manage exclusively by the state and some by public entities and the private sector or by private entities.

First clause - managing public Services exclusively by public entities

Some public services are managed exclusively by general legal persons and private legal individuals do not have right to interfere in the affairs such as the nuclear energy services, documentation, security and so on.

Second clause- managing public services by public and private entities commonly

Some public services manage by public entities and private entities together, such as social services and assistance, which offer both by the state and by charitable associations, or education, culture, health, insurance and so on.

Third clause – managing public services by private entities.

Today, some private legal entities have been responsible for public affairs, such as professional and trade systems, namely the Bar Association, Association of notaries, Medical Council, the nursing system and so on. These include private individuals who regulate and organize their careers and defend of their professional and corporate interests.

In laws and regulations, due to the importance of these institutions activities, meeting general needs for them are considered public legal privilege. Of course, in these cases, the state has right to monitor actions of these individuals.

Four topics- ways to implement the state's public service in Iran

Generally, the way implementing general affairs is by the state. (With the exception of affairs which done initiatively and with internal state organization and without relying on any external force factor, such as establishing order and security).

Because of the density of affairs (particularly acts relating to the rule), the state, assigned some of the acts and public services (mainly non-the state), who is in charge of them, typically and mainly in two ways, and signed a contract in two legal frameworks, the form of contracts and contract templates.

First Speech - privilege agreement

Privilege means to offer a special advantage, lexically. Privilege agreement is a kind of agreement, which whereby the state or related affiliates in accordance with certain conditions, assigned the managing a public affair exclusively to a specific person or persons, that at this limited time; they must handle it with their capital and in return for their hard work, receive funds from consumers or the state, or pay their interests to the state, such as privilege of water, electricity, telephone etc.

Second Speech - the state contracts

Literal definition of contracts: a kind of agreement whereby the contractor in exchange for receiving a certain fee, committing to implement subject of the employer agreement. Contracting is a kind of agreement whereby the state would assignee the act or selling a commodity with certain conditions, to the selected person or persons known to the contractor, in exchange of wages or the price at a certain time.

Third topic- the state general Capabilities and commitments

Among the factors that increase the state's ability to economic policy and social responsibility, is the issue of humanely and structural capabilities. Amartya Sen, Indian famous economist and 1998 Nobel Prize winner, emphasizes on human factor and believes that the state ability will be a function of the ability of social groups. Therefore, any investment in "human development" area has effects and consequences for the state capacity growth to performing organizational duties.

First Speech - pragmatism in the state commitments

In this process, a kind of the state has capability which, first, could create an appropriate analytical-conceptual framework for establishing mentality towards Sodagrahy in the society. This means, "promotion pragmatism" from the state area to the social area, secondly, in the process of economic policy, the state would have the necessary capability, who be able to create appropriate "social welfare" for society.

Thirdly, structural capability means that political system has the ability to create "structural balance". The combination of these three components is indicated that the states have social responsibility towards the welfare and construction, and benefit of their tools for promoting such capabilities.

Second Speech - structural capability in the state obligations

The countries have "social security" which, firstly, enjoying of high structural capability; secondly, there would be harmony between the objectives and how to achieving them. So, countries benefit of social security which having necessary conditions for the fulfillment of the state obligations in their social responsibility area. Structural capability has tangible and quantitative indicators. Utility and welfare are among such indexes. Welfare associated with the economic earnings of citizens. While the utility shows how people are satisfied of social and economic policies. Signs, such as economic security can be included in the state utility area in the look of society.

VII topic- symbols of the state civil and social rights

The state social responsibility in various areas is considered. Each of these areas is part of the social rights and the states must use of their resources for supplying citizens' social rights. Generally, economic policy is shaped in such a way that it can provide bed for supplying citizen's socio-economic needs. This is considered based on the theory of the welfare the state and the necessity to promote social security in various communities.

First Speech - the state commitment and human rights

Numerous interpretations are provided about the components and topics forming human rights. Some emphasize on "special-oriented approach" in relation to human rights issues.

This means that indicators such as expression freedom, thought freedom and freedom of press media are main human rights issues. Others have a "public-oriented approach" in relation to such matters. Generalists believe that human rights are not only related to the freedom of human action, but also there is wide range of topics containing human rights. Namely, we can point to right of services and general hygiene, citizen's health and education.

Second Speech - compliance international protocol in the state commitments

Although above-mentioned components having non-economic issues, but the realization of these goals and process can be achieve only through economic planning and policy making. Including statements relating to this published subjects, we can point to Universal Declaration of Human Rights (issued in 1948), the Charter of Citizen's Economic, Social and Cultural Rights (issued in 1966), the Charter of Social Rights in Europe (1961), Charter of Africa Rights (1981) and the Universal Charter of Child Rights (1989). Each of these statements which are published in various charters, are part of the citizen's rights, that their realization requires economic planning and policy.

Third Speech- Civil rights and obligations of the State

Among the main topics of social policy making in the current period can be the setting of public needs, especially in the field of human rights and the public needs of citizens. This is considered as part of the process that links the field of economic policy making with requirements of social policy making. Many analysts believe that economic policy making is part of public and social policy making and the state plays an effective and constructive role in meeting the public needs. This shows that:

"The extent of using educational facilities and health and public services largely depends on the productivity of families as well as the country's economic growth. In this connection, common indicators between health and nutrition of citizens can also be improved; in such conditions, service, health and treatment costs will decrease. Based on this relationship, political systems have carried out considerable effort to make the health and social rights of citizens as part of economic policy making".

Fifth topic- contracts governing implementation of state's obligations

First Speech- contracts governing provision of public services in Iranian law

In addition to unilateral decisions, organization can in order to achieve their objectives to use agreements and tie contracts and using contracts to reach their goals, for example, when organization want provide services, e.g. public services concessions, issuance of permission for participation of private entities in public services in the form of public service, services and affairs that are needed by society and people and the private sector are not able to do that and it should be done by the state or public participation.

Examples of legal documents about transfer of services to the non-state sector may include:

- Civil Service Management Code: Articles 13, 24, 22, 18, and 17.
- Fourth Economic, Social and Cultural Development Program: Article 144, Paragraph (b) of Article 136.
- The law of adjusting part of State Financial Regulations: Articles 33, 88, and 43.
- The commission permission of Article 20, Ministry of Health and Medical Education.

Second Speech- Existence philosophy of contracts governing the provision of public services

There have been contracts in the past with the name of civil laws. In fact, the incidence of such contracts can be found since formation of states as its modern concept. Concepts of states in ancient Greece cities must be studied in a separate framework, specifically in political philosophy, and out of the present debate. In the present era, states to some extent and through contracts have transferred conduction of

public affairs, which their management has gone out of free relationships and private initiative and were given to the state, to private parties.

In a general perspective, development of privatization and deregulation has caused that states to have great willing to transfer provision of public services using contracts. Private sector participation in public services such as post, communication, refinery facilities, plants and the like for the first time in the third and fourth development rules in Islamic republic of Iran in line with economic liberalization and privatization was explicitly presented by the legislator.

Third Speech- defining the contracts governing the provision of public services

Preparation and provision of public services can through contract be transferred to the private sector, but two essential elements must be observed in this contracts:

First: public services must be in line with the public interests, of course, contract may be for the benefit of a group of citizens such as students of a university or a specific area, e.g. citizens of Shiraz city.

Second: activities of private sector place in the sovereign of public rights.

Overall, we can present three types of contracts, which aim to serve the public:

1. contracts relating to execution of public affairs (public tasks):
execution of public affairs is a management practice, where public power concessions both in terms of performance and in terms of tasks as well as in the following contracts can well be seen.
 - in contracts tied between management and contractors to implement all the construction projects for the public interest
 - in contracts of public task concessions
2. contracts tied for capturing the public domain, for example, owning the land of a public walkway to create a restaurant that is usually given to individuals by municipalities to create restaurant, train station or the judicial complex.
3. contracts relating to the implementation of public services, according to which a private legal person partially or completely conducts a public service and transfer its implementation to this person with the contract and our meaning from contracts governing the public services in this study is the same kind of contracts.

Fourth Speech- position of the contract governing the provision of public administrative services

All the public services are not provided in the same way, but depending on the type and quality of service, its administration procedure differs. Some of them are ran by the state exclusively. and some others other administered by public and private figures and private sector.

First Paragraph- Public Services Administration exclusively provided by public entities

Some public services are provided exclusively by legal persons of public law and private law persons do not intervene in these matters, e.g. atomic energy services, documentation, security and so on. About position of contract in this type of Public Services Administration, it can be said that since this type of tasks and services are of the governing type, only the state can exclusively provide them and the private sector cannot provide these services.

Second Paragraph- Public Services Administration provided by public and private entities participatory

Some public services are administered both by public and private figures such as social services and assistances, which are provided by the state, charitable associations. Educational, cultural, health and insurance services as well as public services and affairs guarantee the meeting of the needs and protecting

public interests and its management is by the state. There are also affairs administered by private individuals.

The third paragraph- Public Services Administration provided by private persons

Today, some private legal persons have become responsible for public affairs such as professional and trade systems, such as the Bar Association. Notaries Centre, Medical Council, and the Nursing Council. These are private persons who act to regulate and organize their careers and defend their professional and corporate interests. In the rules and regulations, due to the importance of the activities of these institutions in meeting the public needs, public concessions are considered for them. Of course, in these cases, state has the right to monitor actions of these individuals.

Fifth Speech- impact of principles governing on public service on contracts governing the provision of public services

Public Service attempts to meet public and general needs. In other words, public services, public interests and the existence philosophy of the state is providing public interests and public services. The state pays attention to some of the commercial and industrial activities to spend its income in public affairs and services. Because of the importance of the mentioned affairs and because of their connection with public interests, in their delivery to people, it is necessary to observe some principles, which are among the main principles of administrative law. These principles include: the principle of continuity, the principle of superposition, the principle of equality and the principle of primacy. In the following, we address effect of principles governing provision of public services. These principles are as follows:

The first paragraph- Principle of Continuity

The principle of continuity of public services is due to the needs for community administration. The principle for issues that are necessary for continuity of human communities is very important. The goal of public services is public interest and meeting the needs of public. Public interest is a permanent concept, which cannot be cross-sectional and temporarily so that any stopping in this service may lead to serious problems for community as well as major disruptions in people's lives. For this reason, public services should be presented flawlessly and consistently. The principle causes a task for public and administrative authorities so that when setting contract, the continuity of public services must be ensured and in the face of this task, the civil and disciplinary liabilities of public authorities may be considered. This principle when setting all contracts governing on the public service, including administrative, industrial or commercial services, must be applied. Examples of this principle could be seen in contracts related to pre-hospital and the fire services, which should be provided throughout the day.

The second paragraph of compliance principle

This principle has consequences. For example, the state has the right that whenever it wants to change the terms and conditions of services making decisions according to the regulations and regardless of legal obstacles, e.g. acquired rights or contractual obligations and to cause necessary changes. This way, neither users of public services nor officers cannot to deduce to the acquired right of maintaining legal status when they have started communication with the office.

The third paragraph- the principle of equality

Maybe it can be said that principle of equality is the most controversial and complex principle. The important thing from the viewpoint of this principle is that human beings are born equal; so their life is of equal moral value. According to the general principle of equality of citizens before the law and public authorities and since public services are for all the population, the principle of equality dictates. All persons have equal benefits, obligations, commitments due to public service as well as public

expenditures to serve public interest so that the racial, ethnic, ideological and political criteria should not be the basis for determining the primacy of people in using these services. In Islamic Republic of Iran, Paragraph 9 of Article III and Articles 12, 14, 19 and 20 of the constitution, Paragraphs 1 and 2 of Article 43 of the constitution, Article 4 of the Fourth Development Plan approved in 2004, and Article 27 of the Law on Civil Service Management, the principle of equality before the law and therefore the public services have been accepted. The recent article about the equal rights of people in using services of the executive organizations in equal conditions has stated that: executive agencies have the same rights in equal conditions.

The fourth paragraph- Principle of primacy

Principle of primacy means that since public service benefits the general public and the interests and needs of the general population must be maintained. So, if any conflict occurs between private interests and public interests in providing public services, primacy is with public affairs and this causes that state to use its authority to protect the public interests or services. This way, in order that state can use the primacy right, a series of concessions is given to the state, which is exclusively provided for the state. These concessions are due to the public power or due to the basic rights.

Conclusions

Today, the dominant theory in the area of issues related to administrative law principles is theory of "public service"; according to this theory, public services are activities that are provided for all people, which through public or private institutions are carried out under the supervision of public entities to meet the needs of the public. According to the constitution, including Principles 3, 29, 30, 43 and so on, this theory is considered as the main available basis for administrative organizations and it is dependent on the principles governing on them. These principles include equality, primacy, gratis being, continuity and compatibility. Some of these principles including equality and gratis being of public services, concerning gratis education and physical, are predicted in constitution and others are not presented explicitly. However, from viewpoint of the constitution, they can be extracted and identified indirectly.

References

- Abbasi, B., Administrative Law, First Edition, Dadgostar Publication, 2010.
- Ansari, V.; Basics in of the of administrative contracts, Tehran, Lawyer Publication, 2001.
- Emami, Mohammad; Ostovar Sangari, Koroush, Administrative Law, Vol. I, Fourth Edition, Tehran, Mizan Publication, 2009.
- Gorgi Azandaryani, AA., Ten Commandments of Public Law, Pondering on fundamental principles and concepts of public law, Journal of Law, Faculty of Law and Political Science, Vol. 41, Issue 2, 2011.
- Hodavand, M., Adapting Administrative Law, Vol. I, Second Edition, Tehran, SAMT Publication, 2011.
- Hodavand, M.; Mashhadi, A., Principles of administrative law in the light of the views of the Administrative Justice Court, Tehran, Second Edition, Khorsandi Publication, 2012.
- Jafari Langaroodi, MJ. Terminology of Right, Tehran, Ganj Danesh Publication and Library, 1997.
- Mansour, Jahangir, The Constitution of Iran, The twenty-fifth Edition, Tehran, Doran Publication, 2006.

- Martorell James, *Social Policy for Development*, London: Sage Publication, 1995.
- Noorbakhsh, M.; "Thoughts of the welfare state", *Journal of Manshour*, 2004.
- Robins, I., *Understanding Sense Capability Approach*, Cambridge: Cambridgen University Press, 2002.
- Sen, Amartya, *Development as Freedom*, Translated by Vahid Mahmoudi, Tehran: Tehran University Press, 2003.
- Tabatabai Motameni, M., *Administrative law*, Eleventh Edition, Tehran, SAMT Publications, 2009.
- World Bank, *The fight against poverty*: Tehran: Management and Planning Organization, 2002.