

The Right to Transport and Freedom of Commuter in Tehran City according to Laws, Regulations and Procedures of Tehran Municipality

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Abstract: -Transport has been always one of the most important affecting factors on urban life, and especially in the last century with the development of motor vehicles and rapid population change has become one of the main problems of urbanization. Also, due absence of a unit system in application and delivering of services by various systems of public transportation including metro, autobus, minibus, taxi, agencies taxi and private passenger taxi, and ...in urban important centers have been caused appearance of many problems resulting crowded or absence of a proper system in the cities, so that interference the right to transport and freedom of traffic with public rights such as access to clean air, public health, access to public transport and many other public interest has become one of the most important problems of major cities around the world. Unfortunately, in our country, like many other developing countries, governments and municipal authorities instead of accepting their responsibility in creating a harmonious balance between the right to transportation and freedom of traffic with public rights, in most cases, limiting right to transportation and freedom of traffic of citizens. In this study, we review in addition to the theoretical basis of this issue, will have paid presenting of legal criteria to solve this conflict.

Key words: the right to transport, freedom of traffic, disturbance of rights, civil laws, traffic rules.

I. INTRODUCTION

Since the freedom of traffic has vital and important role in the enjoyment of other rights and freedoms in the meeting, means that without it meets, cannot expect the realization of other rights and freedoms, it can be considered the link between all of them. Having such a position, has distinguished it from other human rights and freedoms and make its role among all of cases. Thus, this kind of freedom can be considered as one of the most important human freedoms. Of course, importance of current debate not only due to its role in the realization of other rights and freedoms, but also in terms of substantive is high and valuable importance and status. The analysis of each of the rights separately, outlining their limits in this way and also study how their connections with other rights and freedoms can be a long step in the direction of better and deeper understanding of the rights and obligations of states to it. In addition, the study of regional and international documents as well as internal documents provide a comparison between internal, regional and international systems, and thereby will lead us to the strengths and weaknesses points of these systems.

In general, this article attempts to address such issues as the freedom of traffic in Iranian domestic law, composed elements of freedom in traffic and movement, its restrictions and barriers to the principles governing the restrictions on freedom of traffic, the role of vehicles in carry out freedom of traffic and finally, to be investigated obligations and duties of the government's than freedom. The method used in this research was based on contextual analysis, and to the use of documents, procedures, books and articles required is used the library method and the Internet.

In the first part general investigations relating to freedom transit, including concepts, perceptions and its various meanings examined and is implied the freedom of traffic. In the second part, will discuss conflict of transportation and freedom of traffic than public interests as well as the laws of our country.

1. The definition of freedom of transit and commuter

The definition of freedom of traffic and movement is that people haven't limited in leaving their country to anywhere and if they are going to refer to their country and that if they want to be able to travel within the country. In this way, no obstacle should not be detrimental to the person's will.³

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³ . Motameni Tabatabaee, M., public freedoms and human rights, Tehran, Tehran University Press, September 1370, first edition, p. 29 and Shariati, Saeid, the rights of the nation and the state in constitution, Tehran, Association of Young Ideas, 1384, first edition, p. 137.

"Freedom of movement and traffic is a result of personal security."⁴ And this right are considered of basic human rights in countries which have democratic governance where basic human rights are considered, as much as some people believe that deprived of peoples from such a right is consider as characteristic of authoritarian regimes and minded concentration.⁵

Under normal conditions, movement are free within the country generally, and it's consequently the use of roads and paths for all are free, and equal. Free means that the road is open to everyone and does not require special permission to move in them. Therefore, they are not allowed to create obstacles that cause to disrupt traffic; unless in cases which may require the demands of public security and order in some of limitations. Free also means that traffic in roads is free, and toll from pedestrians to undermine the principle of freedom of movement and traffic. Of course if there is no the rule in this regard, otherwise, toll road is bug-free. If public order, public health and emergency events, be require, government can create limit it, Provided that to raise public awareness of around the exclusion zone and restrictions time and also judicial authorities are responsible in this regard to consider complaints and confirm their votes.⁶

Of course, freedom of movement within the country, don't mean that ignore traffic laws and regulations, transport (land, air, sea), urban traffic and like it. Because the regulations is predicted to improve the of road safety coefficient, save lives and order in traffic, and follow it would not be detrimental to legitimate freedom of movement.⁷

1.1 freedom of movement in international human rights documents

section 1 of Article 13 of the Universal Declaration of Human Rights provides in this regard:

"Everyone has the right to have freedom of movement freely and choose his residence within each country."

Also in the second section of article 13 of the Declaration of Human Rights states:

"Everyone has the right to leave any country, including his own country or return to their country."⁸

For this reason must be ruled that no country can close its borders to the citizens of other countries and as well they shouldn't to prevent as the movement of their nationals to outside and inside the country.⁹ For this reason any kind of restrictions in this area is a serious threat to global understanding and peace.¹⁰

The third section of Article 12th the Covenant on Civil and Political Rights decreed that freedom of movement should not be any restrictions, unless the extent provided for under the law and to protect national security and public order, health, or morals or the rights and freedoms of other have been necessitated peoples and also, will be compatible with recognized other rights in the present Covenant.¹¹

Based on article 13 of the Universal Declaration of Human Rights: "Everyone has the right to have freedom of movement freely and choose his residence within each country." International Covenant on Economic, civil rights, is expressed clearly the right to freedom of movement and choice of housing: "Anyone legally residing in the state territory have right to movement and choice of their housing freely there."

According to the human rights does not have on conventions and declarations on human rights. The Fourth Geneva Convention that including humanitarian law, has stipulated in Article 49:

"Individual or mass forcible transfer and relocation of persons protected from the occupied territory to the territory of the Occupying Power or to territory of any other state, is prohibited whether occupied or not for any reason."

Reports of Court at disposal, including the UN Secretary General's report to refer on the negative impact of the construction of the wall on the right of movement of Palestinians. These restrictions that apply to the right of movement, effect on Palestinians activities clearly.

Human Rights Commission's Special Rapporteur described the impact of construction of the Wall on Ghelgheli city so that can be named it as 'widespread and compulsory transfer. Ghelgheli city with forty thousand inhabitants, completely surrounded by the Wall and residents only can be going inside or outside from a military checkpoint station from seven 7:00 AM to 7:00 PM (section 133)

Report Brittany (Bertini), that the most famous UN report on the humanitarian situation in Palestine indicates that no doubt, build of walls, curfew, checkpoints stations and blockades of Palestinian create strategies that in addition to health, education, labor and health has been effective on the right freedom of movement. In this report emphasized: Palestinians involved with various ways, curfews, road closures and restrictions that almost led to economic collapse of the Palestinian, rising unemployment, rising of poverty, reduction of commercial

⁴ . Motameni Tabatabaee, the former Page 29.

⁵ . Ghazi, , p. 147.

⁶ . Tabatabaee Motameni,; p. 30.

⁷ . Shariati, Saeid,; p. 138.

⁸ . Kamalan, S.M, the Charter of the United Nations, Tehran, Kamalan Press, 1386, first edition, p. 336.

⁹ . Tabatabaee Motameni, M; earlier, Page 29

¹⁰ . i bid

¹¹ . Shariati, Saeid,; Page 138 and 139.

activities, limited access to basic services such as water, medical care and health, education and emergency services and rising dependency on humanitarian aid. These restrictions have been affect almost all activities and have caused to most Palestinians cannot have a normal life and their life in a critical situation be done with deprivation and insults to their human dignity.¹²

The Court reiterates that creating of the wall violates Palestinians' freedom of movement and therefore inconsistent with the first section of Article 12 the International Covenant on Civil and Political Rights (section 128 and 134).

C) Immunity from violating of the ban on forced transfer:

Article 49 of Geneva fourth Convention in 1949, stipulates: "the occupying powers shouldn't be transfer parts of its civilian population into occupied territory. International community town buildings operations of Israeli in the Gaza Strip and west shore violates generally this article. The UN Security Council published a resolution in 1980 that had decreed: "Israel's policy and performance in settling the segments of the population and their new immigrants in occupied territories 1967 violate apparently the Fourth Geneva Convention."¹³

United Nations General Assembly in 1982, with referring to the Fourth Geneva Convention, by issuing a resolution: "it condemned the establishment of new Israeli settlements and its expansion toward of public and private land of Arab and alien population transfer to there."¹⁴

Court having regard to the report of the Secretary-General to establish the impact of the wall on the forced transfer of civilian population, it considers incompatible with Article 49 of the Fourth Geneva Convention and Israel's claim that requires it military necessity and so, it is not acceptable accordance the Convention.¹⁵

Special Human Rights Rapporteur emphasizes in resulting of making the walls, people had to be forced to abandon their homes due to loss of land and water.¹⁶

Universal Declaration of Human Rights as legal document highest in the world arena, for the protection of human dignity, equality, human rights without discrimination of gender and nationality that is he common goal for all human being on earth was codify at 10 December of 1948 and consider the issue of asylum and refugee status priority of its articles, and to appreciate and was respected it as a legal phenomenon. Freedom of movement is considered one of the most important individual rights and public liberties. This point of review rights notices, such as the Declaration of the Rights of America, the Declaration of Human Rights and citizenship in France and also the Universal Declaration of Human Rights to be comes. (Ghazi, 1385, p 144)

1.2 freedom of movement in constitutions of the countries

Because this freedom is expressed with considerable emphasis on human rights instruments, thus can be seen the effects of this emphasizing in the constitutions of countries. For example, in principle VI Canada's constitution has expressed that every Canadian citizen the right to stay in Canada, as well as the shift in arrival or departure from the country.¹⁷

Also, Article XVI constitution of Italy independently to pay for the freedom and the provided that:

"All citizens can travel and stay in any point of the national territory, unless the law generally are imposed limits for health and security reasons. Any restrictions does not apply for political reasons. All citizens are free to leave of the Republic territory or return to it, unless they have obligations under the law."¹⁸ "What are the political constraints, will be mentioned later.

With a view to the constitutions of other countries, we find that this rights and freedoms is mentioned explicitly in the fundamental rules of countries and has a special status.¹⁹

Of course, due to the important advantage of this freedom in the midst of constitutions of the countries and international instruments could be concluded that the government's authority to grant passports to its citizens, is multitasking authorities. This means that the state cannot without law to refrain from granting passports.²⁰

¹² . Ibid

¹³ . U.N. Security. Council. Res, 465, 1 (Mar 1980).

¹⁴ . G.A. Res, 37/88 C, 10 pec 1982.

¹⁵ . section 134 and 135.

¹⁶ . section 133.

¹⁷ . Canada's constitution, Translator: Mehdi Rastegar Asl, Tehran, research assistant, develop and refine, Rules of the Presidential Administration, Winter 1378, p. 122.

¹⁸ . Italy's constitution, translator Amir Reza Vakili Fard, Tehran, research assistant, develop and refine, Rules of the Presidential Administration, Autumn 1379, second edition, p. 28.

¹⁹ . Refer to Madani, Syed Jalal-e din, comparative constitutional rights, Tehran, library Ganj-e Danesh, 1374, pp. 210 and 241.

²⁰ . Motameni Tabatabaee, Page 33.

However, others believe that "the government authority about give visas, which allow of entrance on foreign nationals is voluntary, it mean that to the State shall have jurisdiction whenever, they detect harmful on entrance of elements to into the country, it refrain from grants of visa to them."²¹

Also, freedom of movement to outside the country or entering a country may, for reasons such as security, order and public health temporarily limited or denied.²²

In the constitutions of some countries also has stipulated to exception cases that may be limited the right under the law and in the name of national security, public health and the rights and freedoms of other citizens.²³

In addition, The Prevention of Terrorism Act (1989) in England's limits freedom of movement with intention to prevention of terrorist attacks.²⁴

However, the government could prevent from entrance and residence of foreigners who are not legally qualified and foreigner who do not respect the conditions of entrance and residence, If he stay or stop more than time which has provided, or commits a crime or is deemed his presence against the interests of the country, the government may return him to his country.²⁵

1.3-freedom of movement in Iran

However, constitution of the Islamic Republic of Iran is not a clear reference to the freedom, although in terms, several principles of law can be concluded that although there is no stipulated in this field, but implicitly is the respecting to this right accepted in basic constitution.

As previously mentioned, one aspect of the limits of freedom of movement, is forcing the person to stay in a specified place. Article 33, when is valid these restrictions performance that the law provided it, and therefore, to point out that no one may be exiled from his place of residence or prevented in his favorite place, it is accepted freedom of movement implicitly.

In addition, It can be said that since the section of the seventh, ninth and fourteenth in third principle of the constitution, applied interpretation "political and social freedoms within of the law" and "provide comprehensive rights of men and women" and "the elimination of unjust discrimination and creation of equitable opportunities for all in all material and moral grounds "and know these cases these tasks of the government, so it can be concluded that freedom of movement is such as rights and freedoms that must be considered for people. One of the issues that consider at first glance may be within the constraints of freedom in movement, it is when people must in period of leaving from the country or enter it to maintain order and control have passport and special visa accordance with international agreements.²⁶

One of the appearance of restrictions on the right of residence in a country and that the can be deprived citizen of the right of residence in his country is topic which committed a crime in another country and also exist the contract between the two countries based on extradition of offenders. In this case, it may restricted the right on his personal residence in his country. Of course, political crime except from this rule and cannot be extradited person solely political crime.²⁷

Article 79 constitution of the Islamic Republic of Iran, has allowed the government in state of war and emergency conditions with the approval of parliament temporarily to establish the necessary restrictions. Consequence of the imposed restrictions, may be restricted freedom of movement in the country.

Another form of restrictions that civil law provided on freedom of movement, this is the residence of a married woman and has given same the husband residence and has given the residence as obsolescence's residence of parent or their guardian. Another case residence of employees and civil servants, judicial and military is as well as the location of their mission.²⁸

Also under Article 19 of Islamic Penal Code, court can force person that condemned for committing of public crimes in case of suspended or deterrent punishment, to prison as suspended sentences or deterrent... it is enable to prohibit on reside in spot or certain points or force to stay in a certain place.²⁹

²¹ . i bid

²² . Nakhleh, Morris; Alhoriat, charter of Al-halabial-ghoughieh, Beirut, 1999, first edition, p. 175, quoted from Shariati, Saeid, p 138.

²³ . Madani, Sayed Jalal-e din;, Page 241 Bulgaria constitution, Article 35,

²⁴ . Barnett, Eric; Introduction to fundamental rights, translated by Abbas Kadkhodaei, Tehran, Mizan press, in spring 1382, first edition, p. 216 and 217.

²⁵ . Boushehri, Ja'far, fundamental rights issues, Tehran, Justice press, in 1376, first edition, p. 50 and 51.

²⁶ . Vafadar, Ali, fundamental rights and political developments, Tehran, Sherwin press, 1377, second edition, p. 130.

²⁷ . Ibid, p. 51.

²⁸ . Ashouri, Mohammed and et al; human rights and concepts of equality, fairness and justice, Tehran, Tehran University Faculty of Law and Political Science, April 1383, first edition, p. 156.

²⁹ . I bid

The definition of freedom of movement is that people are free on leaving their country to anywhere and when they can refer to their country and that if they want they can travel within the country. In this way, no obstacle should not be detrimental to the person's will. (Tabatabaee Mo'tameni, 1370, p 29 and Shari'ati, 1384, p 137)

"Freedom of movement is a result of personal security" (Tabatabaee Mo'tameni, 1370, p 29) and the rights such as primary rights of person in countries which have democratic governance so that some people believe deprivation of people from such a right is characteristic of authoritarian and minded focus regimes. (Ghazi, 1385, p 147)

Under normal conditions, movement within the country is free generally, and it's consequently the use of roads and paths for all is free, equal. Free means that the road is open to everyone and does not require special permission for move in it. Therefore, they are not allowed to create obstacles for people that disrupt traffic, except in cases where the requirements of security and public order may require limitations. Free also means that traffic in roads is free and toll from pedestrians to undermine the principle of freedom of movement. Of course, if there is no the law in this regard, otherwise toll to due law is bug-free. If require public order and health and emergency events, government, can limit it, providing that to bring the public on around the exclusion zone and time of restrictions, and also, judicial authorities shall to consider in this area on complaints and confirm their vote. Therefore, they are not allowed to create obstacles for people to disrupt traffic, except in cases where the requirements of security and public order restrictions. (Mo'tameni Tabatabaee, 1370, p 30) require.

Of course, freedom of movement within the country, not mean that ignore traffic laws and regulations, transport (land, air, sea), urban traffic and like it. Because these regulations is predicted to enhance safety and road safety coefficient of the roads, save lives and order in traffic and follow it would not be detrimental to legitimate freedom of movement. (Shari'ti, 1384, p 138)

2. restrictions on freedom of movement

One of the undeniable realities of life in human society that man cannot always have freedom of action in different areas of their lives and inevitably should be undergo to written and unwritten constraints arising from the moral and legal principles governing society. A Writer about the limits of freedom is believe that freedom in level of justice based on justice is in the legal framework and thus, "legal freedom" is same as "legitimate freedom" that supply justice.³⁰

In this regard, Article 29 (2) of the Universal Declaration of Human Rights states restrictions which its goals "securing of recognition and respect for the rights and freedoms of others and respect for morally correct requirements public order and the general welfare ". In addition to this restrictions, in accordance to Article 29 (3) Declaration, people cannot also use of its rights and freedoms a way that "is contrary to the purposes and principles of the United Nations." Article 1 of the Charter of the United Nations in in field to explain the objectives of the United Nations, has studied "the international peace and security" "development of friendly relations among united nations based on respect for the principle of equal on rights and self-ally of nations." "Achieve international cooperation in solving international problems including economic, social, cultural or humanitarian aspects " and Article 2 specifies principles like " sovereign equality of all members "" fulfill the obligations from state with good faith "" peaceful resolution of international disputes "" prohibition of the threat or use of force against the integrity of its territorial or independence of any state " so that must be action basis member states to achieve the mentioned goals.

Here, it is necessary also it is mentioned about general obligation of every person which note in the introduction. H & M. Q. According to whatever states the introduction: "Every person, than other people and also to the community to which he belongs, undertake tasks and shall act as is required that attend in promotion and observance of the recognized rights under the Covenant, vitally."

Moreover, it can be noted as the "golden rule"³¹ morality "with others, just so treat that satisfying behave in the same position you,"³² that on facing issue it can be widely applicable. In fact, in addition to the mentioned limitations above, the legal obligation and the moral principle can be apply as restrictions on exploitation of the people from their rights and freedoms of individuals benefit as the practice.

As rightly pointed out by one of the authors "of limitations or exceptions to any rights, can be interpreted as safety valve its right compliance. If these limits are not respected, definitely or rights will violate or will lead to

³⁰ . Rasekh, Mohammad " freedom as the value " in the right and expedient; essays on the philosophy of law, the right philosophy and the philosophy of value, pp. 297-296.

³¹ . Golden Rule

³² . See: Sayed Muhammad Ghari Sayedfatemi, human rights in the contemporary world, first volume introduction to the theory, concepts, principles, territory, resources, p. 74; M. Afchangi, Sayed Mansoori, "the help and assist to others, moral and legal principles, responsibility of individuals , current challenges, Journal of present, Volume I, Issue 2, summer 1388, pp. 91-90.

violation of the rights of others.³³“Of course, this point must also be added that if not be afraid the restrictions imposed on the right of the government rightly and according to established rules and principles, as the lack of restriction respect by the holder of a right will provide infringement of right.³⁴

According to the passage, freedom of movement must also be considered in rows of the freedoms that face with limitations and are not absolute. In comparing of Article 13 Declaration on freedom of movement and Article 29 (2, 3) it contains a general limitation more than all of the rights and liberties, with Article 12 of the Treaty on Civil and Political Rights which state freedom and its limits, three difference seen:

a. Article 13 of the Declaration is more inclusive than the Article 12, because enjoyment of these freedoms, such as Article 12 only are not restricted to persons who living in a country legally;

B. Among stated limitations in Article 12(3) of the Treaty on Civil and Political Rights, not included restrictions "general welfare", Article 29)(2) and "not contrary to the purposes and principles of the United Nations", Article 29(3). In contrast, Article 29 have been spoken of "public health" and "national security" which in Article 12 of the Treaty on Civil and Political Rights remember them as restrictions on freedom of movement.

C. in Article 29(2) declaration "moral right circumstances"³⁵ mentioned as one of the limitations of the rights and freedoms, but in Article 12(2) instead of them is used "public morality"³⁶.

In comparing with the above two documents, Article 2(3,4) of Protocol 4 of the European Convention on Human Rights and Article 22(3, 4) American Convention on Human Rights, they has remembered two other restrictions to freedom of movement while taking steps to "prevent crime "and also its limitations in some" special areas ".

Given the above, in general, it can be entered the following restrictions on the freedom of movement: public order, national security, public morality, public health, rights and freedoms of others, crime prevention, special districts, public welfare, purposes and principles of the United Nations. In this article, we have discussed some of the above.

Public order and welfare, health, morality or standard and national security³⁷ which have conventional strong link to the collective interests of a society, or to speak better, it considered the collective interest and the "common good"³⁸ of a society, all things are some of the case that protected by laws and no one should violate them or cause tarnishing it,³⁹ So, if it is said that these including restrictions on the enjoyment freedom of movement in the sense that; individual freedom should be exercised with consideration of and attention to such cases and shouldn't be contrast Collective interests of society and seriously contradicts or violates them.

Which of these two cases has priority, it is of challenging theoretical and practical cases. The main differences in this field can see between individualists and socialist that one give priority to the individual and interests and his rights (individualism school) and other give priorities to gather and collective interests in a society (the originality community school).⁴⁰

2.1 resolve of conflict criteria

One of the issues that discussed in the system of human right, is the issue of "disturbance of rights".⁴¹ The question that arises here is that, people are allowed to take action in order to exercise his rights and to enjoy whatever that want their rights and freedoms? By considering of the individual within society and his relevant with other people is definitely the answer to this question is negative, it's mean that one of condition for the enjoyment of rights and freedoms that not to violate the rights and freedoms of others. In other words, one of the limitations imposed on the exercise of the right or freedom, lack of rights conflict with the rights and freedoms of others.⁴²

In fact, here, it's not pause speak of the inherent limitations of the right, "but these limitations are the effects of collective life, and are different to the circumstances, and other variables."⁴³

³³ . Bagher Ansari, freedom of information, Page 149

³⁴ . It will be discussed the principles and regulations governing the conduct of states when restrictions on rights and freedoms in the next volume.

³⁵ . Article 13: "1. Everyone has the right to is entitled freedom of movement and residence within the borders of each state. 2. Everyone has the right to leave any country, including his own, as well as the right to return to their country. "

³⁶ . Public morals

³⁷ . Public order, public welfare, public Health, Public Morals, National Security

³⁸ . Public good

³⁹ . Michael Sandle, liberalism and its critics, Tehran: Cultural Science, 1374, pp. 11, 10

⁴⁰ .Katouzian,N, the principles of public law, Third edition, Tehran, in 1386, Page 148.

⁴¹ .Raha'ee, Saeid'', pp. 463-462.

⁴² . Renee Austin, Pages 501-500

⁴³ .Raha'ee, saeid, p 463

symbolic concept "freedom of my hand so that it does not hit another" Including important and vital meaning in connection with discussions ahead of us, "⁴⁴ freedom of my hand" in this sentence, is a symbol of all the rights and freedoms of the person that may be hit "otherface" that is the symbol of the rights and freedoms of others. In fact, this story signifies unlimited lack of authority to act and freedom of the individual in society; a society that is composed of many people's with very much interest and trends, and requires of live together people in a society, respect for the rights and freedoms from others. Otherwise, do not expect people can a fair and reasonable way benefit from their rights and freedoms.

Given the above, freedom of movement may be conflict sometimes with rights and freedoms of other person or group in society, including the right to a healthy environment. Hence, though people are free to exercise their right, but this freedom does not mean that exploit in any way to exercise his rights.

By mention of a concrete example in this regard, can be helped clearing of the issue. Let us assume that the person "A" living in a mountainous area not face with no interruptions to their commute or control from any person or entity, so, he can benefit from the right to freely, but something that might ago is that the person "A" decides to act from this his right through the building of road to unnecessary destruction of the environment around him. Here, act of the person in his right lead to violation of a collective right, namely the right to a healthy environment, which comes with the right to development, right to peace and remembered it as "solidarity rights, , and it would be inconsistent with the provisions contained in human rights documents.

In addition mentioned examples about the contention of this freedom with a collective right, in relation to interfere with an individual's right can be noted in case that persons duration enjoyment of his freedom, want to passes of another property. Article 98 of Iranian Civil Code about the "right of passage" in this case refers to the principle that the right person has not been allowed commuting from other private property or land unless by the permission of the owner and of course, until they let him still there⁴⁵, so, here's right of property or assets of the person, typically, he is entitled to prevent from entrance of someone to their property and this topic is the restrictions on freedom of movement of others⁴⁶.

In fact, the right or freedom is said to those rights and freedoms that "at all times would continue and can be claim regardless of the circumstances, cannot be limited or constrained and it is non-suspension (termination, reduction) its mean that in time of public emergency (also) cannot occur suspension "some of this absolute rights to refer under the heading" non-violable rights ".

So, except for the above, the general rule about the rights and freedoms that are contained in human rights documents that is the rights and freedoms faced with limitations and obstacles and cannot be spoke absolute them. In general, both in the domestic legal systems and the international human rights system, in addition to respecting to variety rights and freedoms, limitations and barriers has reminded and attempts to determine the boundaries of rights and freedoms.

The situation of rights and freedoms in the Iranian legal system follows the same general rule. However, according to views one of authors, in the Iranian constitution it does not exist sole criterion for drawing the boundaries of rights and Freedoms and can be regarded "man's responsibility versus God," "disrupting in fundamental principles of Islam", "public order", "public interest" and "injurious to others" as the limits and scope of rights and freedoms, but "the multiplicity and dispersion of many of the mentioned limitations can be lead to fluidity and eventually lead disruption of fundamental rights and freedoms."⁴⁷

According to what was said, it seems that the "third line" that can think and it's also a way to achieve integration and coordination between the two subjects (individualism and collectivism) to rights and freedoms of the individual do not lead to become of victim, rights collective interests and also collective interests, are not violated for individual interests. Perhaps it can be said that the integration, coordination and balance between this two topic and what can be called the third line it can be expect of the human rights discourse, because "human rights are not guaranteed merely to satisfying of initiative freedoms and rights of peoples."⁴⁸ It should also pay attention to individual the rights and freedoms and respect of them in society collective rights and interests are respected and guaranteed.

⁴⁴ . Karl Popper, p 289.

⁴⁵ . Article 98: If someone does not have the right to pass other property, but the property owner has given permission to cross his property, any time he can see from his leave and become his blocking as well as other easement.

⁴⁶ . Manfred Nowak, op.cit, P. 281

⁴⁷ . Ali Akbar Georgi Azandriani, the principles of public law, Tehran: Jungle press, 1388, pp. 160-159 and 166-163.

⁴⁸ . Sayed Mohammad Hashemi, "economic and social rights; from theory to practice" in human rights in the contemporary world, the concerns and views of jurists and Iranian scholars (Tehran: A'een Ahmad 1388), p. 211.

Thus, a point that mustn't be remembered is that, as individual rights and freedoms has faced with limitations, (collective interests, national security, order, public welfare and health) also it could not provide extensive definitions so lead to violations of individual rights and freedoms. This means that, first, the presented definition of restrictive concepts should not be wide and second, you have been removed to use exist ambiguities in presented definitions of such concepts in laws and regulations; therefore, the two case which said to be considered like two main strategies in regulating the rights and freedoms on the one hand and the collective interests on the other hand to achieved balance and reasonable balance between them.

In addition, it will be discussed mentioned limitations above with respect to these strategies. Since the order and security are of critical issues in communities and the are among challenging limitations of rights and freedoms, and "In a complex world increasingly and changing of the people, order and security, are the existence necessary and are power condition of communities that also was deemed to guarantee them, to the "first it must be discussed of this two topics to and then it will be examined other limitations.

3. Domestic and international laws and regulations governing the movement

Some of the most important domestic and international laws and regulations governing the movement of public and private vehicles that have been adopted in the Iranian legal system can be outlined as follows:

1. Legislation of dealing with traffic offenses⁴⁹
2. Legislation to prevent from traffic entering Motorcycles without number⁵⁰,
3. Bill amending the Law on tax collection from passenger cars to improve the traffic in Tehran⁵¹,
4. Social Insurance Law intercity freight and passenger transport drivers⁵²,
5. Regulations to improve transport and traffic in Tehran⁵³,

6. Law on free access to rail transport network⁵⁴,
7. Traffic regulations of foreign vehicles⁵⁵,
8. Regulations of transportation and safety management of accidents⁵⁶,
9. Law amending the Law on compulsory insurance of civil liability of owners of motor vehicles ground in front of a third party⁵⁷,
10. Legislation of accession to agreement of Transit Transport Framework of Echo⁵⁸,
11. Iran's accession to the Convention on the Law of traffic on the roads and the Convention on traffic road signs⁵⁹, roads⁶⁰,

⁴⁹ . Approved by the Parliament on 12.08.1389 and on 01.17.1390 was approved by the Guardian Council.

⁵⁰ . Approved 07/24/1373

⁵¹ . Approved 06/13/58

⁵² . Approved 02/18/1379. The law was amended on 05.06.1387. Clause 2 of this Article states that: traffic driving on the road has correlated valid business notebook from the organization of transportation and terminals in throughout of country. The issuance, extension and renewal of manual work required driver's certificate Social Security will be paying right to insurance premium by him. Also according Note of 3, all companies and institutions intercity freight and intercity passenger has committed to prevent from the driver of goods or passengers to driver that has not valid workbook from Department of Transportation and refrain in throughout the country.

⁵³ . Approved 13/11/1383

⁵⁴ . Approved 08/06/1384

⁵⁵ . Approved 04/13/1373 added two notes is the last time on 04/12/1373.

⁵⁶ . Adopted Working Group on the development of public transport and fuel management on 04.06.1388

⁵⁷ . Approved 16/04/1387

⁵⁸ . Approved 05/22/1385. States Parties of agreement "with an emphasis on its commitment to strengthen and grow the transfer easy, fast and efficient cargo, passengers and cargoes between the Contracting Parties" have agreed in relation to some issues related to the movement of passengers and transportation of goods in agreements between the parties. Some of the goals and objectives stated in Article 2 of this Convention: A). Granting transit rights to each of the Contracting Parties to facilitate the movement of goods, luggage and passengers through its territory and provide all necessary facilities for transit transport in the framework of the present Agreement. B) Ensuring the safety of goods, luggage and passengers and avoid unnecessary delay during passage of the territories of the Contracting Parties; C) In Article 10 it is also called upon Member States to consider all necessary measures for safety and environmental protection of environment When passing along the transit. Also, in accordance with Article 12 1. The Contracting Parties to the drivers of vehicles and persons engaged in international transit traffic operations and to those who must obtain a visa, they shall grant entry and transit visa that is valid for one year and each Contracting Party shall have the right for fifteen days in the country for up to five days in transit and at places of loading and unloading stay. 2. In the event of illness or injury to persons and damage to vehicle accidents, length of stay will be extended accordingly.

12. Law of the accession of the Islamic Republic of Iran to the International Convention to marine traffic facilitate.

In general, laws to include regulations on how to use the vehicles in the streets and public places, sidewalks, cavalry force, fines and penalties for violation of traffic regulations, pedestrians, etc., which are directly or indirectly linked with freedom of movement.

Freedom of movement, is including the rights and freedoms that the Iranian constitution, frankly, it has not been learned. However, the constitution does not mention this freedom, does not mean that the constitution was indifferent and did not recognize it; and In fact, the constitution in addition referring to the principle of freedom and human dignity in the introduction, has learned in different principles and various methods of human rights and freedoms of individuals. In addition, other principles of law that are a little more explicit than what was said, it has been including a ban on violations freedom of movement, with the exception of legal cases that actually take the form of negative freedom.

Iran's other rules have such a situation and are not seen explicit appeals for the release in any of them:

The law of Respecting Legitimate Freedoms and Protecting Citizens' Rights in Article 5 of the "principle of non-arrest and detention" has pointed out that the ban constitutes a violation of freedom of movement, unless in accordance with the law.

Passport law that paying the conditions of issuance passport on the vote of entrance into the country and leaving the country's, however, nowhere in the law does not the name of the "right of entry and exit" with "the right to receive the required travel documents" people, but implicitly, it has recognized the right of individuals and some limitations and to be determined conditions governing the issuance of passports.

of the Penal Code on crimes of the armed forces who Article 24 oversees espionage and in accordance with section "d" and "e" is the entry of civilians and foreigners that enter in order to obtain documents or classified information and objectives of such places military.

Law on entry and residence of foreign nationals to conditions visa issuance, paying about entry, exit and residence of foreigners, restrictions governing the entry, stay, exit and pass the foreigners, such as penalties for offenses relating to forgery of passport, residence permit or license of passing, as well as illegal entry and cases on expulsion of foreigners. In Comparing with earlier legislation, the advantage of this rule is that for the first time it is speaks " right to entry " and "right to reside" foreigner (section of G Article 2) After the event the Iranian authorities in the State, "the right to stop at a certain time at points inter-way "(Article 7) and the" right to appealing of revision "(Article 12) more than of the expulsion decision by the competent authorities.

It is also possible to noted conscription law and traffic law of graduates, masters, and higher rent and Iranian experts abroad without the status of military service.

In addition to domestic law, the freedom of movement have been identified implicitly and by implication "half-heartedly", it should be noted that the international documents containing these freedoms which approved by the Legislature and they are considered in accordance with Article 9 of the Civil Law "in the rule of law ". Article 77 the constitution also states that: "Conventions, treaties and international agreements must be approved by Parliament." It is clear that the adoption of a document by the Parliament of a country that gives legitimacy and, therefore, Respect and ensure respect for trick contained in them, without a doubt, Will be transferred to the government.

In relation to what has been said, it seems necessary to remind one thing and that is that, although Article 77 of the constitution speaks on adoption of the convention by Parliament, but this does not mean that treaties adopted by the previous boards binding did not know, perhaps that many of the current laws are seen running considered to be from the decisions of previous meetings.

With all that said, there are so much distance always between the document of law and the reality of its implementation in society. The problem, in particular, it is more than normal limit when the rules regarding the rights and freedoms are very unclear and used ambiguous language and also it is not clearly determined about the rights of individuals and the state.

Freedom of movement and residence within the territory of the country, the right to enter and return to his country, the right to receive travel documents such as passports, freedom of choice of their country, the right to receive travel documents such as passports, freedom of choice and the right to leave the country of destination country are positive elements, that non-fulfillment of any of them is considered a violation of freedom of movement.

According to the principle of non-discrimination and equality as fundamental principles of international law as well as base on documents such as the Convention on the Protection of the Rights of Migrant Workers and their

⁵⁹ States Parties "have accepted unit regulations in order to facilitate international traffic and to increase road safety. This Convention was passed by the National Assembly on 26.11.1354.

⁶⁰ . Approved 31/01/1373

families (Article 8) and the Convention relating to the Status of Refugees (Article 26) aliens in during legally present in a country, have the right to interest freedom of movement. According to human rights documents and procedures in this area, attempted to expel aliens should at least follow the standards and principles of human rights; so it should be said that, attempting to dismiss, as state sovereignty is not an absolute right and is faced with limitations. In fact, such restrictions must be considered one of the achievements of modern international law. In addition to observing the principles of fairness and goodwill, the main government restrictions in this field including: refusing to dismiss or reinstate the person if there is a risk of human rights violations him, have opportunity to protest against the expulsion, the prohibition of the expulsion of arbitrary, mass layoffs and ban the freedom to choose the government of destination.

Based on the principles mentioned women and girls should be able to freely benefit from freedom of movement. Therefore, any action that he wants to take advantage of any of the elements of this freedom, such as the right to obtain a passport or travel within their territory or correlated subject to the will of the "other" violates the "right to self-determination" and thus it's considered as their freedom of movement.

Summary and Conclusion

The development and widespread on use of vehicles in the current era has been of a direct link with movement and freedom of movement of people and therefore play an important role in the realization or violation of their freedom of movement.

Since having freedom of movement, as mentioned above, a significant violation of in the enjoyment other rights and freedoms and equal opportunities for people with disabilities can realize their freedom of movement, greater presence in political life, cultural, social and enjoyment of their other rights and freedoms heplng vital role.

Although the government has monitor mainly on the limits the freedom of movement and exerts their actions in this regard, But their limitations faced in this field and should be follow the principles and conditions such as proportionality of requirement, good faith and the prohibition of discrimination, and therefore the governments as implementation of the rights and freedoms of human do not enjoy as such broad authority so that they can apply mentioned restrictions without of following any principles, But their restriction measures to carry out in this order in a way that does not undermine the principle of freedom of movement.

In addition to the obligation to followingof mentioned principles and conditions, the government is also committed In order to perform of acts or facilitate efforts and did not prevent enjoyment of it. In fact, the government on one hand cannot and should not restrict or threaten the freedom of individuals except the cases enumerated by the law result in conscience and the collective wisdom, and on the other hand have to accomplish their efforts in order to maximum enjoyment of the rights and freedoms. As a result, not only the power of state cannot be so broad that leads to the violation of rights and freedoms, but also must try to not violate rights and freedoms of other people and in this regard should be act on legal action, judicial or executive order prevent the abuse of his rights and freedoms.

The government's commitment to perform the freedom of movement, range of legislative, judicial, administrative and executive policies and actions like the issuance of passports and other travel documents, construction and supervision of roads and highways, traffic laws and regulations and supervision and ensure their implementation, monitoring compliance with standards must be done when carry out manufacturing vehicles, anticipated compensation in the rules means internal rules.

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