

# The Role of Expediency and Public Order in Restricting Freedom of Expression under Iranian Law and International Human Rights Instruments

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Freedom of expression, as one of the most fundamental human rights, is recognized in most legal systems and international human rights instruments. This right constitutes the foundation for the realization of other civil and political rights and is regarded as a prerequisite for the informed participation of citizens in public life. Nevertheless, freedom of expression is not an absolute right and may be subject to restrictions in the interest of public order, national security, public morals, and the rights of others. Under Iranian law, concepts such as public interest and public order are regarded as central grounds for justifying limitations on freedom of expression and are clearly reflected in legal texts, particularly in the Constitution and criminal and media laws. By contrast, within the international human rights system, foundational instruments such as the International Covenant on Civil and Political Rights (1966) permit restrictions on this right only within the framework of necessity, proportionality, and the legitimacy of the aim pursued. The main question of this research is whether the standards governing the imposition of restrictions on freedom of expression under Iranian law are aligned with international human rights norms. To address this question, a descriptive-comparative analytical method has been employed. The findings indicate that although both systems emphasize the necessity of preserving public order and societal interests, the standards of clarity, necessity, and proportionality are not articulated in Iranian law with the same precision and explicitness as in international instruments. This situation provides grounds for broad and, at times, overly restrictive interpretations of freedom of expression in practice. The study concludes that by clarifying the concepts of public interest and public order on the basis of international interpretative principles and strengthening judicial oversight, a more balanced relationship between individual freedoms and collective interests can be achieved.

**Keywords:** *Freedom of Expression; Public Interest; Public Order; International Human Rights Law; Limitation of Fundamental Rights.*

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## 1. Introduction

Freedom of expression is one of the fundamental rights that plays a pivotal role in shaping a free, responsible, and informed society. This right not only guarantees citizens' participation in political and social

life, but also provides the foundation for the development of public reasoning, the critique of power, and the realization of social justice. As John Stuart Mill argues, truth emerges through the clash of opinions, and any unnecessary restriction on expression obstructs the discovery of truth and the intellectual growth of human



beings (Mill, 1859). Accordingly, international human rights instruments, including the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), have recognized freedom of expression as one of the inalienable human rights.

Nevertheless, freedom of expression is not an absolute right and may, under specific circumstances, be subject to limitations for reasons relating to public interests or the protection of the rights of others. Article 19(3) of the International Covenant on Civil and Political Rights explicitly provides that the exercise of this right carries with it special duties and responsibilities and may therefore be subject to certain restrictions which are provided by law and are necessary for the protection of national security, public order, public health, or morals (United Nations, 1966). In this way, the international human rights system has sought to strike a balance between individual freedom of expression and the protection of collective interests. In Iranian domestic law, Article 24 of the Constitution stipulates that publications and the press are free to express their views unless they are detrimental to the foundations of Islam or public rights. Thus, the Constitution simultaneously guarantees freedom of expression and, by reference to concepts such as the “foundations of Islam” and “public rights,” permits its restriction under exceptional circumstances. Moreover, statutory laws such as the Press Law (1986), the Islamic Penal Code (2013), and the Computer Crimes Law (2009) have introduced various limitations in this field, which are often justified by reference to “public order,” “national security,” or “public interest” (Katouzian, 2018).

Two key concepts in the context of restricting freedom of expression are “public interest” and “public order.” Although these notions appear similar, they differ in their meaning and legal function. Public interest refers to interests whose realization is necessary for society as a whole, whereas public order primarily concerns the preservation of stability, security, and social coexistence (Donnelly, 2013). In the Iranian legal system, public interest is a concept rooted in Islamic jurisprudential foundations and is closely connected to notions such as the “interest of the Ummah,” “preservation of the system,” and the “prevention of corruption.” According to Muhammad Baqir al-Sadr, public interest constitutes one of the criteria for the legitimacy of governmental

rulings, and the state may, within certain limits, restrict individual rights in order to protect it (Sadr, 2006). By contrast, in Western legal systems, public order is primarily a customary and legal concept concerned with maintaining social peace and security. In international human rights law, any restriction on freedom of expression in the name of public order must be justified by specific criteria such as necessity in a democratic society and proportionality between the aim and the means employed (Nowak, 2005).

The tension between freedom of expression and public interest or public order constitutes one of the major challenges of contemporary legal systems. On the one hand, freedom of expression is a prerequisite for democratic development and governmental transparency; on the other, unregulated expression may lead to the erosion of moral values, the incitement of violence, or threats to public security. The central question in this regard concerns the location of the legitimate boundary between freedom and restriction, and the standards that may render limitations on freedom of expression justifiable. In Iranian law, the scope and criteria of restricting freedom of expression have long been the subject of controversy and ambiguity due to divergent interpretations of concepts such as public interest and public order. Conversely, although limitations on freedom of expression are accepted in the international human rights system, such restrictions must be prescribed by law, pursue a legitimate aim, and be necessary and proportionate. Accordingly, the fundamental question arises: to what extent do the standards and mechanisms for restricting freedom of expression on the basis of public interest and public order in Iranian law conform to the principles and criteria accepted in international human rights instruments?

Therefore, examining this subject is important for several reasons. First, in the contemporary era, particularly within the context of digital media, freedom of expression has become one of the most significant indicators of political and social development. Second, in Iran, extensive legal and executive restrictions are imposed on this right, which sometimes lack a clear basis in international standards. Third, a comparative analysis between the Iranian legal system and international instruments may contribute to the clarification of the

legitimate boundaries of restricting this right and to the reform of legislative and executive policies.

### 1.1. Literature Review

The theoretical debates surrounding the limits and modalities of restricting freedom of expression have largely developed along four intellectual axes: (1) the liberal/rights-based approach, (2) the justice-oriented or communitarian approach, (3) the security-oriented or republican approach, and (4) jurisprudential and expediency-based approaches in Islamic legal systems. Each of these approaches offers distinct definitions and criteria for “public interest” and “public order,” and consequently provides divergent answers regarding the legitimacy of restricting freedom of expression.

The classical liberal, freedom-oriented approach, rooted in the thought of John Stuart Mill, regards freedom of expression as essential for the discovery of truth and the rational development of society, treating restrictions as exceptional and acceptable only in narrowly defined cases (Mill, 1859). The modern version of this tradition is reflected in international human rights discourse, where instruments and judicial practice emphasize that any limitation must satisfy three cumulative requirements: legality, legitimacy of aim, and necessity/proportionality in a democratic society (Donnelly, 2013; Nowak, 2005). Scholars in this tradition have strongly criticized vague terms such as “public order” and “public interest,” warning that broad interpretations of these concepts may turn them into tools of repression (Donnelly, 2013). By contrast, justice-oriented or communitarian approaches emphasize that individual freedoms must be interpreted within the framework of collective values and social interests. From this perspective, public interest is a real and binding concept necessary for the preservation of social cohesion and shared values (Heywood, 2019). Although this approach does not always insist on rigid legal frameworks, it highlights the importance of historical and cultural contexts in defining public interest. Critics argue that the emphasis on “collective values” may serve as a cover for censorship and the exclusion of minority viewpoints unless objective and reviewable standards are established (Katouzian, 2018). The third approach, the security-oriented perspective, stresses the maintenance of public order, national security, and the prevention of imminent threats. Within this view, the

state has both the duty and the authority to prevent actions or speech that might potentially disrupt order. Proponents of this view argue that in contexts of social unrest or war, restrictions are not only legitimate but necessary. Opponents, however, caution that the “securitization” of public life can easily undermine civil liberties and result in disproportionate exercises of power (Nowak, 2005). In the jurisprudential and Islamic legal approach, public interest (maslaha) and its balance with the objectives of Shari’a play a central role. Iranian and Islamic legal thinkers have explained that public interest, particularly in the form of the “interest of the system” or the “interest of the Ummah,” may justify legislative or governmental measures (Sadr, 2006). From this perspective, restricting freedom of expression is legitimate where it contributes to the preservation of the objectives of Shari’a (protection of religion, life, intellect, lineage, and property) (Ghazali, 1994). The principal critique of this approach is that “public interest” in classical jurisprudential texts is often defined in broad terms without transparent criteria and procedures; this ambiguity facilitates expansive and politicized interpretations, ultimately resulting in extensive restrictions on civil liberties (Katouzian, 2018).

In international legal scholarship, the jurisprudence of judicial bodies such as the European Court of Human Rights and the views of the United Nations Human Rights Committee have played a decisive role in formulating practical standards for permissible limitations. These bodies have emphasized the protection of a competitive marketplace of ideas and the capacity to tolerate “offensive or disturbing” viewpoints, and have stipulated that states must demonstrate the existence of a real, specific, and imminent risk in order to justify restrictions (European Court of Human Rights, 1976; Nowak, 2005). In this way, international practice has sought, through the necessity–proportionality test, to prevent the abuse of public order justifications.

Against these theories, two major strands of critique have been advanced. First, human rights advocates and liberal theorists maintain that jurisprudential or state-centered conceptions of “public interest,” in the absence of judicial guarantees and legal transparency, inevitably facilitate abuse (Donnelly, 2013). Second, conservative and some traditional legal scholars argue that international standards are excessively individualistic

and fail to adequately reflect the balance between cultural or religious identity and individual liberties; in their view, societies with distinctive value structures require adapted criteria in order to prevent harm to social order and cohesion (Hashemi, 2021). Proponents of transparent and reasonable limitations, both in the liberal tradition and in the jurisprudential tradition, have stressed the necessity of codifying objective standards, including a clear definition of “imminent danger,” the establishment of independent judicial procedures, and the obligation to demonstrate proportionality (Nowak, 2005). They maintain that public interest and public order may serve as legitimate criteria for maintaining social order only if they are embedded within a

transparent legal framework and subject to meaningful judicial review (Heywood, 2019). Overall, the existing literature indicates that the core disagreement does not concern the necessity of limitations per se, but rather the standards and mechanisms for controlling such limitations: whether public interest should function as an objective, limited, and reviewable criterion, or as a flexible standard that grants discretion to political authorities. Contemporary scholarship converges on a common recommendation: whenever public interest and public order are invoked to justify restrictions, clear rules, proportionality tests, and independent supervisory institutions must be in place to prevent the exception from becoming the rule.

**Table 1**

*Theoretical Frameworks on the Restriction of Freedom of Expression*

Theoretical Approach	Philosophical Foundations	Conception of Public Interest / Public Order	Standard of Legitimacy for Restriction	Key Sources
Liberal, freedom-oriented	Mill's thought and social contract theories	Public interest as guaranteeing general freedom and preventing direct harm	Restriction justified only in cases of “harm to others”	(Donnelly, 2013; Mill, 1859)
Justice-oriented communitarian	/ Theories of Taylor, Etzioni, and Habermas	Public interest as preserving social cohesion and shared values	Freedom interpreted within cultural and ethical values	(Heywood, 2019)
Security-oriented republican	/ Philosophy of political order and stability	Public order as a tool to protect national security and prevent unrest	Restriction legitimate where the risk is “real and imminent”	(Nowak, 2005)
Jurisprudential Islamic	/ Objectives of Shari'a and maslaha theory	Public interest as safeguarding religion, life, intellect, lineage, and property	Restriction permissible if consistent with maqāsid al-shari'a	(Ghazali, 1994; Sadr, 2006)

**Table 2**

*Positions of Supporters and Opponents Regarding Restrictions Based on Public Interest*

Perspective	Main Arguments	Legal/Theoretical References	Critiques
Proponents of restriction (state-centered and jurisprudential)	Protection of national security and social cohesion; safeguarding moral and religious values; prevention of sedition and hate speech	Jurisprudential doctrine of maslaha (Ghazali, 1994); public order theories in Iranian public law (Hashemi, 2021)	Lack of transparent criteria; risk of political abuse of vague concepts
Opponents of restriction (liberal and rights-based)	Freedom of expression as a precondition for other human rights; public interest as a vague concept; restriction as a last resort	Article 19 ICCPR; ECtHR case-law	Neglect of cultural and security contexts of societies
Moderates (necessity and proportionality approach)	Acceptance of restriction within the three-step test: legality, legitimate aim, necessity	UN Human Rights Committee interpretations	Ambiguity in defining “necessity in a democratic society”

**Table 3**

*Critiques and Reform Proposals in the Literature*

Axis of Critique	Problem Identified	Reform Proposals in Scholarship	Sources
Conceptual ambiguity of public interest	Lack of clear legal criteria in Iranian and international law	Precise legislative and judicial definition of public interest in press and media laws	(Donnelly, 2013; Katouzian, 2018)
Conflict with the principles of proportionality and necessity	Restrictions imposed without proportionality analysis	Obligation of courts to apply the three-step test in interpreting limitations	(Nowak, 2005)
Predominance of security-oriented thinking	Equating public interest with state security	Distinguishing national security from cultural-social interests in media policy	(Hashemi, 2021)

Lack of transparency in Iranian judicial practice	Discretionary and inconsistent judicial decisions	Drafting a special judicial by-law on the limits of freedom of expression and standards of public order	(Katouzian, 2018)
Non-compliance with international obligations	Certain restrictions conflict with the ICCPR	Revision of domestic laws in line with HRC interpretations of the Covenant	(Nowak, 2005)

## 2. Theoretical Foundations of Public Interest and Public Order in Iranian Law and International Human Rights Instruments

Public interest is a concept that plays a decisive role in all legal systems, particularly in the context of the tension between individual freedoms and collective interests. In general terms, public interest refers to those interests and benefits whose realization is necessary for the survival and progress of society, even if this temporarily restricts the rights of certain individuals (Donnelly, 2013). From a philosophical perspective, public interest is a dynamic concept that depends on the cultural and political context of each society; thus, what is regarded as public interest in a democratic system may have a different meaning in an authoritarian system (Heywood, 2019).

In Islamic legal thought, the concept of public interest is rooted in jurisprudence and is associated with notions such as *maṣāliḥ mursalah* and *istiṣlāḥ*. From the third century AH onwards, Sunni jurists considered public interest to be one of the subsidiary sources of legal reasoning, particularly in the views of Imam Malik and Abu Hamid al-Ghazali, who regarded public interest as a criterion for the issuance of governmental rulings. In Shi'i jurisprudence, although public interest has not been accepted as an independent source of legislation, it has played a fundamental role in the theory of *wilayat al-faqih* and "governmental ordinances." Ruhollah Khomeini states that "the government may, on the basis of the interest of the system, temporarily suspend even primary rulings" (Khomeini, 2000). Accordingly, in Iranian law, public interest is not merely a legal concept but also a sovereign and jurisprudential principle that legitimizes political decisions (Hashemi, 2021).

From this perspective, public interest in Iranian law has three dimensions:

1. Jurisprudential dimension: relating to the preservation of religion and the Islamic system;
2. Social dimension: relating to public security and social tranquility;

3. Executive dimension: serving as a basis for governmental and sovereign decisions.

Public order is a legal and historical concept that first developed in Roman law and subsequently in European civil law systems. In its simplest formulation, public order refers to a set of rules that are necessary for preserving the security, tranquility, and moral health of society, and any agreement contrary to them is deemed void (Hart, 1961). In modern legal systems, public order concerns not only physical security but also institutional stability and the fundamental values of society.

In Iranian law, the concept of public order appears in various provisions of civil and criminal legislation. Article 975 of the Civil Code stipulates that "courts may not enforce foreign laws or private contracts that are contrary to public order or good morals." This provision indicates that public order in Iran has both moral and legal dimensions. In practice, any rule or conduct considered a threat to the moral and value structure of Islamic society is deemed to be contrary to public order (Katouzian, 2018).

The principal challenge in Iranian law lies in the conceptual ambiguity surrounding public order, as this term is often used in legislation without a precise definition, leaving its interpretation to judicial practice and the discretion of public authorities. The result has been the uncontrolled expansion of restrictions on freedom of expression in the name of safeguarding public order. By contrast, in the international human rights system, the concept of public order has been elaborated through the jurisprudence of bodies such as the United Nations Human Rights Committee, the European Court of Human Rights, and the Inter-American Court of Human Rights, and is subject to strict interpretative controls (Nowak, 2005).

### 2.1. Theoretical Foundations for Restricting Freedom of Expression on the Basis of Public Interest and Public Order

In human rights theory, freedom of expression is considered a first-generation right (civil and political rights), and the general principle is that the state should



not interfere with its exercise (Donnelly, 2013). Nevertheless, the principle of freedom has always been accompanied by exceptions. Pursuant to Article 19 of the International Covenant on Civil and Political Rights, states may restrict freedom of expression only where three cumulative conditions are satisfied:

1. the restriction is provided by law;
2. it pursues a legitimate aim, such as the protection of public order or public morals;
3. it is necessary and proportionate in a democratic society.

This three-part test, often referred to as the test of legality, legitimacy, and necessity, was developed in the case-law of the European Court of Human Rights and has served as a standard for distinguishing justified from unjustified restrictions in cases such as *Handyside v. United Kingdom* (1976) and *Lingens v. Austria* (1986).

By contrast, in Iranian law, the criteria for restricting freedom of expression have generally been formulated in broad and interpretative terms. The Constitution, on the one hand, guarantees freedom of expression (Article 24), while on the other hand imposes general limitations through concepts such as “the foundations of Islam” and “public rights.” These notions lack precise legal definitions and, in practice, have led to expansive interpretations by state authorities (Hashemi, 2021). Consequently, the main challenge in the Iranian system lies in the absence of objective indicators for determining the limits of public interest and public order, whereas in the international system such indicators are controlled through the tests of necessity, proportionality, and legitimacy.

**Table 4**

*Comparative Overview of Public Interest and Public Order in Iranian Law and International Instruments*

Comparative Criteria	Iranian Law	International Human Rights Instruments
Conceptual origin	Rooted in Islamic jurisprudence and the theory of <i>wilayat al-faqih</i>	Rooted in liberal philosophy and social contract theory
Legal definition	Lacks precise statutory definition; broad and interpretative	Defined within the framework of “necessity in a democratic society”
Competent authority	Governmental bodies, Guardian Council, judiciary	Independent judicial bodies
Basis for restricting expression	Foundations of Islam, interest of the system, national security	Public order, national security, rights of others
Proportionality guarantees	Limited and largely political	Strong judicial control and three-part test
Interpretative approach	Broad and authority-centered	Narrow and freedom-oriented

Table (4) demonstrates that, in Iranian law, the concepts of public interest and public order have often functioned as instruments of restrictive policymaking, whereas in the international system they are applied only in exceptional circumstances and subject to strict judicial oversight.

## 2.2. Interpretative Consequences and Practical Challenges

The ambiguity surrounding public interest and public order in Iranian law has resulted in extensive restrictions on freedom of expression, particularly in the domains of the media and cyberspace. For instance, in certain press and political cases, charges such as “propaganda against the system” or “disturbing public order” have been invoked without the articulation of precise standards (Hashemi, 2021). By contrast, under international law, restricting freedom of expression

requires the existence of a real, specific, and imminent threat to public order, and mere criticism of the government cannot constitute a legitimate ground for restriction (Nowak, 2005).

From an Islamic jurisprudential perspective, public interest must be reconciled with the principles of justice and human dignity. Abu Hamid al-Ghazali, in *al-Mustasfa*, emphasizes that genuine public interest is that which is consistent with the objectives of Shari’a, namely the protection of religion, life, intellect, lineage, and property (Ghazali, 1994). Accordingly, if a restriction on freedom of expression harms any of these objectives, it would also lack legitimacy from a jurisprudential standpoint.

An examination of the theoretical foundations indicates that the concept of public interest in Iranian law is predominantly jurisprudential and political in character and is used as an instrument of governmental decision-making, whereas in the international system this concept

is understood within a legal framework and subject to judicial supervision. Likewise, the concept of public order in Iran, due to the lack of precise definition, is susceptible to misinterpretation, whereas in the international system it is constrained by the three-part test of legality, legitimacy, and necessity in a democratic society. Consequently, one of the essential requirements for reforming the Iranian legal system in the field of freedom of expression is the codification of clear and internationally compatible criteria for defining public interest and public order. This would not only strengthen the legitimacy of the legal system but also enhance public trust and improve Iran's standing within the international human rights regime.

### 3. Practical Comparison of Standards for Restricting Freedom of Expression in Iranian Judicial Practice and International Human Rights Bodies

Although, at the theoretical level, both Iranian law and international human rights instruments recognize the legitimacy of restricting freedom of expression for the purpose of protecting public order and public interest, their practical interpretation and application differ fundamentally. In the international system, the presumption favors freedom, and any restriction must be justified by legal grounds, real necessity, and a rational proportionality between the aim pursued and the measure adopted (Nowak, 2005). In contrast, in Iranian law, the tendency toward expansive interpretations of public order and public interest has often led to the restriction of freedom of expression in favor of overarching governmental or ideological objectives (Hashemi, 2021). In this section, by examining several significant domestic and international cases, the operation of public interest and public order in restricting freedom of expression in the two systems is analyzed.

#### 3.1. International Standards for Restricting Freedom of Expression

In the practice of the United Nations Human Rights Committee and the European Court of Human Rights, three core criteria have been consolidated for the legitimacy of restrictions on freedom of expression (Donnelly, 2013):

1. Legality: the restriction must have a clear legal basis, enabling individuals to foresee the legal consequences of their conduct;
2. Legitimate aim: the restriction must pursue one of the objectives expressly enumerated in Article 19(3) of the ICCPR;
3. Necessity and proportionality: even where a legitimate aim exists, the state must demonstrate that the restrictive measure is necessary and proportionate.

In the landmark case of *Handyside v. United Kingdom* (1976), the European Court of Human Rights emphasized that freedom of expression applies not only to information or ideas that are favorably received, but also to those that "offend, shock, or disturb," as these are essential for a democratic society. At the same time, states retain a margin of appreciation to impose certain restrictions within a reasonable interpretation of public order.

Similarly, in *Lingens v. Austria* (1986), the Court held that public officials must display a greater degree of tolerance of criticism and that restrictions on political speech on the grounds of public order are acceptable only in exceptional circumstances (European Court of Human Rights, 1986).

#### 3.2. Standards Applied in Iranian Judicial Practice

In Iran, several bodies, including general and revolutionary courts, the Special Court for the Clergy, and the Press Supervisory Board, exercise competence in matters concerning freedom of expression. These bodies have frequently imposed restrictions by reference to the Press Law (1986), the Islamic Penal Code (2013), and the Computer Crimes Law (2009). Illustrative examples are found in press cases following the 1990s, where publications were suspended on grounds such as "publication of material contrary to public morals" or "disturbance of public order." Although Article 6 of the Press Law enumerates prohibited content, concepts such as "contrary to the foundations of Islam" or "contrary to the interests of society" remain undefined (Katouzian, 2018). In several decisions of the Administrative Justice Court, the blocking of media outlets or internet websites has been justified by reference to the "protection of public order," without any legal analysis of necessity or proportionality (Hashemi, 2021). This clearly

demonstrates the weakness of congruence with the international three-part test.

**Table 5**

*Comparative Analysis Based on the Three-Part Test*

Criterion	International Practice	Iranian Judicial Practice	Comparative Result
Legality	Requires a clear, foreseeable, and accessible legal basis	Many legal concepts remain vague (e.g., "foundations of Islam")	Lack of legal clarity in Iran
Legitimate aim	Must be expressly listed in Article 19(3) of the ICCPR	Broader aims such as "protection of the system" are invoked	Unnecessary expansion of aims in Iran
Necessity and proportionality	Must be shown that the measure is a last resort	Often imposed without assessment of necessity or proportionality	Failure to observe proportionality in Iran

### 3.3. Practical Case Comparisons

#### a) *Handyside v. United Kingdom* (1976)

The Court examined the publication of a book deemed to contain obscene material. Although the Court accepted the state's action under the heading of "public morals," it stressed that freedom of expression covers even shocking or disturbing forms of expression and that restrictions must be narrowly construed.

#### b) Iranian Administrative Justice Court case concerning the suspension of the magazine *Shahrvand-e Emruz* (2008)

In this case, the Press Supervisory Board ordered the suspension of the magazine on the basis of Article 6 of

the Press Law and alleged violation of "public interest." The Administrative Justice Court upheld the suspension without examining the necessity of the measure or the availability of less restrictive alternatives. This demonstrates that proportionality is not seriously applied in Iranian law.

#### c) UN Human Rights Committee case — *Mukong v. Cameroon* (1994)

The Committee held that the detention of a journalist who had criticized the government violated Article 19 of the ICCPR, as the state failed to demonstrate that his speech constituted a real threat to public order. States must therefore prove the "real necessity" of restricting expression.

**Table 6**

*Structural Comparison of Public Interest*

Feature	Iranian Law	International Human Rights System
Theoretical basis	Islamic jurisprudence and governmental ordinances	Liberal philosophy within a human rights framework
Decision-making authority	Governmental bodies (Expediency Council, Guardian Council)	Independent courts and supervisory bodies
Standard of application	Protection of the system and religious values	Necessity and proportionality in a democratic society
Judicial review	Limited and political	Full and independent
Practical outcome	Broader restrictions on freedom of expression	Exceptional and limited restrictions

**Table 7**

*Comparison of Judicial Practice in Selected Cases*

Case	Adjudicating Body	Basis of Restriction	Final Outcome	Impact on Freedom of Expression
<i>Handyside v. United Kingdom</i> (1976)	European Court of Human Rights	Public morals	Restriction upheld with narrow interpretation	Preservation of freedom within order
<i>Lingens v. Austria</i> (1986)	European Court of Human Rights	Reputation of public officials	Violation of freedom of expression found	Strengthening of political criticism
<i>Shahrvand-e Emruz</i> case (2008)	Administrative Justice Court of Iran	Public interest	Suspension upheld	Severe restriction on media freedom



Table 8

## Shared and Distinct Legal Indicators

Indicator	Common Elements	Distinct in Iran	Distinct in the International System
Recognition of freedom of expression	Recognized in both systems	Conditioned on religious foundations and system interest	Conditioned on necessity in a democratic society
Interpretation of public order	General and value-oriented	Dependent on political discretion	Limited and subject to judicial oversight
Supervisory mechanisms	Executive and political	Guardian Council and Expediency Council	Independent international courts
Transparency of laws	Relative and interpretative	Often vague and inconsistent	Precise and foreseeable

Restriction of freedom of expression on the basis of public interest and public order in Iranian law, although justifiable in terms of jurisprudential and statutory foundations, lacks clarity, proportionality, and effective judicial oversight when assessed against international human rights standards. By contrast, the international system, through mechanisms such as the three-part test and independent judicial control, has succeeded in preserving a balance between individual freedom and collective interests. In order to achieve greater convergence between Iranian law and international standards, it is recommended that:

- clear statutory definitions of “public interest” and “public order” be adopted;
- an independent judicial body be established to oversee limitations on freedom of expression;
- the principles of proportionality and necessity be incorporated into press and cybercrime legislation;
- human rights education for judges and legislators be strengthened.

#### 4. Conclusion

Freedom of expression, as one of the most fundamental human rights, occupies a central position in all legal and political systems. This right is not merely a means of expressing ideas and exchanging information, but also a prerequisite for democracy, public oversight, and the development of collective reason. Nonetheless, no legal system regards freedom of expression as absolute, since the preservation of social order and the protection of public interests necessarily require reasonable limits on the exercise of this freedom. In this context, the concepts of *public interest* (maslahah ‘Ummah) and *public order* constitute the principal theoretical and legal grounds for restricting freedom of expression. The present study, adopting a comparative approach to Iranian law and international human rights instruments, has sought to

demonstrate how divergent conceptions of these two notions have resulted in differing balances between individual liberty and state authority.

The examination of theoretical foundations reveals that both *public interest* and *public order* are multilayered concepts that have evolved over time. In Western legal systems, these notions have been developed within liberal theoretical frameworks, with an emphasis on individual rights. In other words, in modern legal philosophy, public interest is understood as requiring minimal state interference with rights and freedoms, while common societal interests are secured through transparent and accountable legislation. By contrast, within Islamic legal thought and, in particular, Iranian law, public interest is rooted in jurisprudential doctrines. From the perspective of Shi’i jurists, the welfare of the community serves as a source of legitimacy for governmental decisions and may, in certain circumstances, temporarily prevail over primary legal rules (Khomeini, 2000). Accordingly, public interest has been accepted as a regulatory principle governing major state policies and as the foundation of *velayat-e faqih* in the exercise of sovereign authority. This has caused the concept of public interest in Iranian law to acquire a predominantly political and governmental character, rather than a purely legal one.

Furthermore, the concept of *public order* in Iranian law—based on Article 975 of the Civil Code and constitutional principles (notably Articles 40 and 24)—has remained fluid and undefined. Whereas, in the international human rights system, public order is limited to public security, social peace, and the rights of others, in Iran it may encompass any matter deemed contrary to Islamic foundations or the interests of the state (Katouzian, 2018). This conceptual ambiguity has facilitated expansive interpretations and extensive restrictions on freedom of expression.

Consequently, it may be concluded that, in Iranian law, the role of public interest and public order in limiting freedom of expression reflects an authoritarian model, in which the state acts as the primary determiner of the scope of liberties, rather than objective and legally controllable standards. In contrast, in international human rights instruments, these concepts are permitted to justify restrictions only where three cumulative conditions are satisfied: legality, legitimacy of aim, and necessity in a democratic society.

A comparison between Iranian law and the international human rights regime demonstrates that, although both systems acknowledge the permissibility of restricting freedom of expression, the underlying philosophy and mechanisms of such restrictions are fundamentally different. In instruments such as the International Covenant on Civil and Political Rights (Article 19), the legitimacy of restrictions is contingent upon the protection of public values such as national security, public order, public health, or public morals. Such legitimacy is only recognized where restrictions are imposed by law, pursue a specific legitimate objective, and are applied in a proportionate manner. By contrast, in Iranian law, the legitimacy of restrictions is primarily tied to the preservation of the Islamic system and jurisprudential foundations. In other words, the “interests of the system” are treated as an autonomous and superior value capable of justifying any form of limitation. This understanding departs from international standards, in which the objective of restrictions must lie outside the preservation of political power and instead be defined in terms of the protection of civil society.

In the case-law of the European Court of Human Rights, the principle of proportionality operates as a controlling mechanism to prevent unnecessary state interference in freedom of expression. In the landmark cases examined, the Court emphasized that freedom of expression encompasses ideas that may “offend, shock, or disturb,” and that restrictions are permissible only where there exists a real and immediate threat to public order. By contrast, Iranian law lacks a comparable test of necessity and proportionality, and determinations of public interest or threats to public order are largely entrusted to political and security bodies. As a result, restrictions tend to be pre-emptive, general, and imposed without effective judicial oversight.

Within the international human rights system, independent judicial bodies such as the UN Human Rights Committee and the European Court of Human Rights exercise effective supervisory functions in assessing the legitimacy of restrictions. In Iran, however, oversight of limitations on freedom of expression is generally vested in institutions that form part of the power structure itself. This institutional overlap undermines the principles of impartiality and independence and reduces the effectiveness of legal remedies. While, in international law, freedom of expression constitutes the general rule and limitations are exceptional, in Iran the very recognition of this freedom is conditioned by the proviso that it must not be contrary to Islamic principles (Article 24 of the Constitution). As a result, restriction operates as a structural presumption rather than a temporary exception.

Comparative analysis indicates that the divergent interpretations of public interest and public order reflect two distinct philosophies of human rights:

1. A liberty-oriented philosophy (in the international system), premised upon the primacy of the individual over the state and the necessity of controlling political power;
2. A duty-oriented philosophy (in the Islamic-Iranian system), premised upon the primacy of religious and social order over individual will and the legitimacy of governmental intervention to preserve religious values.

Accordingly, in Iran, public interest is understood not primarily as the benefit of civil society, but rather as the stability of the governing system and the preservation of an ideological order. In practice, restrictions on freedom of expression are therefore employed not to protect “society,” but to safeguard “the system.” From a theoretical perspective, this approach is incompatible with the universal foundations of human rights, which are grounded in the equal dignity of all human beings and cannot be subordinated to particular political interests. Moreover, excessive reliance on the indeterminate concept of public interest, without clearly defined legal boundaries, leads to the relativization of justice and liberty. When public interest transcends the rule of law, no objective standard remains to evaluate the legitimacy of state decisions. This, in turn, fosters legal uncertainty, media self-censorship, and the erosion of public trust.

In sum, the study has demonstrated that public interest and public order are necessary but double-edged concepts. When precisely defined and carefully constrained, they serve as guarantors of balance between liberty and security; when subordinated to political authority, they become instruments for the violation of freedoms. The international human rights system, through the establishment of clear legal standards of legality, legitimacy, and proportionality, has attempted to channel these concepts in the service of liberty. By contrast, the Iranian legal system, by entrusting their interpretation to political institutions, has effectively transformed them into tools of restriction. Accordingly, reform in this domain requires a transition from a state-centred to a society-centred understanding of public interest and public order. In other words, public interest should be redefined not as the “interest of the system,” but as the “interest of the people.” Such a reorientation is not incompatible with religious or jurisprudential foundations; rather, it can serve to strengthen justice, transparency, and public trust within the framework of the Islamic legal order. Ultimately, it may be concluded that the proper balance between freedom of expression and the preservation of social order can be achieved not through restriction, but through the development of democratic institutions, civic education, and rational interpretations of jurisprudential concepts. Only then can public interest function not as a mechanism of control, but as a standard for the realization of justice.

## 5. Research Recommendations

### A) At the Legislative Level

1. Statutory definition of public interest and public order: The legislature should enact precise, restrictive, and objective definitions of these concepts—particularly within a prospective law on public freedoms or a revised press law—to prevent expansive interpretations.
2. Mandatory application of the three-part test: Any restriction on freedom of expression must:
  - (a) be prescribed by clear law;
  - (b) pursue a legitimate aim;
  - (c) be necessary and proportionate in a democratic society.
3. Establishment of an independent supervisory body: An institution analogous to a

constitutional court or an independent human rights commission should be created to assess the legality of restrictions.

4. Amendment of Article 975 of the Civil Code and related criminal legislation: The notion of public order should be confined to genuine threats to public security and social peace, rather than interpretive moral or ideological values.

### B) At the Policy-Making Level

1. Promotion of a culture of tolerance and dialogue: Policymakers should recognize that diversity of opinion is not a threat but a foundation of social resilience.
2. Reform of security policies concerning cyberspace: Public interest should be understood as ensuring transparency and preventing media monopolization, rather than suppressing critical discourse.
3. Drafting of a Charter of Media Freedom: With the participation of civil society and professional press associations, to regulate state-media relations on the basis of mutual trust.
4. Gradual harmonization with international standards: Through accession to regional conventions and implementation of recommendations issued by UN human rights mechanisms.

### C) At the Judicial and Interpretative Level

1. Restrictive interpretation of public order and public interest: Courts should interpret these concepts within the framework of fundamental rights rather than solely through governmental considerations.
2. Introduction of open judicial procedures in press-related cases: So that civil society may participate in and monitor decisions concerning restrictions on freedom of expression.

## Authors' Contributions

Authors contributed equally to this article.

## Declaration

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

## Transparency Statement

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

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## Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

## References

- Donnelly, J. (2013). *Universal Human Rights in Theory and Practice* (3 ed.). Cornell University Press.
- European Court of Human Rights. (1976). *Handyside v. United Kingdom*. Strasbourg: European Court of Human Rights.
- European Court of Human Rights. (1986). *Lingens v. Austria*. Strasbourg: European Court of Human Rights.
- Ghazali, M. (1994). *Al-Mustasfa min 'Ilm al-Usul*. Dar al-Kutub al-'Ilmiyya.
- Hart, H. L. A. (1961). *The Concept of Law*. Clarendon Press.
- Hashemi, M. (2021). *Constitutional Law of the Islamic Republic of Iran*. SAMT Publishing.
- Heywood, A. (2019). *Political Theory: An Introduction* (5 ed.). Palgrave.
- Katouzian, N. (2018). *Public Law and Fundamental Freedoms*. Mizan Publishing.
- Khomeini, R. (2000). *Velayat-e Faqih (Islamic Government)*. Institute for the Compilation and Publication of Imam Khomeini's Works.
- Mill, J. S. (1859). *On Liberty*. Parker & Son.
- Nowak, M. (2005). *UN Covenant on Civil and Political Rights: CCPR Commentary*. Engel.
- Sadr, M. B. (2006). *Iqtisaduna (Our Economics)*. Islamic Publications Institute.
- United Nations. (1966). *International Covenant on Civil and Political Rights*. New York: United Nations