

Detailed Abstract of the Article: A Comparative Study of the Restoration of Public Rights with Emphasis on the Role of the Judiciary

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Introduction and Research Problem

The present study examines the concept of "restoration of public rights" and the role of judicial institutions, particularly the prosecutor, in Iran's legal system. The main problem is that although Article 156, Clause 2 of the Constitution considers the "restoration of public rights" to be among the duties of the judiciary, and the 2018 Directive has also provided mechanisms for it, there is no comprehensive criterion for distinguishing "public rights" from "individual rights" and "public interests," and the concept of "restoration" is not precisely defined either. This ambiguity leads to differing interpretations of prosecutors' jurisdiction and dispersity in judicial practice.

Conceptual Framework

Public interest is a complex and ideological concept that is influenced by political structures. The definition provided: "An outcome that provides the best desirable, sustainable, and inclusive conditions for the life of a social group." This definition focuses on final outcomes, not merely policies and instruments. In Iran's legal system, there are three main approaches to defining public rights: The first approach considers public rights to be the set of rights and privileges that all members of society enjoy equally; the second approach regards the restoration of public rights, in terms of nature, as close to the protection of public rights and places it at a level beyond individual rights; and the third approach considers public rights to be a combination of private and public rights, which includes the individual and social rights of citizens and even foreign nationals. The common point of these views is that public rights pertain to rights or interests whose effects go beyond the level of private relationships and affect society or a broad group. The study proposes four fundamental criteria for identifying public rights: the existence of a specific legal basis, the public or trans-individual scope of beneficiaries, the potential impact of the violation of the right on society, and the necessity of institutional support.

Accordingly, it distinguishes between "public rights" and "public interests": public interest may merely be a social goal or expediency, while a public right must have legal backing.

The Difference Between Class Actions and Public Interest Actions

In class actions, the right invoked belongs to a particular class or group (such as the workers of a factory), and only members of the specified group have the right to file a claim. However, in public interest actions, the scope of beneficiaries is much broader and relates to the general public. Any individual in society can, under certain conditions, seek to vindicate a right that is for the benefit of the entire society.

The Role of the State as the Principal Defendant

Many macro-level decisions are made by public and governmental institutions; therefore, in a major part of public interest actions, the defendant is a public law entity or a governmental organization. In traditional systems, the condition of having a direct and personal interest was required for the acceptance of a claim, but today many countries have provided mechanisms for filing claims in the absence of a direct beneficiary.

The Nature of "Restoration" and Its Distinction from Other Judicial Duties

There is a key distinction between the "right being protected" and the "institutional function of protecting the right": "Public rights" pertain to rights and interests of a trans-individual nature, and "restoration" is the set of measures and jurisdictions exercised to guarantee, restore, protect, and prevent the violation of these rights. The violation of public rights cannot in all cases be equated with the commission of a crime or civil damage. An analysis of Article 156 of the Constitution shows that "restoration of public rights" is placed alongside "handling complaints" and "crime prevention" and has an independent function. Therefore, the restoration of public rights cannot be fully reduced to the handling of private claims or crime prevention.

Field Findings

An examination of approximately 200 judgments and opinions of prosecutors in several provinces reveals two main views: The first view holds that public rights can include cases where the beneficiary is a specific individual; the second view believes that public rights are realized when a large group of people is affected. The study proposes a third view: The main criterion is the nature of the right and the direction of its protection, not merely the number of affected persons. If the right claimed essentially belongs to a specific person and the goal is merely the recovery of a debt

or compensation for damage, the multiplicity of victims does not change the private nature of the right. Practical examples include the order of the deputy prosecutor of Bandar Abbas (2020) to prevent the discharge of a newborn from the hospital until full recovery, citing Article 290 of the Code of Criminal Procedure and Article 29 of the Constitution, and the order of the prosecutor of the center of Sistan and Baluchestan to provide a place for the companion of a patient to rest. These examples show that many public rights issues are not necessarily of a criminal.

Legal Challenges and Proposals

The existing challenges are: the lack of a comprehensive and coherent criterion for distinguishing public rights from public interests or private rights with social effects; the inability of the 2018 Directive to replace comprehensive legislation, because determining the limits of jurisdiction of judicial institutions requires a clear legal basis; and the necessity of developing jurisdictions within the framework of the principle of legality of jurisdictions. Proposals include drafting comprehensive legislation with specific criteria for identifying public rights, stipulating in directives that the mere multiplicity of victims does not transform a private right into a public right, and creating a coherent judicial practice through the collection and classification of judgments related to public rights.

Conclusion

Public rights pertain to rights that are rooted in the Constitution, statutory laws, or enforceable regulations, and their violation exposes a group of individuals in society to harm. The main criterion for identification is the nature of the right and the direction of its protection, not merely the number of affected persons. The restoration of public rights has a function independent of private claims and criminal prosecution and can have supervisory, preventive, protective, and non-criminal dimensions. The role of the prosecutor should be within the limits of legal jurisdictions and, in cases of the violation of the trans-individual rights and interests of society, beyond criminal prosecution. A comparative study shows that in some legal systems, special mechanisms are provided for the protection of public interests, but their direct transfer to Iran's legal system is not possible without regard to domestic legal foundations. Resolving the existing ambiguities requires drafting clear legal criteria, creating a coherent judicial practice, and paying attention .

Keywords

Restoration of public rights, public rights, individual rights, prosecutors, class actions, public interest