



International Research Science and Development Center

International
Research Science
and
Development Journal

www.IRSDJournal.com

International Research Science and Development Journal
Vol. 3, No. 1, 2022, pp. 104-128.
ISSN 2348-3008

An introduction to the jurisprudential and legal concept of public order and its disruption

Meysam Behdadfar¹. Peyman Taghavi Gooderzi²

¹ Jurisprudence and Fundamentals of Law, University of Islamic Religions

² Master of Jurisprudence and Fundamentals of Islamic Law, University of Islamic Religions

Abstract

Observance of public order in any country is one of its most important legal rules and one of the most important duties of governments is to maintain public order, which they institutionalize through the enactment of relevant laws and regulations, and this concept is one of the fundamental issues discussed in the field. Jurisprudence and public law. In various laws and regulations of our country, the term public order has been used without the legislator defining and expressing its dimensions. But so far, due to ambiguity and abstraction, the concept of public order has not been able to provide a comprehensive definition. Therefore, the uncertainty of the framework of this concept and the lack of an explicit and definite rule for recognizing the instances of acts that disrupt public order, in practice, has challenged the country's legal system. In this article, while comparing the commonalities and differences of this concept in the fields of jurisprudence and law, we try to present a different perspective by emphasizing the examples of disturbing public order with a comparative approach and it will be stated that the concept of public order is a social concept. It is a society and its observance is one of the guiding principles of any legal system. Finally, solutions for judicial institutions are presented.

Keywords: Public Order - Disruption of Order - Good Ethics - Public Interest - Public Services - Public Security - Velayat-e-Faqih.

Introduction:

Public order is a prerequisite for the development and empowerment of a society and a necessary condition for having many examples of civil rights, including social comfort and welfare, and its importance is such that this concept is rooted in the law in question and as the goal of the case law. It is considered and on the other hand in the rules of religion is a religious purpose and is rooted in the religious principles and is intended to achieve justice. The purpose of many laws is to maintain public order. For this reason, public order, while it can be the basis of citizens' obedience to the law, facilitates the rule of law by citizens (Marco Sassoli, 2005: 670).

Public order is considered as a deterrent and supporter of public interests in all areas of law, including private and public, as well as from another perspective in national and transnational areas (Bahman Hosseinjani, 1389, 3). The importance of public order in private law to the extent that some jurists, given the increasing involvement of the government in the economy, believe that the general condition of compliance of the contract with the public interest and public interest (as the main elements of public order) should be added to the basic conditions of transaction accuracy (Nematullah Ulfat, 1384, 84). Dr. Katozian in one of his articles acknowledges " Is to agree with public order (Nasser Katozian, 1387: 338). Due to the greater application of this concept in public law; The main focus of this article is on the realm of public law, which is a neglected issue.

The relationship between public order and political, cultural, social, etc. structures is so close that it is impossible to continue social life without considering and observing it. Therefore, any factor that disrupts the establishment of public order and disrupts it in society is condemned in both jurisprudence and law, and punishment is provided for it. Accordingly, in order to clarify the issue, due to the ambiguity of the concept of public order, its

position in jurisprudence and law is explained, and then the concept of disruption of public order is examined and finally the result of the discussion will be presented.

Investigating the jurisprudential concept of public order:

Public order is one of the issues that Muslim jurists have paid attention to, but have never given it a central position, and for this reason it has been less discussed. Of course, the result of various and expensive discussions that Islamic jurists have had leads us to the point that the concept of public order has been considered by nature and not by title (Abd al-Ghani Ahmad Vastani, 1341: 243) and based on the implementation of opposing affairs. They have obstructed with public order. Of course, it seems that the concept of public order has not been explicitly considered in the works of jurists. In the Islamic legal system, which looks at legal issues from another perspective and has its own worldview, other dimensions of the concept of public order have also been considered. . For example, in the words of the Infallibles (PBUH), the concept of order has received much attention from individual and social aspects, and the jurists have been very strict about anything that disturbs the order of society and disrupts the livelihood system of the people. Therefore, Islam's view of public order is known in terms of "order", "maintenance of order" and "disorder of the system" in jurisprudence. And it can be said that in all chapters of jurisprudence, public order is considered as a guiding principle by jurists and all jurisprudential rulings can be analyzed in this regard. (Mohsen Ismaili, 1379: 268) For example, it has been argued that it is not permissible to violate a judge's sentence: "If a sentence is allowed to be violated, there will be chaos in society, so to prevent chaos, a judge's sentence is invalid." (Mohammad Hassan Ashtiani, 1363: 55) "The system of society depends on judgment, and if there is no judgment, there will be no order in society and there will be no justice."

(Sayyid Abdul Karim Mousavi Ardabili, 1423 AH: 331). Ayatollah Vahid Behbahani also considers the realization of social order as one of the reasons for proving the authority and influence of the ruling of the Shari'a ruler. For its realization extended. In the issue of not allowing the harassment of a jurist with a jurist in charge of the province, it has been argued: "If it is permissible for a jurist to interfere in a matter that has been ruled by the guardian of the people and rule against it, the system of interests of Muslims will be disrupted and disruption of the system of Muslims is definitely not permissible." (Mohammad Sadegh Hosseini Rouhani, 1413 AH: 296). In Shiite political jurisprudence, the current government is considered as an undesirable and illegitimate government and it is considered obligatory to fight against it. This all-out struggle will be reasonable when its replacement is considered so that the society does not suffer from disorder and vacuum of government, otherwise such a struggle is nothing more than creating chaos and disturbing public order and is condemned in jurisprudence and This is the basis that in the narrations of Sultan Fajr's government is introduced better than the absence of government.

Examining the legal concept of public order:

In jurisprudence, we sometimes encounter terms and interpretations that, despite their very important role and application, have a kind of conceptual ambiguity and public order is one of them (Mohsen Sadeghi, 2005: 90). The fact is that in the world no There is no comprehensive understanding of the criteria for recognizing the concept of public order (Andrew Barraclough and Waincymer Jeff, 2005: 5) and many countries have difficulty expressing the term. The relative nature of the concept of public order in the EU member states, they faced a major dilemma in their lawsuits because each country explained and interpreted the concept according to its own point of view and the work reached a point where the European Court of Justice accepted the concept. The relative

nature of public order and the autonomy of countries in introducing instances of public order provided two criteria for recognizing public order. Declare to the public that the case contains a real and very serious danger to society, not just any aggression. A simple rule can be considered a disruptor of public order (Kessedjian Catherine, 2007: 27) and Morris, 1987: 95). This is why jurists consider one aspect of the relativity of public order to be its spatial relativity, meaning that what is opposed to public order in one country may not be considered contrary to public order in another (Najad Ali Almasi, 1389: 187). And at the international level, the courts may not consider the verdict that is considered valid in a country acceptable in similar cases (Hunter Martin, 2003: 231 and Alan Redfern) to any. Now, in this regard, the jurists of our country have not been far from this issue and have struggled to provide a comprehensive and clear definition of it, and the success of these people is limited to providing a general definition. This difficulty is also seen in determining the instances of public order. Because public order is directly related to the pillars of civilization and ethics governing a society and is different from one society to another, and this has made it more difficult to fully understand public order (Mohsen Sadeghi, 2005: 91).

The concept of public order is no more than a simple element, and in all disciplines the law is the same for all individuals, but according to the limits of public order, divisions are accepted because public order is different in the field of public law and private law. As well as in the field of domestic and foreign law. The reason for this is that they have offered various interpretations of public order in determining the criteria for distinguishing the rules of public order. The existence of different interpretations is not due to the multiplicity of the legal nature of public order, but is well documented by an incomplete induction in the law (Nematullah Ulfat, 1384: 87). In the sense that the public interests in question to establish rules are involved with the individual interests

of individuals, and in this case the most important interest, which is the public interest, is preferred. Obviously, because the interests of society are not fixed and are constantly changing, the relativity of public order has been concluded, that is, according to this view, public order will be determined by considering all social, economic, cultural and political factors of a society. Of course, it seems that the relativity of public order in this field, which has been mentioned by most jurists, is a little questionable, and in this regard, the jurisprudential view that considers public order as inherent in society, not incidental; And on this basis, it does not recognize the possibility of much change and transformation for public order, it seems more correct because in jurisprudence, even the interests of society should move within the framework of the basic rules, in cases where it is necessary only for a temporary period. The secondary rulings, as the conversion of the subject, the verdict differs and returns to its original state after the necessity is removed. Therefore, it is better to believe in the flexibility of public order on this basis and in this case, in order to realize both the problem of relativity in the concept of public order and the problems after it, and the problem of the immutability of public order in temporal and spatial dimensions. We have softened a bit in this regard.

In any case, it seems that in the law of the subject, the concept of public order refers to the observance of rules, the purpose of which is to protect public interests and to maintain the family and the smooth running of public affairs. Law and obedience is the leadership of the society and the system of the society, whether in the economic field or in the political, administrative, cultural and moral fields, depends on it, and the violation of those matters will damage the system and the ruling power. Makes it impossible to establish that system. And this goal justifies the need to obey the leadership and the law. So much so that the pious Imam Ali (AS) in response to the consultation and question of the second caliph about participating in the war with the Sassanids says: "The

position of the ruler is like a string of pearls that gathers seeds and holds them together. "So if the string breaks apart, the seeds will fall apart and will never gather."

Definition of public order:

Due to the difficulty of recognizing the elements that constitute public order, a group of jurists have abandoned its definition. However, those who have defined it have offered different definitions of it. Commenting on the concept of public order, the French jurist Girard Cornou states: It is necessary for some special materials (Quoted from Seyyed Ali Hosseini, 2007: 23). This lawyer, regardless of the origin of public order, has considered the goals that this concept pursues and has provided the above definition. Another French jurist has described public order as "a set of basic elements of the law of any country that is respected and restricts individual rights and freedoms" (quoted by Mohsen Sadeghi, 2005: 91). Of course, this definition has two forms. It is essential, first, that the term set of basic elements of law is vague and does not reduce the ambiguity of the concept of public order, and second, that in this definition, rather than clarifying the concept of public order, its role and function in law is discussed.

From the point of view of Dr. Ahmad Muslim, an Arab jurist, public order is nothing but the political, social and economic essence of a state, based on the beliefs on which it is based, which are the beliefs of security, freedom, democracy and social beliefs that It is related to equality before the law or respect for the basic ideas of a particular religion or the beliefs of economic schools and the like (Mohammad Javad Arista, 2006: 218). Is not true in all societies and is not considered part of public order.

Dr. Katozian believes that "public order laws are laws that are intended to protect the public interest and to disrupt the system that is necessary for the

smooth running of administrative, political, or economic affairs." (Nasser Katozian, 1387: 161). It is interesting that this lawyer considers the public interest as a criterion for determining the rules of affairs and considers the laws that are made in order to protect the collective interests of individuals in a society as laws with the aspect of public order and order (Nasser Katozian, 1997, 159). In his opinion, "the rule that is customary for determining the rules of a matter is that whenever the law is related to public order, it is a matter". (Nasser Katozian, 2008, 160). Of course, the criticism that It is clear that most laws have a social aspect and the general interest in its enactment has been considered by the legislator, so such a rule alone cannot determine the rule of jurisprudence and public order. Dr. Hashemi acknowledges that "public order implies rules in which the nature, dignity and material and spiritual interests of society must be seriously protected." (Seyyed Mohammad Hashemi, 1386: 410). In this definition, all the dimensions of public order are not well clarified and only the main element of public order is stated. Dr. Jafari Langroudi, one of the prominent professors of Iranian law, also defines public order as "a set of legal facilities and laws related to the necessary flow of affairs, related to the administration of the country or regarding the protection of security and ethics in the relations of individuals. On the contrary, it is ineffective. Mandatory laws, which include legislative orders and prohibitions, are mandatory laws. These laws guarantee public order, good morals, or the protection of people of little intellect or young age, and so on. "According to these laws of public order, it is specific to the laws of command." (Mohammad Jafari Langroudi, 1387: 2653). Regarding the Arabic equivalent of this term, Professor Jafari Langroudi adds: "Contemporary Arabs call public order" public order "and call the word public order and good morals public order and etiquette. The word "system" in jurisprudence has been used absolutely and unconditionally and with the help of evidence in the sense of public order. And often the word disturbance is added

to it, which means disturbance of public order. It seems that Master Langroudi's opinion is more powerful than other definitions and should be chosen as the preferred definition.

Examples of public order:

In dissecting and studying the legal nature of public order, we come across a few other words that we must evaluate in relation to public order, and we can say that these are the elements and examples of public order. However, some of them do not fully comply with public order.

1. Public interest and comfort: In all definitions of public order, the concept of public interest has a central place and is one of its elements. And it includes the factors that provide the welfare, comfort and well-being of society, and in many cases the material goes back to the whole society and not necessarily to each member of society. (Seyyed Ali Hosseini, 2007: 26) Public comfort also means the absence of any harassment and discomfort in society that is outside the normal and normal limits of life, such as crowding and crowding in public places and public facilities that cause discomfort to people.

2- Public services: There are several definitions of public services. "Public services are matters that are necessary to meet the needs and interests of the public and are not subject to free relations or the rules of private law, and the government somehow manages or supervises them." (Mohammad Emami and Ostvar Sangari, 1389: 37). Professor Jez also offers a practical definition of public service: "Public service is limited to the public utility needs that a country's government decides at a given point in time to meet through public or governmental organizations for diagnosis. "Public services should be considered only as the intention of the government." (Quoted by Reza Musazadeh, 2008: 53). According to the above definition, it should be said that 1- Public services are only related to meeting the needs of public benefit and public 2- The creation

of public services must be approved by the legislator and provided through government organizations.

And includes three types (see also the same, p. 55):

A) Public administrative services: Services that are provided by the government without the intention of profit and in order to meet public needs by government organizations.

B) General industrial and commercial services: Such services should have an industrial and commercial character in terms of the subject of activity and production and exchange are its characteristics. This category is subject to private law.

C) Professional public services: Basically, professional public services to the services of trade unions such as the medical system, the engineering system, the Bar Association, etc. Is related. The activities of such unions and trade union systems are considered public services and are subject to mixed rights. Therefore, in view of the above, it is obvious that public administrative services and only the aspect of public law related to professional public services should be considered as examples of public order.

3- Public security: Security means the absence of any factors and dangers that disrupt the material order in society and cause financial and human losses to individuals (Manouchehr Motmani Tabatabai, 1387: 224).

4- Public modesty: It is a series of moral standards that have been institutionalized in a special way in every society for many centuries and its violation seems disgusting and sometimes causes severe reactions. These moral standards are so ingrained and established in society that they automatically become the rules and regulations of the subject (Parviz Novin, 2009: 43). These standards of behavior, its implementation is considered necessary by society (Jurgen Kurtz, 2008: 45). It is often seen that legislators and lawyers use public decency and good morals in one sense. Take. But it should be said that public

decency has a more limited scope than good morals and includes sexual issues that hurt the conscience of society, such as the publication of obscene photos and magazines.

5- Good ethics: Good ethics is related to the behavior, actions of individuals and groups in order to comply with the standards and criteria respected by society (Parviz Novin, 2009: 44); Asford culture also states that moral principles and issues related to good morality cannot be compiled, because it has a wide range and differs from one society to another seems to be the relationship between public order And good morals are absolute in public and private, and anything that is contrary to good morals is contrary to public order, but the opposite is not true (Mehrzaad Abdali and Tafreshi, 2004: 3).

6- Rules of public order: means the rules that must be observed to maintain the political, economic and social organization of the country. Like tax laws (Mohsen Sadeghi, 1384: 97).

In general, the rules of matter related to the above examples can be considered as the main subject of public order. Considered the main subject of public order. Although each of the mentioned examples can be used in both jurisprudence and law, but if we pay attention to the basis and sources of the formation of each of the above examples in both perspectives, we can say that between the worldview between this There are profound differences between the two legal systems. Because according to the basic jurisprudence and the basic principles of public order, it is the divine laws and regulations that must be used to establish justice and all examples must be interpreted according to this view. But in the subject law, the source of rights is the status and power that has the right to set rules based on the values of society and impose its observance, and it is this position that is called the "source of rights" and is manifested through the public will, which sometimes It is the source of rights directly and sometimes in the form of custom and habit, and sometimes it is the source of rights in the form of

exercising legislative power and in the form of law. Therefore, in each case, the judge must discover the will of the legislator according to these examples, because it is impossible to accurately enumerate the cases of public order, and only in this regard, a rule can be introduced, and therefore the role of the judge is still important.

The position of public order in jurisprudence:

In this regard, several jurisprudential rules and rulings have been formed in relation to public order, some of which are mentioned:

A. Rule of maintaining the system: This rule, which is also related to disturbing public order, has been mentioned by one of the jurists of the last century named Sheikh Abolghasem Taleghani Kojouri Mazandarani. In discussing the rule of guarantee in his "Treatise on the Rule of Guarantee" with the appendix "Discovery of Doubt", he mentions the need to maintain the system as a rule and says that "anything that disrupts the system is corrupt and invalid."

The rule of order is used in several senses:

1. Sometimes it means maintaining the inner beauty of society and its institutions from chaos. This definition seeks to establish rational connections between government structures and prepares the environment for the implementation of divine commandments. And its focus is on organizing the community's livelihood system. In this regard, the jurists consider acting as a precaution due to disruption of the livelihood system and the so-called "disruption of the system" is a bad and unreasonable thing (Seyyed Mohammad Hossein Kazemini, 2009: 98). As the late Clergyman Khorasani says, "complete caution is not obligatory if it causes hardship to the system." (Mohammad Kazem Khorasani, 1401 AH: 358).

2. Another meaning that the jurists have intended from the rule of maintaining order is the protection of the unity of the Islamic country and Muslims from the

invasion of enemies, which in the language of jurists is known as preserving the testicles of Islam. In his book, the late Mirza Naeini mentions the principle of protection from foreign interference and warning against the usual trickery in this regard and the preparation of defense and military talent, and goes on to say: The rulings that are prescribed in the pure Shari'a to perform these two duties are considered as political and civilizational rulings and the second part of practical wisdom (Ayatollah Mirza Naini, p. 7).

3. The third meaning is to maintain the government. Of course, in the previous two cases, the comprehensive jurist was not necessarily at the head of the government, and basically the type of system and government did not exist, but the jurist sought to maintain the social system and livelihood of Islam. But in the latter view, the government also has legitimacy, so its preservation is also important. This theory gained strength after the revolution, and maintaining the system meant maintaining the existing government, maintaining the livelihood system, and maintaining the Islamic entity (Seyyed Mohammad Hossein Kazemini, 2009: 98). This view was reinforced by Imam Khomeini (ra) and took on an executive aspect, so that Imam Khomeini (ra) in response to a question from the Speaker of Parliament in 1981 states: "What is involved in maintaining the system of the Islamic Republic that its act or omission causes disorder in the system and what is necessary that its omission or act requires corruption and what its act or omission causes embarrassment after recognizing the issue by specifying that it is temporary It, as long as the subject matter is investigated and is automatically canceled after the resolution of the subject matter, is allowed to be approved and implemented and it must be specified that each of the executors has exceeded the prescribed limits and is found guilty and "He will be prosecuted and will be punished according to Islamic law." (Imam Khomeini (RA), Sahifa, Volume 22: Page 211).

B. The rule of the ruler but the abstainer: That is, the ruler of the Islamic society should do some things that the rightful owners refuse to do in order to administer justice and maintain public order and interest.

C. The principle of authenticity: According to this rule, the actions of others are correct unless proven otherwise, and most jurists, including Ayatollah Khomeini and Ayatollah Makarem Shirazi, have considered the reason to be the maintenance of public order.

Other jurisprudential rules include the rule of *suq*, the rule of *ufo* with contracts, the rule of *iodine*, the rule of *al-qada* on the absent, and the rule of influence of the judge's ruling.

Jurisprudential rules based on public order:

Obligation of government: One of the reasons for the necessity of government for Muslims is the rule of reason that it is necessary to preserve the Islamic society. And the Shari'a has accepted it as the head of the wise. And the necessity of the sufficiency of the system of government in general is coincidental and no jurist can be found who has rejected it. And this is considered necessary even if the government is unjust.

Hasbiyya affairs: Hasbiyya affairs are matters that are desirable from the point of view of the Shari'a and also inevitable from the point of view of social life, and all the works without which chaos and disorder will occur in the society.

Adequacy of different industries: It means the necessity of dealing with all kinds of jobs and professions, especially jobs that are necessary for society.

The position of public order in law:

This position is different in different areas of law. For example, public order in public law is a principle and no one has the right to violate it, and matters contrary to it are invalid, and dealing with those who disturb this order is

necessary, but in law The private sector seems to have a lesser aspect due to the principle of the rule of will in contracts, although today it has been affected even by contractual freedom due to increasing government interference in the maintenance of public order. As Dr. Katozian puts it in one of his articles: "Public order today, as a limiting factor, governs all private contracts and even reduces the scope of the rule of action." (Nasser Katozian, 2007: 187). The courts can invalidate the unjust terms in the supplementary contracts by relying on the concept of public order. To understand the role of public order, we must look at the views of different schools on this issue because different schools have different orientations about it. In short, liberals who pay more attention to the freedom of the people are more diligent in limiting the concept of public order, and on the contrary, socialists are more diligent in developing the realm of public order (Abdul Ghani Ahmad Wastani, 1341: 4).

The concept of disturbing public order:

The concept of disturbing public order differs in different areas of jurisprudence and law. For example, in criminal law, the simplest concept that arises from a crime is the general requirement of disturbing public order. Good deeds and public interests should be concluded (Seyyed Mohammad Hashemi, 2007: 410). The title of the rule of disruption in the system has been used and this rule protects the frameworks within the jurisprudential system that have been created and recognized in accordance with the divine rules.

Definition of disturbing public order:

It can be said that if the necessary flow of affairs or in other words, the provision of basic needs of society is cut off and therefore the rights of the people are violated, public order is disturbed.

Cases of disturbing public order in jurisprudence and law:

A. Disruption of public safety:

Security can be examined in two objective and subjective senses; In the objective sense, they have stated the lack of threat to the acquired values, and in the mental sense, they have determined the lack of fear of attacking the values (Mohsen Esmaili, 1379: 264). We offer two parts:

A) Disruption of public socio-political security

The category of socio-political security is mentioned in two parts of internal and external security and every school and political system is sensitive to it. Of course, regarding political security, we can say that there are profound differences between jurisprudence and the law of the subject, because in the jurisprudence of the system, Islamic government and leadership have intrinsic value, while this is not the case in the law of the subject, and this difference in political crimes. It reaches its peak. Because in the jurisprudence of conspiracy, dealing with the Islamic system and dealing a political blow to it is not less than other cases of disturbing public security and may be more, but in the law of the case, political crimes are usually treated more leniently due to the reformist motives of the perpetrator.

Therefore, due to the difference between the two views of jurisprudence and law, some jurists consider crimes against internal and external security in the category of political crimes and believe that since the purpose of these crimes is to oppose the system, it should be in the provincial criminal court and in They were tried in the presence of a jury, and crimes such as treason, bombing, and espionage should be considered crimes against public safety (Adel Sarikhani, 1384: 36). Of course, some have gone beyond this and believe in the separation of crimes against public order and the political system and consider these two categories as separate.

B) Disruption of public intellectual-cultural security

The political peace of the society cannot be established and sustained without intellectual and cultural security or mental and psychological. Therefore, mental and internal order and turmoil cannot have the appearance of external disorder, because maintaining the intellectual and cultural system of people and its coherence is prior to creating their social order. (Mohsen Ismaili, 1379: 269) Therefore, according to the preamble is mandatory We also included this type in the category of public safety.

In this regard, Islam, having a belief and intellectual system, has considered thinking and certainty as the first condition to enter the Muslim circle, and considers doubt as a disease that is more destructive than anything. Therefore, he considers creating doubts in the cultural system or distortion and heresy in it as great and unforgivable sins, and for this reason, occupations that weaken the beliefs of Muslims and shake their cultural strength are known as Muharram gains and addressing it. Prohibitions such as the sanctity of magic, magic, sculpture, the sale of idols, etc., have been banned due to cultural influences.

In law, many cases that threaten cultural intellectual security have been banned, although some acts of the press that because public disorder may be a priority today, some of which we will mention: Jafar Bushehri, 1387: 260 to 268)

- 1- Encouraging and inciting people to indulgence, drinking and drug addiction, publishing indecent material and ugly images
- 2- Inciting people to cruelty and predatory behavior in any way possible, even caricatures
- 3- Creating temptation in fundamental political and social ideas that threaten the unity and permanence of society. For example, to incite people to oppose the rule of law.
- 4- Promoting infidelity in lands whose legal system is based on specific religious rulings
- 5- Corrupting the morality of the society

B. Disrupting the provision of public services:

To reopen this issue and compare our country's legal system with other Western countries, we bring an example quoted by Dr. Katozian to show what is the view of the judicial practice of other countries on this issue:

"In French jurisprudence, a doctor enters into a contract with a laboratory to take patients to that laboratory and be paid a percentage of the laboratory's income. Such a contract is everywhere, but the French Supreme Court cancels it because it opposes public order. Declares and argues that when a physician has an interest in laboratory income, he or she may unreasonably send and exploit a patient, and that medical care, which is a right for patients, may be in jeopardy (Nasser Katozian, 1387: 330).

In public law, public services, which include the services of government organizations that are performed without the intention of profit, as well as the aspect of public law of guilds, public health and issues related to the administration of a city in terms of water, electricity, city gas, asphalt, drainage, Sewage, bridges, roads, highways, construction of schools, universities, libraries, airports, homes for the elderly, the disabled, the poor, the beggars, prisons for criminals, the construction of cemeteries, airports, etc. These services are disruptive, prohibited and violators must be dealt with. Because, the requirement of the essence of administrative law, which is an important part of public law, is considered "public services", services that must move in the direction of "public interest". It should be noted that public services should be provided mainly by organizations and public authorities (organization or department). And in some cases where the producer has the monopoly on the supply of goods needed by the public, his work is in the category of social and public services and is subject to public order. (Nasser Katozian, 1378, 327) that in jurisprudence, the rules related to the prohibition of hoarding and any factor

that disrupts the livelihood system of the people, can be mentioned in this regard.

C. Disruption of public order related to good morals or public chastity:

We have already stated the concept of good morals and public chastity. In our various laws, opposition to these concepts is considered opposition to public order and is forbidden, and it can be said that there is no difference between jurists and jurists. Public decency is not considered a crime if it is consensual because the basis of many criminalizations in the West is "harm", while in previous centuries the basis of common values justified the criminalization of many acts against religion, morality and public decency. However, if the same immoral acts occur in public streets and centers, it will be considered a crime due to disturbing public order and comfort (Mohsen Rahami, 2004: 16).

D. Disrupting the implementation of community disciplinary rules:

In the definition of disciplinary rules, we said that we mean rules that must be observed to maintain the political, economic and social organization of the country, such as rules related to the country's economic system or tax laws. In the case of disturbance, we must also believe that because public order is disrupted, it will be prohibited as a punishment. For example, we refer to the disruption of the country's monetary and exchange rate system, which means disorder and turmoil in the distribution or exchange of monetary and foreign exchange transactions, which is referred to in paragraph 1 of Article 1 of the Law on Punishing Disruptors of the Economic System. And stipulates:

1- Disrupting the monetary and foreign exchange system of the country through major smuggling of currency or minting of coins, hearts or counterfeiting of banknotes or importing or distributing major of them, both domestic and foreign, and the like.

Is considered a crime and commits the punishment provided in this law (Mojtaba Nourzad, 1389: 120).

E. Disrupting the comfort and public interest:

Public comfort also means the absence of any harassment and discomfort in the community that is outside the normal and normal limits of life and any case that causes harm and discomfort in the community, such as crowds and crowds in the streets and public facilities that cause inconvenience to people and also noise. Loud music that causes psychological damage to the neighbor, and many other cases (see Mir Mohammad Sadeghi, 2001) are among the issues that have been banned in this case and violators will be dealt with.

Conclusion:

Examining public order in the field of jurisprudence and law, we find that public order is more of a social concept that has been considered as a guiding principle in all legal systems by legislators, judges and jurists because the science of law regulates social relations. It should be said that public order exists in all social institutions and consequently in law, so anything that acts contrary to the nature of a social institution and causes disorder and disorder in it, deals with public order and the governing principles. On that society, it will require the maintenance of this order. By studying Islamic sources and the view of jurists, we came to the conclusion that maintaining the public order of the Islamic society and the need to follow the leader of the Islamic society to establish this order from the basic rules and disrupt it is forbidden because maintaining the system of society in jurisprudence has intrinsic value and based on Many jurisprudential rules have been formed. In the law of the subject, it was also stated that public order is a social concept and law has recognized it. This concept, in addition to being rooted in the foundations of law, is one of its main goals. A common element that exists in all definitions of public order is the existence of a fixed element of public interest and interest in this concept. In the jurisprudence of today, other legal systems invalidate the unfair terms of

ancillary contracts that are contrary to public order, or opposition to public order in the science of conflict of laws in private international law changes the law applicable to the issue. One of the achievements of this article is the introduction of examples of public order and its disruption, and it is suggested that in our country's legal system, the legislator introduce the general principles governing public order based on the characteristics of this research in various public and private areas. And it is the judges who, according to the situation, circumstances and social conditions, determine its cases and establish an appropriate judicial procedure.

References

1. Ahmad Vastani, Abd al-Ghani, (1341), PhD Thesis in Public Order in Private Law, University of Tehran, Faculty of Law, Department of Private Law, Supervisor: Dr. Emami
2. Albert venn dicey and morris,(1987)," conflict of laws" 11 th edition, law rence collince, gen.ed. london: steven and son Ltd, vol 2. p.p: 1511
3. Almasi, Najad Ali, (2010), Private International Law, Mizan Publishing, 16th Edition
4. Arista, Mohammad Javad, (2006), Article on Obstacles to the Implementation of the Foreign Law "Public Order", Basirat Magazine, Nos. 25 and 26
5. Ashtiani, Mirza Mohammad Hassan, (1363), Kitab al-Qada, Qom, Dar al-Hijra Publishing, second edition
6. Barraclough Andrew and Waincymer Jeff, (2005) "Mandatory Rules of Law in International Commercial Arbitration", Melbourne Journal of International Law, Vol. 6, p.p 1-26
7. Bushehri, Jafar, Criminal Law 1 (Principles and Issues), 2008 Publication of Publishing Company, Second Edition
8. Catherine , kessedjian ,(2007)" public order in European law", in: Erasmus law review, vol 1, issue 1, pp.25- 38

9. Hashemi, Seyed Mohammad, (2007), *Fundamental Rights of the Islamic Republic of Iran; Sovereignty and Political Institutions, Volume II*, Mizan Publishing, 18th Edition
10. Hosseini Rouhani, Seyyed Mohammad Sadegh, (1413 AH), *Fiqh al-Sadiq*, Qom, Dar al-Kitab Institute, third edition, volume 13
11. Hosseini, Seyyed Ali, (2007), *Public Order and the Rule of Law in Islam*, Publication of Young Conduct, First Edition
12. Hosseinjani, Bahman, (2010), *Thesis of Public Order in Criminal Justice: (Comparative Study in the Iranian and British Legal System)*, Tarbiat Modares University, Faculty of Humanities, Supervisor: Mohammad Jafar Habibzadeh
13. Imam Khomeini (RA), *Sahifa Noor, Volume 22* (Imam Khomeini's collection of software)
14. Ismaili, Mohsen, (2000), *Article on Security and Sharia (Public Order in the Rules and Rules of Jurisprudence)*, Book Review, Nos. 14 and 15
15. Jafari Langroudi, Mohammad Jafar, (2008), *Legal Terminology, Volume 4*, Ganj-e-Danesh Publishing, First Edition
16. Katozian, Nasser, (1997), *Civil Law: General Rules of Contracts*, Tehran, Publishing Company, Fourth Edition, Volume 1
17. Katozian, Nasser, (2008), *Introduction to Law and Study in the Iranian Legal System*, Publication of Publishing Company, Sixty-Third Edition
18. Katozian, Nasser, Autumn (2007), *Article on Liability for Cigarette Production and Supply*, Law Quarterly, Journal of the Faculty of Law and Political Science, Volume 37, Number 3
19. Katozian, Nasser, Autumn (2008), *Article Restrictions on Contractual Freedom Based on Consumer Protection*, Law Quarterly, Journal of the Faculty of Law and Political Science, University of Tehran, Volume 38, Number 3.
20. Kazemini, Seyed Mohammad Hossein, (2009), *Master Thesis, Principles of Public Order in the Field of Public Law from the Perspective of Islam and the West*, Faculty of Law, Qom Campus, Department of Public Law, Supervisor: Ayatollah Amid Zanjani
21. Khorasani, the late Mohammad Kazem, (1401 AH), *Kefayeh al-Osul*, Qom, Al-Bayt Institute, first edition

22. Kurtz, Jurgen. (2008) "Adjudging the Exceptional at International Law: Security, Public Order and Financial Crisis" in: European Union Jean Monnet Chair, New York, NY 10012, available: www.JeanMonnetProgram.org. pp.1-44
23. Mesbah Yazdi and Hojjatoleslam Kaabi, (2003), Guarantee of the implementation of the constitution and public implementation of the limits, Imam Khomeini Institute Publications, first edition
24. Mir Mohammad Sadeghi, Hossein, (2001), Crimes against Security and Public Welfare, Mizan Publishing, First Edition
25. Mohammadzadeh, Reza, (1999), Master Thesis in Criminal Law, Faculty of Law, Beheshti University, Supervisor: Dr. Mohammad Ali Ardabili
26. Morsali, Yadollah, (2010), Public Order in Legal Practices, Jungle-Immortal Publishing, First Edition
27. Mousavi Ardebili, Sayyid Abd al-Karim, (1423 AH), Fiqh al-Qada, Qom, Jamiat al-Mufid, second edition
28. Musazadeh, Reza, (2008), Administrative Law (2-1) Generalities and Iran, Mizan Publishing, 10th Edition
29. Naini, Ayatollah Mohammad Hussein, Tanbih al-Ummah and Tanzih al-Mullah, Qom
30. Nourzad, Mojtaba, (2010), Economic Crimes in Iranian Criminal Law, Jangal Publications, First Edition
31. Novin, Parviz, Mordad and Shahrivar (2009), Article Public Order in Law, Judgment Journal, No. 58
32. Rahami, Mohsen and Mohammad Reza Nazarinejad Kiyashi, Spring and Summer (2004), Article on Government and Criminal Law, Journal of Legal Thoughts, Year 2, Issue 6
33. Redfern Alan and Hunter Martin, (2003) "Law and Practice of International Commercial Arbitration", London, Sweet and Maxwell, pp. 221-238
34. Sadeghi, Mohsen, Summer (84), Article on the concept and application of public order in judicial and quasi-judicial authorities, Journal of the Faculty of Law and Political Science, No. 68
35. Sarikhani, Adel, (2005), Crimes against Security and Public Welfare (Private Criminal Law 3), Qom University Press, First Edition

36. Sassoli, Marco. (2005)" Legislation and Maintenance of Public Order and Civil Life by Occupying Powers, *The European Journal of International Law* Vol. 16 no.4, p.p 661-694
37. Sultan Mohammadi, Abolfazl, (2003), Velayat-e-Faqih article from the perspective of Allameh Vahid Behbahani, *Journal of Islamic Government*, 8th year, No. 14
38. Tabatabai Motameni, (2008), Manouchehr, *Administrative Law*, Samat Publishing, Fourteenth Edition
39. Ulfat, Nematullah, (2005), Article on public order and the obligation to conclude a contract, *Journal of Jurisprudence and Law*, No. 7