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# National security and principle of no harm

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## ABSTRACT

Social security is an important political issue for any country that brings influential and profound political and legal impacts. Its most important political and legal impact is seen in emergencies when social administrators should manage a crisis in terms of their natural duty. To this end, they inevitably choose to limit their citizens' personal rights. Since paving proper grounds to exercise personal rights, crisis management and national security are, *inter alia*, the functions of the governments and the guidelines to provide them are contradictory due to their natures, limiting the domination of personal rights is considered as one the most reasonable guidelines to curb existing problems in a political society. The important issue created by the scope of such limitation in personal rights that causes the biggest challenges to the legitimization of such guidelines during emergencies is the principle of no harm and forbidding harms to other people as a proper criterion for governmental discretion scope in exercising the rules of emergency time and in limiting personal rights.

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## Introduction

When the society is confronted with political and security problems, top political leaders and managers have no choice rather than establishing security situation and its relevant actions. Keeping national security requires exercising unusual guidelines in this period since, in one hand, an important function of government is to protect personal rights and, on the hand, protecting national security is a special task for government. So, the government plays an important role in protecting two contrary rights. Now, a question arises: how does the government play its role in protecting two contrary issues? What is its measure to give a proper response to resolve such conflict?

Noteworthy, during a crisis, the direction of personal right vector is reversed toward public interests and national security in order to retain the sovereignty and integrity of the country. During this period, keeping public order and security is preferred in order to prevent social system scattering and to respect public security. In such process, people's personal rights and freedoms are influenced by *limiting* and *suspending* their rights. Normally, the crises will be managed by one or both actions. The important point is to achieve a benchmark to measure such limits in order to be used by social managers as a "hallmark". This is the main issue studied in present paper.

The main hypothesis is that harm forbid is a proper benchmark for both parties namely managers and followers in adjusting their performance. It means that both the actions by people should be stopped and/or limited due to their harms and people can prevent any aggression by government and officers to their rights by resorting to harm. Although based on what mentioned in the Constitution Law, harm forbid is not limited to crisis time and no one should pose harm against others, such rule in this period can be a proper criterion for the rightness of decisions and a benchmark for how to act. It needs to pay attention to three issues namely national security, personal rights and principle of no harm.

## National security

National security is a simple subject which, in one hand, can be easily understood and all individuals can feel it in their social and personal life and, on the other hand, it is difficult to give a conceivable and comprehensive definition on it. Authors have focused on a certain aspect of national security and have clarified their opinion on this basis in giving their own definitions. The diversity of definitions confirms such claim.

According to social science encyclopedia, national security is the potency of a nation to protect internal values from external threats. As a contemporaneous security researcher, Penelope Hartland-Thunberg believes that national security is the capability of a nation to pursue their own national interests successfully throughout the word based on their own discretion. Based on definition provided by Canadian National Defense College, national security is to keep an admirable life style for all people adapted to citizens' legitimate demands and wishes. It includes releasing from military pressure, internal overthrow and destroying political, economic and social values that are necessary for life quality. According to Frank Trager as another security researcher, national security is a part of government's policy aimed at providing desired national and international political conditions or to keep and expand critical national values against potential hostiles and enemies" (Rabeei, 2004, pp. 12 – 16).

As mentioned, each theoretician has defined national security in terms of national values, national interests and radical threats.

To elucidate this term, it is necessary to pay attention to both constituents simultaneously. These constituents include threat problem as the main element of security concept by identifying which, the necessary issue for releasing from it is recognized and security target by which one can recognize what is protected and secured by conducting security initiatives.

## Threat

The most important item which should be carefully considered in security clarification is threat. Since security is always defined as threat – oriented, it has been the most

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important element in all definitions provided for security. Threat is the pre-step of insecurity. In this step, the risk is getting serious and may lead into insecurity if it is realized. According to connoisseurs, threat may have different shapes and may influence over different areas of the society. Usually, security researchers divide the main threats against a national society in clarifying the concept of national security into five kinds of threat including military, social, political and environmental threats (Buzan, 1999, pp. 140 – 168).

- **Military threats:** in the highest level, military threats are posed by foreign enemy through aggression to sovereignty and occupying a country. The main reason for threats stemmed from security definition. Therefore, in security policymaking at different countries, such threat is specially accounted. Most security investments are on active and efficient military organizations equipped with state-of-the-art weapons to defend the integrity of the country in necessary times.

- **Social threats:** in a social threat, the substantial elements that convert a population to nation and give them an identity are threatened. Since such elements are considered as the national values of a society, they link the people of nation like a chain and create national integration and cohesion. Any damage to such elements could lead into a crisis and disorder in the identity of a nation and, consequently, jeopardize social identity.

- **Political threat:** in contrary to social threats that target the identity of a nation, political threat is directly toward political stability as well as administrative pillars. This threat is seriously regarded by government since it can overthrow a regime. "Government is a political entity and political threats can be fearful as same as military ones. Obviously, it is true further in weak countries with lower public legitimation even though it is a source of concern in countries with strong and powerful governments" (Rabeei, 2005, p. 137). Both threats are exercised together by aggressive governments. Through social threats, national identity of societies is damaged and, consequently, the cohesion of aggressed country is destroyed. Afterwards, political threats would come to a result with a low cost and the stability of administrative pillars in a political community will be ruined.

- **Economical threats** are an important threat against national security. Economical threats are less flexible with more profound impacts on the societies than other types of threats. Compared to other threats, its importance is in the fact that all classes of the population will be impacted because that economic problems impact on people's welfare directly and a rule of thumb is that people cannot neglect their own welfare in the favor other issues even the most important values. If there are economic problems or challenges and even if they are not coming to a threat, all people of the society and their reactions are considered as an important variable and they would play a vital role in this area so that social managers should a special planning in this regard.

- **Environmental threats:** these are among the most unknown and complicated threats against the security of a country, geographical region and even international era. The important point is that such threats are usually cross-national and occurred by wide range aspects in a huge part of the earth. Since it is a cross-national threat, curbing it and releasing from its dangers is not affordable by one or a few of countries and it needs a global will. Ozone hole, global warming, the pollution of rivers and seas as well as other human biological arenas and, recently, Arabian hazes against Iran are kinds of such threats.

An important point which should be regarded in analyzing this side of security is the reality of threat not feeling it. Threat

feeling is a mythic sense. During a threat, its nature should be initially analyzed in order to prove whether it is true or false.

Likewise, the type and nature of threat, its intensity and weakness and its time and location distance from considered target are the factors that play a role in formulating security policies and initiatives. "When a threat converts into a national security issue depends on type of treat, how to view it and its seriousness. Affecting factors on threat seriousness include its identity, its proximity in terms of distance, its occurrence extremity and its possible consequences. More serious threat makes it more legitimate to consider it as a national security issue in order to react against it." (Buzan, 1999, p. 159) Therefore, threat seriousness is an important issue which should be regarded in identifying the threat.

The criterion to identify the seriousness of threat is to threat the existence and to ruin it. It means that those threats that jeopardize the existence of a target are called as existential threats and should be seriously considered. Defeating such threats is an issue of national security which needs security guideline. "Thus, those events should be considered as security issues that are possible to be included in the framework of existential threat concept. In other words, it should be competent to be attributed to such concept. Such circumstances cause to take extraordinary initiatives beyond necessary daily political ones." (Abdullah Khani, 2006, p. 497)

#### **The aim of security**

Another issue which should be considered in recognizing national security is this question: "what's the aim of national security?" What should be protected in national security? Answering this question, one can use term national security against personal, human, social, global and international security. In national security, the existential security of nation in protected. As mentioned in discussion on fundamental laws and political science, nation is the human pillar of an existence called country. National security is what makes a nation. To be and stay as a nation, a population needs a safe and proper territory, calm life and keeping its identity as a nation against other nations. Thus, one can say: "for many countries, the main concept of national security indicates the need to keep land integrity and independence, to keep national life styles and to prevent any intervention by foreigners. Therefore, national security is initially to establish conditions that protect the country from aggressions by other countries to its political independence, cultural values and economic welfare (Roshandel, 1995: 18).

One can answer above questions in another way. Security researchers have taken two approaches in answering these questions. In the first approach, some authors have passed military threats as the main axis of security traditional definitions and have focused on other challenging issues in national communities and have identified the problems that can face countries with security problems and have moved toward proliferation of various threats in different aspects of social life.

Military, political, social, economic and environmental threats are new areas by which security managers design a certain defensive tactic to protect the security of their people in that particular area. On this basis, some believe that "through the emergence of transformations in national and international arenas since World War II, the scope of national security concept is getting broader political thinkers are incrementally defining national security in terms of various military/nonmilitary and internal/external threats. To this end, divisional thinking is replaced by a holistic one (Afrough, 2001: 115).

In the second approach, however, an abstract definition is provided for national security by emphasizing on values. For instance, in a definition, an aim of national security is to establish favored national and international conditions to keep and expand critical values of a nation. In another definition, national security means as the lack of threat against acquired various objectively and as the lack of fear subjectively. Likewise, in another definition, US Security Council definition is used that expounds national security as protecting the society from damages to fundamental institutes and values (Mandel, 2008: 41).

Ultimately, one can conclude from above discussions that national security can be defined as: "in a combination of all definitions, national security, as the main task of any government by which it can manage and control all internal and external threats, means to establish condition to protect existential values of a country from foreigners' aggressions. For many countries and human societies, keeping territorial integrity and independence, keeping life pattern and preventing foreigners' interventions are considered as existential values" (Kaviani, 2011: 230). Naturally, establishing conditions to protect from any aggression includes a situation that keeps the country from threats. It also involves conditions by which protects the country from any threat by contingent actions.

The existential values of a nation for which national security is executed to protect their integrity can be seen as a combination of several national values including guarding political and territorial survival (independence), guaranteeing organic survival (physical and collective) of people (territorial integrity), creating necessary condition for social welfare and establishing cohesion among different tribes inside the country (national values) (Sayegh, 1998: 18).

Revising personal rights is the subject which should be considered in this step.

#### **Personal rights and its categorization**

In categorizing personal rights, they are divided into two absolute and depended rights in terms of their natural situation. Absolute rights are exclusively related to a person while depended rights are rights granted to someone as a member of the society (Black's Law Dictionary, 1998). Here, we study personal rights through the same definition.

Human aspect of a person is his first personality aspect which is fully private and has no relation to others. With the same trait, rights are created and announced for him. This aspect involves both existential aspects of human. The first one is human body. It involves a part of personal right like life, health, sanitary, food, clothes, house and releasing from all physical limitations like freedom, conviction and exile. In fact, these rights bring physical integrity protection. Another aspect of human existence is spiritual and its absolute value is human inherent munificence. Certainly, it has his own rights including freedoms like transportation, housing, social relations, job, praying, equality and forbidding to detect beliefs and insult.

On the other hand, human social trait is another personality aspect with its own rights. Such rights can be categorized in two groups. Civil – social rights are a part of human rights in human community regardless government consideration as political power. Private ownership, job and freedom in job selection are, *inter alia*, such rights. However, government entrance into institutionalization, execution and guarantee of such rights has no conflict to their civic nature.

Another group of rights include political freedoms like freedom of parties, expression and writing and gatherings as

well as political rights such as the right of determining the fate and participation in elections.

The same order of personal rights indicates the priority of different human rights. The top priority is personal rights. Among personal rights, physical integrity is the top priority followed by munificence related rights, social – personal and political rights.

To show the implications of such rights by using Iranian Constitutional Law, such categorization was reinvestigated by using mentioned rights in Iranian Constitutional Law.

Physical and material personal rights: it includes life and life protection, supplying fundamental needs such as house, food, clothes, health and treatment as the rights of fundamental life rights; prohibition of torture.

Spiritual personal rights: they include: political and social liberties; removing inequality prejudices; protecting family privacy; keeping privacy in using personal documents and evidences including protection letters, phone conversations and correspondences, censorship prohibition, eavesdrop and detection, respecting peoples' religions and traditions; prestige protection, the prohibition of detecting the beliefs; the prohibition of desecration and torture; forbidding nationality foreclose and the prohibition of domination by foreigners.

What remarkable in this group of rights is that some rights can be categorized in different groups in different perspectives. They include prohibition of inequality, prejudices and torture. Although they are material and their impacts may be seen in all human physical integrity, they are in contradictory to inner munificence than physical integrity and, to the same reason, they are included in inner munificence.

Civic – social personal rights: these rights that relate to human in the society regardless the government include: removing unjustified prejudices; cultural rights, language, national and tribal lines; protection of property and prohibition of aggression against it; private ownership and property ownership from job; house and resulted rights; transportation and residence freedom; appealing right.

Political – social personal rights: the rights related to policy orientation in the society and relations to government and include: social political liberties; press and media liberty; the freedom of parties and political groups; social liberties and marches; determining the fate.

These are all human personal rights mentioned in the Constitution Law and they are categorized in four different groups.

#### **Principle of no harm**

Here, terms and their semantic scopes are summarized. It should be clear that what are not negated in terms of this principle.

#### **Terminology and semantic scope of harm**

Harm and harmer are two key issues mentioned in no harm principle with their own semantics. At the outset, it is necessary to mean harm. In a short definition, "harm is meant as deficient in property and ego" (Imam Khomeini, 1410 Hejira: 28).

In another definition, "harm is to waste what human merits whether it is ego, property or organs. Therefore, if someone's property or organ is wasted or deformed or he lost his life, consciously or unconsciously, then it is said that he is damaged" (Najafi Khansari, 1421 Hejira: 370).

In this definition, it is important that harm acquires a broad scope. It means losing anything valuable for human including life, health and properties with material value and also anything with spiritual value.

According to Naeeni, “the result from harm and harmer if realized through a verdict or action unconsciously is harm while its harmer if happened consciously (Najafi Khansari, 1421 Hejira: 378 – 379).

Another definition is that “harm is an action noun related to harm and damage while harmer negates harm by considering someone who causes harm (Sistani, 1414 Hejira: 134).

The scope of negating the harm is another issued which should be respected. Upon a harm, it is executed and negates the verdict whether it is accompanied with the intent of harmer or not, and whether with their delinquency or fault. Anyhow, harm verdict is negated regardless the person who has issued it. It is too broad that it will be negated even if it is commanded by holy lawgiver.

In such cases, harm prohibition principle with annulment limits the domain of its impact and according to this principle, if a party is failed in a transaction, albeit it is concluded correctly and no cancellation clause is inserted.

Limitation in preliminary verdict for harm prohibition can be even observed in contradiction to jurisprudential principles. For example, *domination principle* by which people dominate their assets and are authorized to types of ownership is considered as a permission to own their lands. However, harm prohibition limit land ownership and negates what damages to other people. Therefore, this principle limits the rights of people and its domain.

#### **Principle of no harm**

Since the meaning of scope and its semantic scope is clarified, its negation should be also elucidated to show its meaning. Jurisprudents have expounded no harm through different definitions. Principle of no harm means that the nature of harm is negated in Islam. Therefore, there is no verdict in Islam which yields to harm and loss. Thus, in verdict with harm is not in the scope of Islamic rules. Divinity is not satisfied to people's loss neither through Him nor through other people (Naraghi, 1996: 51). In explaining harm prohibition, Naraghi (1996) has provided the broadest meaning since Allah is not satisfied with people's harm. So, such harm includes all cases one can imagine and by which people are lost and damaged.

In other words, it shows no harm among imposers. It means that it follows not doing a harmful action in the religion and there is no scope for a harmful action in the religion (Makarem Shirazi, 1411 Hejira: 68). In one hand, this is an imposing verdict and, on the other hand, it annuls all verdicts that yield to harm. It means that if religious laws and rules come to a loss, they are null and void by which the harm is negated.

#### **Types of harms**

Here, types of harms are considered so that one can execute principle of no harm in order to prevent such verdicts.

#### **Personal harm**

The important point is the type of harm negated by such principle. Therefore, typical harms are negated or personal ones? In typical harm, harms to types of people are considered regardless the people who are damaged while in personal harm, losses to a person are considered. Therefore, the harm and its scope depend on the moods and conditions of harmed person. Some jurisprudents say that the reason of no harm is real proposition, that is, if the harm is realized. In this way, the verdict is cancelled. Therefore, when a verdict is harmful for someone, the verdict is cancelled either it losses other people or not. Thus, the benchmark is principle of no harm is personal not typical harm (Gorji, 2008: 161).

#### **Public harm**

The generality of loss disseminated among people is another issue which should be considered. Sometimes, adopting a law damages one or more people. In such cases, the wisdom orders to accept the lowest harm. Obviously, the priority is to curb the harms against a few people.

#### **Social harm**

Sometimes, the balance between collective interests and personal rights is damaged and they confront each other. In such cases and to return the society to calmness, special rules should be adopted. The first manifestation of the principle of no harm is here where one should to eliminate greater harms against the society and collective interests.

Since the society is the vessel for human life and a part of inner propensities of the people is satisfied by attending in the society and by interacting with other people, a necessity for personal life is to keep on such ambience where their harms, conflicts and rights are understood well.

Hence, one should say that when rationality commands to endure lower harm, adopted rules should consider the lowest harms. By executing such regulations, personal rights are naturally limited in addition to preventing a larger harm against the country. The question is that whether the harm is initially against the society or its members? Naturally, the society and its integrity should be protected and it's preferred to personal harms. The reason is the verdict by wisdom to the preference of lower harm. Therefore, the harm is transferred to limit personal rights and one should admire the lowest harms in all cases and prevent imposing greater harms in the conflict of losses by keeping on above-mentioned rules.

#### **Analyzing the principle of no harm in security**

It is a very useful principle in mitigating rules on personal rights and to establish a balance between it and national security. It can be also considered as a proper guideline to create equilibrium and justice in preferring the interests of people and the society not only in crisis but also in normal situations.

According to above points, many rules and regulation in emergency condition limit personal rights and such liberty limitations are accompanied with harms. Therefore, their legitimation should be measured by principle of no harm and cancel them if there are harms. Likewise, by limiting the scope of government and governmental officials' authorities and by proving the harms by some unavoidable rules during emergency times, it can be a measure to determine the preference of national security rules on personal rights and to determine the scope of such roles in personal security because that the priority of this principle over initial verdicts is proved in jurisprudence.

Now that the principle to determine and modify conflicts is determined, its implications should be also clarified. Then, by accepting the limitation over personal rights in order to defeat greater harm namely insecurity in social order, another question arises: which personal rights should be limited? According to what mentioned before, personal rights are categorized in different groups based on their role and importance in human life and one should try to defeat the harms based on such categorizations so that managers defeat the greater harm through accepting the lowest loss. It means that personal rights should be limited in order to defeat a big interference in the system. In the meantime, the lowest harms should be targeted on limited rights.

As already mentioned on the priorities of personal right different groups, if we consider human personal rights in four group of rights including physical integrity, inherent munificence, civil rights on human job and assets and rights on political activities, the we can categorize them. Thus, personal

rights on physical integrity have the highest priority followed by rights on munificence and inherent reputation. Due to their nature, these two groups of personal rights cannot be limited since such limitation would cause the highest harms and deprives from other human rights.

Therefore, life right and all rights that impact on human physical integrity such as torture prohibition and human physical integrity protection are the first rank human rights. In the next step, rights on reputation and prestige that are directly related to human inherent munificence are too important. It includes the prohibition of slavery, the right of equality and other rights on spiritual aspect and human inherent munificence.

The next step after rights on existential integrity including both physical integrity and inherent munificence includes all rights related to property, ownership and occupation as a part of human civic rights which should be supported. Other rights in human personal and social life such as social, cultural and political rights in human rights discussion are in lower ranks.

### Conclusion

- In present study and far from meaning in political science and international relations, national security includes all policies and initiatives taken to protect the country from all threats that jeopardize its existence. Naturally, the leaders of the political community are responsible to manage this. The main aim of such actions is to keep national values, public interests and political stability even though government's arbitrary management can makes it vulnerable.
- In normal conditions, there is no challenge between national security and personal security. In such conditions, both subjects with their own broad scopes are executed without any limitation by one over another. Although the principle of no harm is fruitful in the same situation, rule of law theory as a normative principle can draw limitations and borders of each one. However, in emergency conditions by which an existential threat jeopardizes the existence of a country, limitations are posed against personal rights. The important point is the limitations and measures to evaluate and assess them.
- Therefore, the principle of no harm with its indicators such as personal harm, the necessity to defeat greater harm, the priority of the lower loss in limiting personal rights and categorizing personal rights and accepting the limitation of lower important personal rights in crisis management can be a complete

benchmark in transposition of national security and different categories of personal rights.

- The issue which should be finally considered on keeping on or ending emergency time is that the nature of limitations during this period is damaging since they are in contrary to routine social life. As mentioned before, they should be negated as soon as possible. In other words, they are harming principles and their survival would continue the losses and they should be avoided in terms of accepted basics. Therefore, their immediate cancellation after emergency time is ideal.

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