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Minorities in the Iranian Domestic Laws and international documents

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ABSTRACT

Regard for the minorities' rights and non-discrimination against them are among the affairs which are substantially under discussions by the human rights international entities; these entities have thought of measures for the observance of minorities' rights and securement of various ethnic groups' peaceful coexistence. The world has sometimes witnessed hostile and violent treatment of various ethnic groups or actions by majority groups for so-called ethnic cleansing. The current paper titled "Minorities in the Iranian Domestic Laws and international documents" has addressed the rights of minorities by using disruptive methods and via a comparative approach. The findings showed despite the fact in recent decades, the world has witnessed various ethnic groups' peaceful coexistence. The world has sometimes witnessed hostile and violent treatment of various ethnic groups or actions by majority groups for so-called ethnic cleansing, measures and actions have been thought of for the observance of minorities' rights and their securement of a peaceful coexistence among various ethnic groups. In relation to minorities' rights, religious scholars and authorities as well as country's officials in Iran have taken major steps in recent years in line with better lifestyles of the compatriots. One of the salient examples of which is the Government based Fatwa by the Supreme Leader about the equality of Diya (blood money) of religious minorities with Muslims, which is thought of a noteworthy action in its own kind.

Keywords: minorities' rights; principle of equality; international laws; international document; Iranian domestic laws

1. STATEMENT OF THE PROBLEM

Regard for the minorities' rights and non-discrimination against them are among the affairs which are substantially under discussions by the human rights international entities. Though the world has sometimes witnessed hostile and violent treatment of various ethnic groups or actions by majority groups for so-called ethnic cleansing these entities have thought of measures for the observance of minorities' rights and securement of various ethnic groups' peaceful coexistence (Sharifi Taraz Koohi & Gharabaghi, 2010).

Religious minorities which account for a statistical population of Iran are spending good and peaceful life along their Iranian compatriots. The Constitution has also provided for special measures for observing minorities' rights. Prior to the Constitution Revolution Victory in 1906, the rights appertaining to religious minorities, according to the Iranian laws, were subjected to governments' policies, individual characteristics of kings and local rulers and were based on ideas and opinion by Muslim and non-Muslim scholars. After the victory of the Islamic Revolution in 1978, religious minorities, based on the Islamic Republic of Iran's Constitution, were divided to Fourfold sect of Ahl-Sunna, Zeydi Shiites Muslims, as well as known religious minorities such as Zoroastrians, Jews and Christians (Armenian, Ashuri). These minorities are respectable within the legal framework, are free to practice their religions, and are authorized to act upon their own rites (Moradi, 2011).

Under principle 64 of the Constitution and its amendment, each of the official religious minorities can have representatives in the Islamic Parliament. The only difference of the current regulations related with religious minorities' elections with the laws enacted in 1906 being that in order to identify minorities in the elections, amendment to article 20 of the Law of Personal Status (enacted in 1984), has asked for the registration of the kind of religious minorities within their ID documents (birth certificates).

In some Constitutional principles, general interpretations are provided that include religious minorities as well, including the necessity of creating conditions for peoples' popular participation in determining their own destiny and securing a judicial environment for all people (principle, 3), support by the laws for all people and equality of peoples' rights (principles 19 and 20), the right for choosing an appropriate job (principle 28), the right for trial and choosing a lawyer (principles 34 and 35), and then principle of innocence of all people from crime commission (principle 37). Therefore, it can be concluded that the Islamic Republic of Iran's Constitution, compared to the Mashroote Constitution, has provided more liberties and rights for religious sects and minorities.

Governments have no choice but to pay special attention to domestic and international requirements in proportion to the observance of the rights of all citizens, particularly various human groups which need special attention for certain grounds, including children, women, workers and religious, political, ethnic and racial groups. Governments have to embark on observing human rights rules and regulations accurately and proportionally and in case, any of these cases are violated, states will face with challenges and engagements in various domestic, regional and international areas.

Human rights and minorities' rights are among the controversial issues which nowadays, as critical categories, have challenged states, international assemblies and minorities from several perspectives. Today, attention has been paid to minorities for two reasons: first, from the view of observing human rights and non-discrimination in enjoying basic and legitimate rights and liberties; second, from the view of the right to enjoy and maintain ethnic, religious

and linguistic identity intended (Sharifi Taraz Koohi, and Gharabaghi, 2010). In relation to minorities' rights, religious scholars and authorities as well as country's officials in Iran have taken major steps in recent years in line with better lifestyles of the compatriots. One of the salient examples of which is the Government based Fatwa by the Supreme Leader about the equality of Diya (blood money) of religious minorities with Muslims, which is thought of a noteworthy action in its own kind. The issue of minorities' rights and non-discrimination against them are among the affairs which are substantially under discussions. Thus, examining the issue of minorities' rights, given it has been under focus in today's world, assumes special importance. Hence, the current paper deals with the minorities' rights in Iran and in the international arena.

2. CONCEPTS AND BASICS

Minority refers to groups of people in a country and a city which are distinguished by majority from the view of religion, sect and race. In legal literature, minority refers to a community of citizens who, by way of having special characteristics, are distinguished from the majority group. According to another definition, minority is a community of people who comprise a different identity in terms of culture ethnicity, language, or religions. The minority group is usually defined in comparison to its own situation in the country of residence; however, they may be identified in a larger area like a continent or a small area like a province. In Iran, backed by racial homogeneity, the existence of racial minorities of Iranian decent is negated, though ethnic, linguistic and religious minorities can be identified in various points in the country given geographical expansion. Having said this, minorities residing in Iran can be classified into ethnic, linguistic and religious groups which are explained in the following (Ariamanesh, 2011).

The term minority which is often accompanied by linguistic, ethnic and religious features involve that group of humans who live under marginal conditions or in conditions arising from quantities and meantime, social, political, economic and cultural inferiority (Pierre, 1994). In other words, minorities are known with this quality that among social classes, they have a lower rank against the majority groups in terms of political, economic and cultural backgrounds, it is impossible for them to acquire some appropriate jobs or at least they find it challenging to acquire them.

Some argue that minority is not and numerical and countable notion; rather this term applies about all groups which live in a society. However, they are distinguished from other people in the community by means of ethnic, religious and linguistic dependency. These people might be place under domination, or be removed from participation in the political affairs of the society, or be discriminated against; however, if there is some collective and group sense, they are considered to be minority (Lakzaie, 2004: 2). Minorities' rights are among major subjects of the international community and one of the main concerns within the Legal Justice Discourse. In any legal systems, minorities enjoy the same rights, where these rights can be measured as the criterion in that legal system (Ahmad zade, 2012). The issue of minorities' rights is, on the one hand, a new and a modern topic, and on the other hand, it is said to be having roots in the world of Islam.

In the 17th and 18th centuries, scholars and philosophers' regard for man was a an abstract impression of laws, though it corresponded with the modern human's attitude and so-called Descartes-Kant's subject, because, speaking of them was acceptable in philosophy and

social sciences. Hence, it is in this case, that in Human and Human Rights Documents, man without varied belongings is discussed. That which attracted views to the rights and situation of minorities was their impacts in the occurrence of the World War Two. In the post War period, the first legal document was related with the 1938 Rights of Minorities Act, which was associated with prohibition of and punishment of genocide. After that, various documents were also signed in world assemblies for the sake of protection of minorities' rights. However, from the view of Minorities' Rights Advocates, little achievement has taken place in the international arena for preserving minorities' rights. Government's resistances and diversity of minorities' groups, diverse claims of these groups and their various strategies for expressing their own words in response to affairs as well as international reactions have led the story of minorities' rights to become an endless story.

Little agreement may be seen in defining minority compared to special sciences concepts, because existing definitions in this area are so close together and the definition which is most famous is the one offered by Capotoriti, who considers minority as a group of people who do not take part in the government and, in terms of number, are less than the rest of the population and its members, while being nationals to that country, have different ethnic, religious and linguistic characteristics with the rest. They also have a sense of interest and solidarity unity for protecting their own culture epitomes and religion or language. That which is clear from this definition is the diversity of identity and identification among minority groups. This same point holds true for ethnic groups. A basic distinction may not be made between minority and ethnic groups, as such various components in different societies as language, race and religion and culture are thought of creating ethnicity; i.e. religious distinction which leads to the creation of Muslim ethnic groups in Sri Lanka. In Latin America race is important. Minority groups are identified based according to the majority of the society, because these groups are determined with such characters. However, it appears that in the social sciences culture, the distinction between ethnic groups and minorities refer to some doctrinal roots; i.e. the minority group is known as a branch of ethnic groups. Accordingly, ethnic groups who are distinguished by religion or religious creed are considered to be minorities; however, it is stated that there is no serious distinction between them. Of aforementioned material, it can be stated that categorization of minorities is no an easy job and this won't be made possible, because given facets related with being minorities, there will be different strategies and claims.

2. 1. Kinds of minorities

- Religious minorities
- Sect-based minorities
- Linguistic minorities
- National minorities
- Ethnic minorities
- Racial minorities

2. 2. Kinds of minorities' rights in the Iranian Law and international documents

- Minorities' social rights
- Minorities' civil rights

- The right to choose mother tongue or local language
- The right of immunity from discrimination and aggression
- The right of equality with the majority
- The right to enjoy education based on minority characteristics
- The right of communications with other minorities
- The right of participation in managing localities and life place
- The right of tolerance
- The right to enjoy a healthy environment
- The right of voluntary standardization with the majority in the country
- The right of having TV and Radio Channels in their own language and based on their characters

3. MINORITIES' RIGHTS IN THE IRANIAN DOMESTIC LAWS

In the current situation and given the current Constitution of the country, three categories related with minorities can be distinguished:

Religious;
Sect based;
Ethnic;

One has to expect that special rights are foreseen for each of these identified layers. In an overall categorization, minorities, in Constitution, can be classified into two respects: one is axis of opinion and the other is axis of ethnicity. If accumulated, these two axes yield five classes of minorities:

Mere religious minority
Ethnic-religious
Mere religious
Ethnic-religious
Mere ethnic

The pertinent rights have been provided for in the Constitution respectively. In terms of restrictions exercised over minorities' activities, principles 9, 14, 20 and 26 of the Constitution contain points which are as follows: lack of planning a conspiracy or action against the Islamic Republic of Iran, no disruption with the political and cultural independence and the total integrity of the country, observance of principles of independence, freedom and liberty, national unity, and the very basis of the Islamic Republic. This issue also assumes importance that the principles set forth in the Constitution are concise and general given the enactment of the Jurisprudence and the Constitution. If this case has been solved with regards to religious minorities' rights with single article, they have not yet been raised due to vague principles (Ghasemi, 2003).

Legal sanctions and overall policies in regards to fight against discrimination based on religion and opinion are as follows: according to the Islamic Republic of Iran, religious minorities can freely practice their religious ceremonies and follow their own religious rules

and personal status. Principle 12 of the Constitution provides: " the official religion in Iran is Islam (the Jafari Ithna Ashari creed) and other Islamic sects, including Hanafi, Shafe'ee, Maleki, Hanbali and Zeidy are fully respected; the followers of these sects and creeds are free to practice their own rites and are authorized in their religious teachings and personal status (marriage, divorce, inheritance and will) as well as relevant claims at courts. In any region where followers of these religions are found to be in majority, local regulations shall be within the scope of counsels' powers according to that special religion, with the rights of other religious followers being protected".

Also, principle 13 of the Constitution provides "Zoroastrian, Jewish, Christian Iranian are the only religious minorities who, within their scope of laws, are free to practice their religious ceremonies and act upon their own religious creed and personal status based on their faith". Also, principle 19 states:" Iranian people of any tribe or clan enjoy equal rights, and color, race and language shall not be considered privilege". In principle 20, it has been argued that:" all people in the nation, including man and woman are equal in the view of the laws and enjoy all human, economic, social, and cultural rights, with observance of Islamic rules and laws". In addition to the Constitution, the said affairs have also been suggested in Conventional Laws, including in a single article named "Observance of non-Shiite Iranians' personal status Law" enacted in 1933 which provides:" Courthouses should observe rules and regulations as well as certain habits common in their religions except for cases law provisions refer to public security..

Also, under article 143 of the Executive Regulation of Prisons Organization and Security and Corrective Measures, approved in 2002, when jailed, the prisoner's official religion is inserted in the leaf of ID, and in order to strengthen prisoners' religions creeds and execution of their religious faith, upon drawing help from the Ministry of Culture and Islamic Guidance, and through prison official, means necessary for the conduct of religious faith shall be provided. Articles 144 and 145 of the forgoing Regulation provides:" Each prisoner who has one of the authorized religions of the country can keep a volume of his own Heaven Book, Book of Prayer and Sajjade for the conduct of his/her own religious faith. Each prisoner with one of official religions in the country can apply for a religious representative to be present in the prison and help him with religious issues, should the prison chief agrees" (Javid, 2013).

In large part of principles pertaining to peoples' rights and liberties, the constitution speaks of an individual without special distinction (even man and woman or upon declaring both) and communicates about all the nation and religious minorities. However, in principles 19 and 20, this equality is explicitly mentioned. In principle 19, it has been suggested that "Iranian people of any tribe or clan enjoy equal rights and color, race and language won't discriminate them". In principle 20, upon emphasizing on the same support, the law supports "people of a nation" with observance of Islamic rules and human, economic, political and cultural rights. Overall, it can be argued that principles 19 and 20 of the Constitution lay emphasis on all people in a similar fashion and state that color, race and language won't discriminate them (Ghasemi, 2003).

Principle 13 of the Constitution is deviated to stating this right for religious minorities and it has been stipulated that known religious minorities, upon observing legal powers in the conduct of their religious ceremonies, are free and can act based on their own rites and personal status. In this principle, by personal status, it is meant the same as we discussed in the forgoing principle (principle 12) and includes marriage, divorce, inheritance and will.

By religious teachings, it is meant religious teachings related with affairs at school or special agencies of those minorities. Also, in one of the precedents of the Country's Supreme Court in 1984, a single article regarding the permission of observing Iranian personal status not being Shiite at courts has been referred to and it has been stipulated in that vote that : "except for rules and regulations in regard to security issues, all the rules and certain laws must be respected " (Ghasemi, 2003: 863). Principle 26 of the Constitution does not speak of known parties or religious minorities and has apparently placed this right in a set of Islamic Associations. The rights of choice for religious minorities and their political participation, in line with various principles of the Constitution, is like other groups of the society and have no difference. This point has to be mentioned that representatives selected by the religious minorities in the Assembly enjoy the same rights and powers other representatives do; i.e. the very principle of representative being general and adherence to defending the Constitution, independence, popular freedom and securing their interests as well as stating about all affairs hold true.

4. MINORITIES' RIGHTS IN INTERNATIONAL DOCUMENTS

Today, racial, religious, ethnic and linguistic minorities live in many countries, where in most cases; they are under pressure due to political and religious reasons. In order to prevent the wastage of these groups' rights in various legal, political, social and cultural areas, international laws have enacted rules and regulations in favor of them. The first document in support of minorities is the 1856 Paris Treaty which explicitly prohibits racial and religious discrimination. After the World War I and II, and the major changes that occurred within the borders of some countries, a racial, religious and ethnic mix appeared, where this issue revealed the subject of minorities and observance of their rights more than ever before. Accordingly, at the time of the international community, an international system for the protection of minorities had been created. Thus, in then Treaties contracted between nations, it had been stipulated that states in which minorities do exist should not exercise discrimination against them and allow them the right to choose their own language and religion (Ahmadzade, 2012).

After the World War II and the formation of the United Nations, despite the fact that no special document had been explicitly devoted to minorities in the International Human Rights Documents, with the insertion of the principle of non-discrimination in the United Nations' Charter, World Human Rights Declaration and other Human Rights Documents, ethnic, racial, religious and linguistic minorities were placed under international laws. Today, few countries are seen to have explicitly ignored minorities' rights or to reject them (Ahmadzade, 2012).

However, in the international laws, in spite of general support for Human Rights Document for Minorities, the only international document supporting them in special is the " People's Rights Declaration on national, ethnic, religious and linguistic minorities which, according to article 1 of this declaration, countries shall support national or ethnic, cultural, religious and linguistic identity in their own respective territories and facilities special conditions for promoting their own identity" (Zyaea Bigdeli, 2008). Minorities' laws are known with three ethnic, religious and linguistic characters in our time.

This issue has assumed importance with the development of fundamental notions of human rights in the world through the Communications Revolutions, modern technologies,

distance of countries getting closer to each other, collapse of walls and a variety of civil entities and NGOs. In the light of legal, philosophical, political and sociological researches and also via collective efforts by representatives of countries within international entities, particularly the United Nations in the field of developing international documents and creation of appropriate mechanism, the international community has been seeking to provide necessary capacities to respond to ever-increasing needs of minorities (Mahmoodi, 2010).

We are witnessing international efforts to promote minorities; rights under circumstances in which, though the world community is faced with crises in this path, it has gone through, to a large extent, a part of major and key obstacles, at least from a theoretical point of view. One of these obstacles is the crisis of "Tyranny of the Majority", as an impervious wall against minorities and democratic states, which reached its peak in the 19th century within the realm of political philosophy as a conceptual crises and hence much thinking efforts have been dedicated to tackle it (Mahmoodi, 2010). As the history of minorities across the world has shown, they raise their won social and political claims with self-awareness about the notion of difference compared to the majority. They think of equality with majority and in some case of autonomy and separation in regards to job discrimination, education, speaking in their mother tongue. History has taught us that minorities have, in many cases, been placed under persecution, simply for the reason they are susceptible and vulnerable against the majority. For instance, one can refer to the situation of Armenians in the Ottoman's empire, Ukrainians in Poland and Catholics in the Northern Ireland (Mahmoodi, 2010).

Up until the 19th century, minorities enjoying national and international roles were simply religious minorities. With the development of national self-awareness in the 19th century, national minorities played a major role. They protested against their own problems and crises and asked for better treatment. In the Habsburg's empire, the Czechs were among these minorities. In America and Europe, minorities involved migrants who were living in these countries for economic reasons, lack of social and political security and life attractions. Unequal treatment of these minorities in relation to civil rights, life conditions and job opportunities, led to frictions and conflicts in some cases and caused violence among minorities and citizens. Thinkers, lawyers, and policy makers in advanced countries have taken steps in the direction of removing discrimination and inequalities as well as compensating for the previous oppressions with respect to minorities. Of these steps, we can refer to the policy of Opportunities equality and exercise of positive discrimination in favor of minorities with regard to such areas as housing, education, religious affairs and employment (Bullock & Stallybrass, 1986).

After the World War I and formation of the United Nations, support of minorities' rights were expected to be included in this new body's agenda. The crimes some governments had committed against racial, religious and national minorities during wars necessitated such actions on the United Nations' part. However, this international body treated the issue from another perspective at first and looked at it with doubts: in fact, treatment of minorities by several nations prior and during the wars as well as misuses by some nations for attainment of their aggressive goals (e.g. regimes residing outside of Germany) generally led to non-confidence of conquering nations and reduced enthusiasm for seeking a solution for this issue (Zolain, 1994).

The United Nations' position in regards to the issue of minorities was, for a long time, a combination of aforementioned contradictory observations; meaning it provided minimum

support for the persons in minorities while keeping the situation of minorities silent in then international laws.

The international declaration on removal of any racial discrimination enacted in 1968, which led to the finalization of a Convention under the same title on December 20, 1965, had considered all people, including minorities against the laws as equal (art.1). The International Act on Civil and political Rights as well as the International Act on economic, social and cultural rights, both enacted in 1966, place emphasis on equality of rights and non-discrimination against all humans (clause, 2 and clause 2 of art. 2 respectively). Thus, the international system for the protection of minorities was, at first, founded for protecting them. It is clear that the securement of all peoples' rights, disregard of their minority situation, involves people who belong to minorities as people of a community (Zolain, 1994).

With lapse of time and evolution of opinions, it was made clear that the issue of minorities could not be solved under the covering of Jurisprudence ; rather another major factor should have been considered and that was belonging (sense of belonging) to a group possessing these features which distinguish them from others. Therefore, supporting minorities' rights would be certainly futile without considering the collective facet of the issue of minorities. Despite the complexity of the issue and sometimes, opposition by some member states, the United Nations started activities in this regard, including consideration of an article within the International Treaty ON Civil and Political Rights (famous article 27), which in parallel to these activities, it led to the formulation and approval of "Declaration on peoples' rights belonging to national, ethnic,, religious and linguistic minorities" (Zolain, 1994).

The said Declaration provisions can be examined in the light of decision by The Permanent Court of International Justice which was issued on April 6, 1935 with respect to Schools of Minorities in Albania (Serie, 1992), because this decision would state the fundamental thinking behind the supportive system of minorities' right well: peaceful coexistence of minorities along with other populations, while maintain their special demonstrations need to be made possible in a totally equal situation and then, facilities have to be provided for their special traditions. For the Court, "these two necessities are related, because real equality won't come about between minorities and majority unless the former would enjoy their special bodies and as a result, not be coerced to relinquish that which comprises their lives". These two facets of this notion can be found in the text of December 18, 1992 Declaration. However, despite the achievement the international support system based on this declaration has acquired in this regard it involves shortfalls and restrictions which need reflection (Zolain, 1994).

In international documents, almost all circumstances in which minorities see themselves exposed to inequality and discriminate treatment are foreseen and in reaction top that, discriminate treatment, particularly in terms of race, religion as well a social and cultural, roots and other conditions have been pronounced prohibited. The principle of non-discrimination, besides the United Nations;' Chart in 1945 (arts. 1 and 45) and the Human Rights Chart (art. 2 of the Global Declaration and Rights Treaties) has been emphasized in the following international documents (Hashemi, 2007).

1. ILO Convention No. 111 of 1958 related to discrimination in employment.
2. International Convention on the Elimination of All Forms of Racial Discrimination in 1965.

3. UNESCO International Convention Against Discrimination in teaching.
4. UNESCO Declaration on Race and judgments 1978 (Articles 1 to 3).
5. Declaration on the Elimination of all forms of religious and ideological discrimination and inequality 1981 (Article 2).
6. Convention on the Rights of the Child 1989 (Article 2).

Also, in domestic laws, "Iranian people of any tribe or clan, enjoy equal rights and color, race and language won't discriminate against them (principle 20 of the Constitution) and " all people in the nation , both men and women, are under law protection and enjoy all human, political, economic, social and cultural tights, as Islamic rules are predicted". Principle 3 of the Constitution lays emphasis on "Free education for all" (clause 39), "popular participation in determining political, economic, social and cultural destiny" (clause 8), "removal of inappropriate discrimination and provision of fair facilities for all" and "guarantee of all-our rights for people, both men and women and creation of a judicially fair environment for all and popular equality against the laws" (clause 16) which as individual and social rights suggest necessity of support of all minorities.

In numerous international documents related to human rights to a national, ethnic, racial and religious points, some special rights to persons belonging to a minority is predicted. These documents are as follows:

1. International Convention for the Prevention of mass destruction (genocide), 1948 (Article 2.)
2. International Convention on the Elimination of All Forms of Racial Discrimination 1965 (Articles 2 and 4.)
3. International Covenant on economic, social and cultural rights in 1966 (Article 27)
4. International Covenant on Civil and Political Rights, 1966 (Article 13)
5. International Convention on the Rights of the Child 1990 (Article 20.)
6. The 1960 UNESCO International Convention against discrimination in education (Article 1)
7. The 1978 UNESCO Declaration on Race and judgments (Article 5)

5. CONCLUSION

In regulating the Islamic Republic of Iran's Constitution, sufficient attention has been paid with respect to formative adaption with Treaties' provisions and binding international documents referring to human rights and individual and collective freedoms. Though human rights advocates have concentrated their own efforts in the direction of formative adaptation with international documents in terms of observing minorities' rights, due to unpredictability of string sanctions for the violation of the aforementioned rights, the availability of scant conflicts is necessity with the international system. Some of these conflicts are indispensable due to political and social context of Iran as well as Islamic rules and can be ignored from an interactional law.

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