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The Investigation of People's Rights and their Guarantee in Constitution and Jurisprudence

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ABSTRACT

People's rights are the chief issues of political systems on which there is much emphasis in Constitution. Of the main parts of Constitution in every country is people's political freedom and rights. It is considered the most important part of law. Therefore, Iranian Constitution has assigned various principles to the rights of individual, social, judicial and security freedoms. People's rights entail different things that are constitutional rights reflected in Constitution. In this paper it is tried to classify people's rights from the viewpoint of Iranian Constitution and Islamic Jurisprudence. It investigates tools and mechanisms needed to guarantee and fulfill civil rights and protect legal constitutional freedoms.

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INTRODUCTION

Throughout history, man has always needed his basic needs to be met because of his tendency toward civil rights. The most important reasons men have gathered together and formed societies are collective security and social needs. Generations of individuals need a collective attempt to survive disasters such as flood, fire, famine, etc. and protection against enemies. Human beings gather together according to their needs and behave wisely and establish a social system based on wisdom and development, i.e. if a society or government is to be regarded as advanced, the basic needs of its individuals have to be fulfilled.

Today, in the world's legal and political literature, the rights and concessions of foreign nationals and individuals are highly important. Here is the point that constitution comes to determine the relationship between individuals and government. As human societies are developing and the relationships between individuals are getting complicated, one of the issues that has taken importance is to respect peoples' rights and constitutional freedoms. People's rights originate from their nature. Constitution, as the most fundamental contract between people and governments, guarantees the rights of both parties. In Iran, following Constitutional Revolution – which occurred one hundred years ago – considerable civil rights and concessions were included in the constitution of the time. After Islamic Revolution – 7 decades after constitutional monarchy – the second comprehensive constitution was passed in 1975. In the new constitution, a new important chapter was allocated to pin importance to people's rights and freedom. The most important point in every country's constitution is people's rights and it is important to the extent that when such rights are lacking in a given country, its democratic nature is in question. Constitution was written to fulfill people's rights.

Literature Review:

From old days until now, people's rights have undergone some evolution in the form of different declarations. The first text on human rights belongs to Cyrus the Great whose declaration dates back to 2500 years ago. It was engraved on a cylinder-like stone which was discovered by one of the British archeological team during archeological exploration in the city of "Oor" in south-eastern Iraq. Issuing the decree of Great Charter in England (1215), declaration of America's independence (1776), declaration of human rights and French citizens (1789), global declaration of human rights after the second world war, the drawing-up and ratification of international treaty of political and civil rights (1948), international treaty of social, economical and cultural rights (1966), in line with human rights which came into effect, and finally, Islamic declaration of

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human rights ratified on August, 5th, 1990 in Cairo, all are the steps taken to recognize human rights and to provide and guarantee them. Except from the before-mentioned declarations, today in constitutions of most of the countries in the world, people's basic rights have a special room. In a democratic country, the most important issue is keeping and guarantying the enforcement of human rights. The responsibility to keep and guaranty people's human rights against government powers is on the constitution.

The second chapter of Constitutional Amendment to Constitution (principles No. 8-25) entitled "people's rights" is the first document and the foundation stone of people's rights in Iran. In Iranian constitution, people's rights are extensively delineated; and discreet chapters are allocated to this issue.

People's Rights:

The third chapter of Iranian constitution entitled "people's rights" expresses people's basic rights in Islamic country through 24 principles. It should be kept in mind that people's rights are not only mentioned in this chapter, but from the beginning to the end of the constitution there are full references to people's rights and privileges.

Equal Support of All People before Law:

Equity and equality are important principles of human life and the prerequisites to an honored life in order to reach self-actualization. The content of Article No. 1 of the global declaration says that "all human beings are freely born and they all are equal in honor, respect and rights. Wisdom and conscience are bestowed on them. It is necessary that they behave each other humanely."

One of articles in the third chapter of Iranian constitution which is associated with people's rights, is the 20th principle expressing that all people in society whether man or woman are equal before law and they all enjoy equal social, economical, political and cultural rights.

The Right to Select Place of Residence:

The right to select place of residence means that each individual can select anywhere he likes to live.

Principle No. 33 of Iranian constitution posits that no one can be exiled from his place of residence or prohibited to live where he likes or forced to live somewhere he dislikes unless law permits.

Article No. 9 of the global declaration of human rights forbids arbitrary arrest, exile and prison and Article No. 13 says that everyone can freely travel to other countries and select his place of residence.

Privacy:

According to Principle No. 25, investigating and not delivering letters, recording and bugging phone calls, disclosing telegraphic messages, censoring, not delivering them, bugging, and invading privacy are forbidden unless law permits. This Principle strongly defends people's privacy.

Prohibition of Inquisition of Beliefs:

For sure, probing into people's privacy and their secrets are something quite immoral and unacceptable. According to Principle No. 23 of Iranian constitution, the inquisition of beliefs is prohibited and no one's privacy should be blamed or invaded because of his beliefs.

Support for Women:

Societies grow when their women are educated. In Principle No. 20 of the constitution, it is clearly stated that all individuals whether man or woman are equal in the eyes of the law and they all enjoy equal social, political, economical and cultural rights under the Islamic framework. Government has responsibility to guarantee women's rights in any way under the Islamic framework. According to Principle No. 21, the government should:

1. Create conditions in which women can progress and protect their marital and spiritual life.
2. Support mothers especially during pregnancy and take the custody of children and support orphans.
3. Form fair courts to protect family and its survival.
4. Provide special insurance for women and widows.
5. Give custody of orphans to competent mothers in case of the absence of a legal guardian.

Security and Immune from Assault:

Security and immune from assault are the most important and necessary conditions of all freedoms, because when the body is exposed to mental and physical threats, man cannot benefit from all his rights and freedoms. According to Principle No. 22 of the constitution, people's honor, life, belongings, rights, housing, and job are immune from assault unless the law decides otherwise.

Judicial Security:

Judicial rights are the ones that a person should have when faces judicial system and judicial inquiry. In Iranian constitution, Principles No. 36, and 159 are concerned with this issue. It is highly important that the court of law does justice to individuals. It is stated in Principle No. 34 that: it is everyone's alienable right to file a lawsuit and bring a case to the court.

Article No. 10 of global declaration of human rights regarding the equality of people before court, says that everyone has the right to bring his case to trial freely and openly.

Prohibition of Torture and Disrespect to Defendant:

One of the outcomes of the right to live is the prohibition of torture and inhumane treatment. Principle No. 38 says that "any torture to obtain confession is forbidden. Forcing one to testify, or take an oath is not authorized and such testimony, oath and confession is of no value. If one is disobedient of this principle, he is subject to punishment."

Acquittal Principle:

Acquittal principal is a common legal heritage recognized in all well-developed countries. According to Principle No. 37, no one is guilty, unless there is evidence to the contrary.

The Right to take Iranian Nationality for Iranians and Foreigners:

Having Iranian nationality is an alienable right for any Iranian; and the government cannot deprive one of his nationality unless he wills, or he takes another nationality. Therefore, whoever who has Iranian nationality, has the right to change his nationality and if he is forced into having a nationality it is against Principle No. 41 of Iranian constitution.

According to this principle, having Iranian nationality is an unalienable right, and the government cannot deprive someone of his nationality.

Freedom of Speech in Media:

Freedom of speech is a must for all citizens. As regards journalism, freedom of speech in media is put forward. Freedom of speech is as old as the history of human being; however, freedom of media is something that has turned out with the advent of spoken and written media. According to Principle No. 24, media have freedom to express the realities unless it is against Islam and public rights.

The Right to Supervise and Take Part in the Country's Affairs:

In political terms, people's participation for determining their own future leads to growth and improvement of national dignity and unity. According to divine order, human controls his social future. Therefore, the constitution has created such conditions for people to participate in all life-making decisions. In various principles of the constitution (6, 7, 26, 27, 62, 87, etc.) it has been referred to political participating methods.

Freedom of Parties, Communities, and Syndicates:

Freedom of gathering and forming party and syndicate-politics-related associations is important from the viewpoint of public order, because the final formation stage of political security crises turns out as gatherings and because the abuse of gatherings is by far a more imminent threat than that of other freedoms.

Freedom of parties is another freedom granted to people. In fact, participation of citizens in politics and political affairs, and election of top officials is impossible without their cooperation. Principle No. 26 says that parties, communities, political-syndicate associations, religious associations or recognized minorities are free to work unless they violate principles of freedom, independence, national unity or Islamic basics. No one can be prevented from participating in one of the associations or parties or forced into participating in one of them.

Freedom of Unarmed Rallies:

According to Principle No. 27, formation of rallies and gatherings when carrying no gun is authorized providing that they are not against of Islamic principles. One of the realizations of democracy is the freedom of rallies and demonstrations. People can directly and openly express their grievances without any intermediary.

The Right to Vote:

The right to political participation in a society that elections are determinant of many things is highly important. Voting characterizes the citizenship's power and participation in political occasions. Principle No. 6 of Iranian constitution says that in Islamic Republic of Iran, affairs should be administered through public vote, by elections – the election of president, members of parliament, members of councils etc. – or by referendum in cases specified in other principles.

Freedom of Religion:

One of the most important issues of human rights mentioned in both Iranian constitution and global declaration is freedom of religion. In case of the Principle No. 12 of Iranian constitution, it is mentioned that the formal faith in Iran is Islam and the formal religion is Asna-Ashari – related to 12 Shiite Imams – and it is unchanging forever; other religions such as Hanafi, Shafe'e, Maleki, Hanbali and Zeidi are held in respect. Religious freedom is of such importance that Principle No. 14 refers to the issue and puts a great emphasis on humane treatment respect for other non-Muslim minorities.

The Right to Employment:

The most important social-economical right is the right to employment. Everyone should choose a right job suited to his abilities and talents. According to Principle No. 28, everyone can choose a job that he likes if it is not against Islam and public interests. The government is responsible to create various jobs and equal job opportunities based on the needs of society.

The Right to Membership of Labor Unions:

In Principle No. 26, a reference is made to freedom of unions. Market unions create jobs and have a very chief role in the distribution system. All retail chains and a great portion of the wholesale chains are subsumed to union system.

The Right to Possession:

Possession is a basic right of every human being in society. From the beginning that human came into being, by nature and instinct, he always took a liking to his belongings and never let anyone to take it.

Free Education:

The government must provide free educational conditions. The Right to education is one of the most important needs of individuals and it can be regarded as person's participation in society without being embarrassed. According to Principle No. 31, the government should provide the public with free education until the end of secondary education and develop higher education in a free manner as much as possible.

Enjoyment of Social Security:

Social security plays an important role in cultural, economical, and social boom. According to Principle No. 29, the old, the ill, the disabled, the unemployed etc. should enjoy social security; and in cases such as incident, fire, treatment, etc. the government should financially support them. Government is responsible to provide the public with necessary services and financial support.

Not Causing Loss to Others:

According to Principle No. 40, no one is allowed to cause loss to others or to transgress the public.

People's rights in Jurisprudence:

Human is a creature that was created in the most beautiful way and was admired by God. Because of this, He put great significance on it. In Islamic texts, people's rights are broadly talked about and plenty of rights are recognized for people including the right to live, the right to freedom, the right to choose job and life partner, the right to education, etc.

Equality and Justice:

Equality principle is the first element of social-Islamic system. From the viewpoint of Islam, all races with different characteristics were made from one man and one woman and the first man and woman who were the parents of all humans had the same characteristics by nature. The Islamic Declaration of Human Rights (1990) also assumes countries' constitutions as Sharia; therefore, it has been stated in the first part of Article No. 19 that "all people are equal before Sharia".

Freedom in Islam:

Freedom in Islam is of great importance. Islam attaches great significance to it and considers it as a distinguishing feature that differentiates human beings from other animals.

Security in Islam:

One of the human demands is security. In Islamic countries, it is considered as one of the basic and vital necessities for society.

People's Political Rights in Jurisprudence:

One of the most important political rights is the right to participate in collaborative events; which resides in 2 principles: council and allegiance. Referendum is the updated version of council principle and elections are regarded as the new version of allegiance. Islam has founded the relationship between rulers and people on the basis of bilateral rights and has recognized each to be responsible to the other.

People's Social and Cultural Rights in Jurisprudence:

Islamic declaration of human rights passed in Cairo, Adopted in 1411 A.H., took into account people's social rights and recognized them in several cases. In Article No. 17, it says:

A. Every man has the right to live in a morally clean place in which he can grow spiritually. Society and governments are responsible for supplying such right for him.

B. Government and society are responsible for providing health and social conditions through public centers with regard to the available facilities.

C. Government is responsible for guaranteeing a good life for man; through which he can earn a livelihood and afford needs such as food, housing, clothes, education and treatment.

People's Judicial Rights in Jurisprudence:

Judgment in Islam is of great importance. One of the most important aims of prophets from the viewpoint of Quran is to keep justice. Penal trial principles are strong enough; in a way that they never let trial deviate from the right path. "Quran has assigned different responsibilities to those who are involved in making judgments, including trust and abstention from subjective opinions and self-ego".

Nationality and Asylum-Seeking in Islam:

Asylum-seeking occurs when one sees his life and freedom in danger and has to leave the country. From the viewpoint of Islam, nationality is based on 2 principles: faith and allegiance. Therefore, if a person is Muslim or follower of other divine faiths, he can have Iranian nationality.

Women's Rights in Jurisprudence:

Islam and the Prophet (PBUH) gave special attention to women's rights. Prophet considered Paradise to be beneath mothers' steps and Quran instructed (and recommended) beneficence to parents. In Islamic system women possess the same rights as men do; these include the right to educate, work, ownership, and suffrage. According to Islam, women's employment is considered to be a right. Quran explicitly states in many verses that women have been created of the same nature and mettle as men. It primarily talks about Adam: "We created you all from the same parents and we set a mate from his own mettle" (Surah Nisa, verse No. 1). It then talks about mankind: "God created a mate for you from your own mettle" (Surah Nisa, Surah Nahl, and Surah Rome).

Guarantee of People's Rights in the Constitution and Jurisprudence:

The most important issues in respect to guarantee of people's rights are sovereignty of law, judicial autonomy, and supervision by the constitution.

Sovereignty of the Law:

Sovereignty of the law becomes meaningful when the acts and behavior of the governors and rulers are based upon the law which are rules enacted and notified by the legislators. According to this principle, all political foundations must be subject to legal rules and none of these foundations has the right to threaten fundamental rights and freedom considered by the rules. Third Principle of the Constitution of Islamic Republic of Iran requires the government to eliminate any despotism, dictatorship, and monopolization as its main duty. Various principles of the Constitution, which express duties and authority of the system leaders, can be also known as principles related to the sovereignty of the law; Principle No. 110 and other Principles such as No. 71, 72, 113, 125, 128, 133, 138, 140, 156, 170, and 173 have determined the scope of duties and authority of the officials of the Islamic system.

Judicial Autonomy:

One of the reasons for separating the powers has been emancipation of judicial system from political dominance. Protection of citizens' rights and execution of the justice is a serious mission issued to the judicial power by the constitution.

Supervision and Protection of the Constitution:

Execution of the constitution is not an immediate and sudden matter which all its principles can be fulfilled completely at once as soon as being ratified and bound. Two types of supervision have been predicted to protect the Constitution of Islamic Republic of Iran; one is legislative supervision and protection, the other one is

executive supervision and protection. In legislative supervision and protection, the Guardian Council takes action to supervise the ratification of the Islamic Parliament to conform them to the law and the constitution; this has been set out in Principle No. 91 of the Constitution of Islamic Republic of Iran. In executive supervision and protection, and according to the Principle No. 113 of the Constitution, the president is responsible for execution of the constitution.

Guarantee of People's Rights in Jurisprudence:

In Islamic government, people are entitled to seek for the degree of conformity of the government officials' behavior with the divine rules by reviewing their performance. The rulers, too, are required to encourage people in this respect and prepare the necessary manners of evaluation. The principles protecting people's rights are as follow: 1) leadership of the competent or rulership of the righteous, 2) sovereignty of the law, 3) justice, 4) supervision and the right to criticize, 5) leadership by people, and 6) keeping promises. These are the principles which provide people's freedom and rights.

Conclusion:

The rights and privileges of the citizens in political and social changes domain have developed the same way as many concepts and factors of human life. Islamic Revolution of Iran determines mutual relations between government and the people and the governmental powers' jurisdiction by assembling and establishing governmental foundations and legislation of the constitution through religious instructions.

Execution of the law is performed in practice by executive organizations and also disciplinary and judicial organizations. Vindication of people's rights demands special actions and instruments in a way that any citizen, whose rights have been trampled, may lodge a complaint against the executive authorities; and the judicial system, too, may return the citizen's lost rights to him/her by using necessary instruments. In other words, the judicial system must provide the necessary ways for fulfilment of the execution of citizens' rights in all aspects, and the public prosecutor has this apprehension that citizens' rights are not to be trampled.

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