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Guarantee of woman social security and welfare rights in light of Iran Islamic Republic Constitution

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ABSTRACT

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There are a lot of rules mentioned in the constitution law of Iran regarding to women rights. Some of them mention women as just a woman and some refer to them as wife or a mother. These rules in the constitution of law Iran in this paper are discussed from different side of view in order to establish basemen of thinking for providing Iranian women the basic rights so that they can be helpful and useful in the society like men. This discussion has paid attention to the basic and fundamentals of Iran constitution law.

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1. Introduction

According to principals of Iran Islamic republic constitution it is guaranteed woman rights in all aspects with regard to Islamic rules. Affairs that government is bound to fulfill are in two categories, first those that put forward merely for woman being Such as making favorable grounds for woman personality growth and restoring their material and spiritual rights. Social affairs relating to ensuring women rights in respect of being mother and their membership in the family such as necessity for establish competent court for protecting family entity. Also it has been set in Iran constitution and public law some rules

containing women equal rights between woman and man in selecting job improving working women conditions, right for education, social security, and treatment. According to the Iran laws women are prevented to occupy hard and hazardous jobs (article 75 labor laws), jobs against prestige personality and against family interests (Article 1117 civil law: Support from woman by government and related).

Government set rights and duties for every party in a certain framework. Constitution reflects lawmaker main point of view in a legal system. Such as all law must draw up according the constitution of Islamic republic of Iran, which dedicates that women should have dignity and esteem in the Islamic republic point of view in introduction of constitution, views woman right completely ideological and in principal of constitution blocks discussion about equal right between woman and man.

Point of view of constitution lawmakers is not agreed with equal rights between woman and man. And in each of principle that treats it directly or indirectly rights of woman is conditional and related to protecting of basic Islamic and lawful and religious law, So legal protection from woman rights must be made based on Islamic regulation frameworks.

In Iran Islamic republic contrition, the only source for law making and religious laws do not accept antler source for law making as a result, approval of laws based on equal rights between man and woman face with obstacles.

It must be paid attention to this point this in constitution law women are in special attention because she serves a role as wife and mother in the family.

2. First discussion: religious affect on law

In Iran, there was traditional dialogue about woman political-social position. This dialogue rooting in social and religious traditions in Iran, play a leading role in hind of attitude towards woman in Iran society. But in onset of twenty century and constitutional revolution In Iran, a new dialogue has put forward regarding woman by influence from modernism; although it has common aspects with basic modernism in west but lacks of complete agreement with.

This dialogue was considerably a dominant dialogue in area of woman studies in Pahlavi era explaining the woman position in various areas of society in theoretical works (Fozi, 2008).

In third chapter of constitution law regarding people rights and woman constitute a part for people, all kind of people rights and social freedoms and its bounds has been discussed. That most important rights and freedoms include: equal right before law for all people, right for all people from equal rights regardless of color, ethnic Language, equal protection of law for woman and man and enjoiment of both of them from all human, political, economical, and cultural rights with respect to Islamic rules, right of security and immunity, dignity, job, right for immunity from investigation, Right for judicial security, prohibition from torture, Prohibition from a aspersion of another character or reputation, freedom of speech. Freedom of writing and freedom of press, right of establishment of groups, parties, associations, political and trade associations and Islamic associations and demonstrations freedom right for job and occupation and right for having social security(Nikzed, 2009).

Also according to the third principal of constitution, the government of Islamic Republic of Iran is bound to apply all its facilities for attainment of these goals; also in second principle for creating a favorable environment for growth of ethical virtues based on faith and virtue and fighting with all kind of corruptions. Securing of political and social freedoms within the limits of law and remove of discriminations and creating just facilities for all people in all material and spiritual area.

In other words, in cases these advocators of improving of woman rights conditions can empress their views with broad-mindedness considering time and place, third views are not included in Iran lawmaking because its advocators are out of governmental system. And all they with any continent of religious thinking don't agree with equality of woman rights based on religious basics and just are seeking for improvement of woman rights. In other hand, equal support accounts for discrimination and Oppression because there is a clear difference between (shoyail, 2003).

Based on twenty one principle of constitution, the government is bound to guarantee the woman rights in all aspects with respect to Islamic rules and accomplish attires including creating suitable areas for growth of woman prestige, spiritual right of support for mothers especially in pregnancy, Guardianship of child and support of children, Without guardian cresting competent court for support and survival of

family, creating special insurance for widows and elderly woman, And without guardian and also granting guardianship of children to the competent mothers forwards to emulate of the in case of absence of religious guardian.

The next step must be family common financial regime and elimination of conditions stopping fair equivalent. It is not possible to survive the spiritual rights of woman and create favorable ground for growth of their prestige except by woman active involvement in all social activities and elimination of injustice among this group and possibility of education to the highest levels (Parvin, 2001). It is clear that in these years there should be favorable grounds for woman prestige and surviving their position but we have the current situation of woman in various fields.

Expression of this note is very general and obscure; that material and spiritual rights of woman needs correlation and one certainty without other do not reach to the meaning (Hashem Zadeh, 2012).

It seems that necessary and favorable ground for growth of woman personality is not made completely and material and spiritual rights is not reached.

Although in recent year there were admirable reports but reality is that these efforts was not suitable with circumstances and needs and there is still serious obstacles in the way of revival of material and spiritual right of woman and continuity of early measures can be resolver of this difficulty.

In Quran point of view woman and man are equal in respect of humanistic value and talent and capability of spiritual recognition and there is not much difference between them in regard of responsibility of duties and roles and enjoining of society rights, unless it is regarding to the special Situation of physical creation and probably spiritual creation or it is differences that can be transitional of current situation and it is possible to change the situation.

2.1. Second discussion: government support from woman in guardianship and education of children.

In regard of woman material right, cases are suggested such as common possession based on contract between woman and man, elimination of current conditions regarding of receiving remuneration, reformation and re viewing of laws regarding inheritance of wife from husband (Shojaei, 2002).

Principle 21 in its notes put bound of government to support of mothers especially in pregnancy and child guardianship, support for children without guardianship. This support includes both material and spiritual aspect the government can take a step to execute this principle by Providing free health and treatment services during pregnancy and at least until two years old child and allowance payment. This support can be including promotion of cultural and scientific level of mothers and their enjoyment of judicial assistance according to article of law making, guardianship of small or interdicted children. Also the small children who their father dies are granted to their mothers.

And according to the note 2 this Article marriage of mothers that mentioned in this article doesn't prevent them from guardianship rights. Also in another single Article is approved that express grantee of refusal from delivering child to guardian is due to order from special civil court or its substitute. Given guardianship of a child to someone and her / his father or mother prevent verdict to be executed. This article indeed can be guaranteed, the article 1169 to be executed. Thus if guardianship of child given to his / her mother and her / his father or patience relatives refuse to deliver the child to her mother, the court will bound them to reclaim the child or non-opposition and in case of opposition the court will condemn them to jail until the verdict will be executed.

Indeed, Jail in this article, is a tool to force abstainer to do according to the court verdict (Chorbunnia, 2006). In case that physician of social security organization, recognize that the kind of job is dangerous for pregnant worker, the employer must give her employee a suitable and lighter work without deduction of her salary until the end of her pregnancy (Rasteyar, 2001).

If a person restrain to give back a child given temporarily to him, when the persons that have legal right for guardianship of child, he will be punished by condemned to 3 or 6 months jail. Another aspect of keeping child by guardian is that she prevents child to harm to other people. Child especially in early stage of life if let be free and without supervision, can always hurt to the neighbors, so father and mother should prevent the child to do the dangerous works (Katozian, 2011). The government take a important practical stop for safekeeping of family with establishing family courts to materialize to note 3 of principle

21 of constitution but what is mentioned as competent eases of family court in law, dedicate of many current court to the court of issue of principle 21 of constitution is not comprehensive and don't comprehend family crimes except abandonment of subsistence.

For example the investigation to the crimes such as insult, beating in family is necessary by special court of justice while these cases is not in competency of above mentioned court and referral to the public prosecutor office what is nowadays prevalent in Iran emphasis on family importance without its difficulties despite changes in society and people altitudes to the family still traditional family and affair related to it is propagated by gornernueat.

Society must take responsibility regarding individuals, Provide for them suitable living facilities. Since there is no any special attention to this matter in government responsibilities and duties, they should make it better (Aghasi, 2012).

According to the note 3 of principle 21 creating special insurance for widows and elderly woman and without supervision is a government responsibility.

Unfortunately there was no attention to this quote regarding that considerable percent of women are housekeepers and are breeding children and lack of effective cooperation of men, and prevented to work outside the house. So they become affected by unfavorable situation.

Creating special insurance aforementioned in note 4 of article 21 can prevent too grant from occurring this situation society is a uniform related system and any kind of ignorance to the women rights cause harm and declaim of society and harm to the men.

According to the Article 4 of security law of women and children without supervision Enacted in (24/8/B71) regarding supports, it can be inferred that these supports provides women, With respect to the special circumstances provisions. And through special professional training is applied by government and related organization because based on note 3 of Article 4 the government is bound to accomplish the cultural and social supports including providing services such as educational services, employment, profession and social supports.

2.2. Third discussion: women right for enjoiment of social security

There should be Women right for enjoiment of social security regarding to the special insurance of widows and elderly women without supervision. That constitution with employing recent would account this kind of women unable of self supervision and the family not creative. Although there has been efforts by center of women partnerships affairs for approval and execution of insurance of housekeeper women that begins its experimental executive, but continuation of this requires serious try to solve difficulty such women in a comprehensive and efficient and more importantly urgent way. Definitely no timely action in this regard will involve society in unpleasant consequences, that there are signs of it at the present in the society (Shojaei, 2001).

It must be mentioned that housekeeping women insurance plan is set in 2001 by center of women partnership affairs and since 2002 responsibility to accomplish this plan has put upon. This organization by definition of a Social insurance program with special approach regarding to this category and allocating some part of this credit by social security organization is working.

According to this plan, insurance social security of housekeeper women is applied to the insurance so that participation of government with housekeeper women especially for family guardians alongside of ensuring honorable life for women with payment of continual amount of money is done. This organization on behalf of government at to pay of pension based on conditions inserted in the executive regulations of household women (Ghorbania, 2005).

Note 5 principle 21 prescribes granting guardianship of children to competent mother for emulation of them in case of lack of religious guardianship is the government responsibilities according to this note in this principle in case of lack religious guardian that is including father or paternal grandfather or appointed executor on behalf of one of them. The court must delegate the guardianship to the mother unless it become attains her non competency despite in the civil law and law of imprisonment affair is no duty for court.

According to the article 61 law of imprisonment affair interdicted father or mother so long as they don't get having competency for guardianship. While notes 5 of principle 21 of constitution put the

criterion of mother guardianship merely on her competency and don't pay attention to her remarriage as content for non-competency.

Articles 1251 and 1252 of civil code has bound mothers to appoint as guardianship so that during if one mother is in from of marriage should inform the public prosecutor of residing district in this case aforementioned can demand to determine new guardian or supervisor annexation or if guardian don't inform her marriage daring one month, the judicial authority can demand her removal.

While according to note 5 principle 21 of constitution the competent mother should in case of lack of legal guardianship appoints guardian for her children. Marriage of mother is not a reason for her non competency as mere not marriage is not reason for non-competency; the constitution criterion regarding grant guardianship to the mother is prepared to the civil code in this regard because according to Article 125 / and 1252 of law, remarriage of mother who have appointed as her child guardianship, endanger this guardianship, but any time that she obtains non competency this position will be delivered to others; it is obvious that in case of discrepancy between constitution and civil code it must act according to constitution. It means that in case of lack legal guardian for child who need for a guardianship and competency of mother.

There for in executing determination of guardianship and her removal in civil code and law of imprisonment affair, first must pay attention to note 5 principles 21 of constitution and act accordingly.

According to Article 62 of imprisonment affair law enacts in 1940 the mother of child having ethical competency is proffered over any other provided that she didn't get married.

If mother get married, she loses her legal. Then the court decides, the mother becomes guardianship or gives this position to the other person. The guardianship must do her duties under supervision approved by court and he / she must provide child income list and expenditures and approve it to court and (Hosseini, 1997).

With a general look to the principle 21 of constitution of Islamic re public of Iran it can be considered that there are notes of this principle namely (2, 3, 5) with reference to roles of women as family center, prevented from possible spoiling of their rights in the family but in two note from above principle (1 and 4) considered women basically without her position in family and bound the government to special support for women regardless of her maternal or spouse role.

Despite note 5 of principle 21 of constitution that base mother guardianship criterion on the merely her competency. The Article 61 of imprison affair law and articles 1951 and 1252 of civil code, totally considered the remarriage of mother as a content for her non competency, while as the mere non marriage, is not reason her non competency. The marriage of mother is not reason for her non competency so in these cases it seems that issue must grant to the recognition of court and abstain to give general and identical role for all cases.

3. Conclusion

The constitution, both in introduction and it principal, pay special attention to the half of people namely women. Regarding to this mother that constitution consist the main law and highest legal source in the country, its guidelines and directions must act in all stages of law making, executive and judicial if we compare society as a man, all organ of this body must be harmonize and strong for a sound and strong activity if we consider man and women as motional limbs and organs of society, weakness and inability of each part of body prevent other port to repeal potential capabilities man and women in society are two inseparable part of society body.

Progress and achievement of men depends on progress and achievement of women in society that half of its people remained behind in various aspects than the other half in comparison with society that use all potential power in each person whether man or women will become defiled and this failure and lifting behind go to both men and women.

The constitution in addition to enforcement of all aspects of society and providing spiritual and material needs these rights is guaranteed for each of society individuals there for each person must enjoy these rights as a member of society.

Therefore with believe to the fact that complete development of one country, universal welfare and establishing of peace requires uniform participation of woman in all content in equal conditions with the men.

With this fact that changes in traditional role of women and men in society is necessary for complete equality between men and women it is hoped that some day it becomes realized that justice seeking should go towards women and justice runs like blood in veins and eliminate the current inequalities regarding women.

References

- Fozi, Y., 2008. Evaluation of Islamic revolution and consequences regarding. Political-social position of women in Iran, Main 16-research quarterly, issue 39.
- Ghorbani Nia, N., 2006. Revelation in women rights evaluation right regulations related to women in Islamic Republic of Iran, women participation affair center, Tehran: Rooshan, p 153.
- Hashem Zadeh, Z., 2011. Lawmaking support from women, www.hoghoghdanan.com.
- Hosseini, A., 1997. Women rights in Iran and international documents, Tehran: Ganj Danesh publication.
- Katozian, Nasser (2011). Basic course in family rights, Tehran: Mizan publicat.
- Nikzed, A., 2009. People rights in constitution of Islamic republic of Iran, Adopted from site: www.mardomsalaari.Com version No 2112.
- Parvin, F., 2000. Government grant of women rights, Payam magazine, No 19, p 54.
- Rasteyar, B., 2000. Women positive rights in regulations and religious jurisprudence, Shiraz: Navis.
- Shojaei, Z., 2002. Women in the constitution, achievements, defects and approaches, lawyers focus magazine, autumn and winter, 81(179), p 159.