



Study of Covenants with the General Principles Governing the Legal System of Islamic Republic of Iran

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Abstract. The International Covenant on Civil and Political Rights is one of the most important international human rights that discusses a wide range of rights and duties regarding civil and political rights. Many countries including Iran have joined this covenant and bound themselves to respect its case law. Countries, at the time of joining, accept covenants conditionally or absolutely depending on type of their government and dominant attitude on governance system. Government of day in 1975 accepted the International Covenant on Civil and Political Rights absolutely. After the victory of the Islamic Revolution and the governance of the Islamic Republic of Iran in developing its international obligations, which had already joined, encountered numerous problems; including in fulfilling commitments that the International Covenant on Civil and Political Rights had established. In this regard, there have been a lot of efforts to study how to resolve conflicts between these international conventions or Islam norms. The present dissertation also aims to study the differences and similarities between the International Covenant on Civil and Political Rights and Islamic teachings and considers differences and similarities between human rights of the West and Islam and in value and theoretical principles and finally concludes that legal system of Islam and the West, despite the undeniable differences in theoretical and ontological principles, have many similarities with each other, that by strengthening these similarities along with clarifying the differences, effective steps can be taken to promote genuine Islamic thoughts which are based on the pure divine nature.

Keywords: Civil and political rights covenant - economic, social and cultural rights covenant- reservation right - Succession in covenants -covenants.

1. INTRODUCTION

The country of Iran has joined the Convention on civil, political, economic, social and cultural rights without reservations or interpretative declaration before the Islamic Revolution in June 1975 (1354). But after the victory of the Islamic Revolution and the governance of Islamic rules on all legal aspects of the Iranian people, in accordance to all components of these two covenants, these principles were doubted and as a result some people, with reference to the succession of states in covenants think this covenants lack legal validity and some others think entering reservation right is the solution of problem. Unfortunately, accepting these covenants unconditionally leads to Confrontation of Islamic rules and covenants in ambiguous aspects that the most scientific way is reckoning and identifying conflict matters.

Based on the doctrine of the holy tablet, when a new country is established as a result of liberation from colonialism (successor country), newly independent country will not be committed to the covenants that previous country had signed on territory of newly independent country, unless this country accept transfer of multilateral covenants for themselves with issuing declaration of succession (Article 8), that this opportunity is lost unfortunately.

After Victory of Islamic Revolution exercise of reservation right was neglected and the next behavior of the Iranian government was accepting international commitments contained in the Covenant. However, there is no doubt that some of the provisions of the Covenant are incompatible with Islamic teachings and internal laws of the country and until finding a solution

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for this problem, the required conditions in the legal system of the Islamic Republic of Iran for implementation of covenants will not be present. The only appropriate solution to solve this problem is declaration of the condition for some of the provisions of the covenant which appose internal laws and Islamic principles.

Basically countries can declare condition on some provisions of international covenants while signing, ratifying and joining them with respecting purpose and subject of the covenant. The Iranian government has ratified the International Covenant on Civil and Political Rights without reservation. Therefore, only through negotiation with the human rights committee and the Member States of covenant and discussing impossibility of implementing some of its provisions due to incompatibility with Islamic teachings, opposed parties may be convinced to accepting exact and specific conditions.

America's government as ratifying the International Covenant on Civil and Political Rights, with declaration of reservation to Article 7, committed itself to avoid cruel and inhumane treatment or punishment contrary to human dignity as the concept brought in Revisions of America's constitution. Clause 1 in the article 20 of the Convention states: "Any propaganda for war is prohibited by law." The government of America reserves this article and this reservation does not limit freedom of speech and assemblies that are protected in accordance with the constitution and other laws of America.

The French government also has declared reservation right and French lawmaker is considered righteous to the subject of war that propagating it is banned in Article 20 and its criteria is "violations of the laws and regulations and international issues". This country has stated in article 27 about rights of religious minorities in adherence to religious traditions and freedom of performing religious ceremonies: "In the light of the principles of the French constitution, it is not applicable as far as the French Republic in the light of second principles of the

French constitution, this article is not applicable as far as it is related to French Republic".

The above examples infer that these powers, in some cases, have joined this document conditionally; dual and contradictory behavior of human rights claimants towards different countries around the world and human rights issue in them leads to doubt in intentions and motivations of pursuing the human rights situation, and this causes loosening of theoretical and practical commitment to it.

so they should not make other countries join unconditionally and on the other hand and they doubt the intentions and motivations for pursuing human rights situation, and this leads to loosening of theoretical and practical commitment which will result

2. CHAPTER ONE: INTERNATIONAL COVENANTS RATIFIED BEFORE THE ISLAMIC REVOLUTION

Six conventions were ratified at the time of Pahlavi regime including conventions abolition of slavery and the slave trade, shall International Convention on Prohibition of mass murder and punishment, Convention on Elimination of Racial Discrimination and the Convention prohibits the punishment of mass destruction, the Convention and the International Covenant or Convention on civil and political rights and the International Convention or Covenant on Economic Social and Cultural Rights.

Islamic republic of Iran government, despite change of regime continues legal personality of Iran regarding the international standards that has signed and ratified these conventions and committed to it unconditionally.

On the other hand government of Islamic republic of Iran has been established by decision of the Iranian nation, that form the government on the basis of Islamic principles and manage it

and constitutional law which is ratified in a referendum by an absolute majority people's vote, requires the government to ratify and implement all its laws and regulations in accordance with Islamic teachings¹. At the same time Islamic republic of Iran has not announced officially is not committed to the mentioned conventions, rather has had cooperation with representatives of United Nations on human rights. From six conventions approved before revolution two conventions are in contrast with Constitution law in some articles². International Convention or Covenant on Civil and Political Rights and International Covenant on social, economic and cultural rights are problematic because two mentioned convention are in contrast more with four principles of Constitutional law, which requires government to ratify and implement all its laws in accordance with Islamic teachings. There is no doubt that it can not be said that Islamic republic of Iran should ignore its Islamic provisions as it is in contrast with the basis and existence philosophy of Islamic republic of Iran regime³. On the other hand the government is obliged to implement the Constitutional law. What is the solution to contrast of the constitutional law with the two mentioned Covenant in this situation? How the Islamic Republic of Iran, in case constitutional law is in priority, has no international responsibility? Some solutions in this area have been provided, as follows.

1 - Incomplete or irregular approval: It is generally accepted in international law that governments must act according to their domestic laws when signing and ratifying international covenants. In this case a question arises as if a country ratifies and signs a convention by a reference without authority or contrary to the internal rules, is the convention void? Vienna Convention of 1969 says that countries can not cite invalidity of their content relying on the fact that expressing content for commitment to a convention has been violation of domestic laws in terms of qualification of convention conclusion ; except in cases where f vital importance.

According to what said, these two conventions are ratified by parliament of the previous regime and has violated a fundamental domestic principle that is Article 2 of the Constitution, which states that all regulations and decisions of the previous parliament should be based on Islamic criteria. Therefore, ratifying two mentioned conventions in the previous regime is illegal and invalid⁴. Islamic republic of Iran does not have commitment to illegal action of previous regime, and is not required to implement the articles of two mentioned convention which are contrary to the law.

about governments international responsibility there are different opinions, but in total, the majority of comments are on the invalidity of such approval, as it is the brought in law covenants of conventions, the principle is on the validity of the incomplete approval, unless the action is clear failure of a fundamental rule of national law (including the Constitutional law), in this case, the considered country can declare incomplete ratify as void according to this obvious failure⁵. Of course articles 46 of 1969 and 1986 of Vienna conventions have not announced such a citation after 25 years of revolution foreign affairs ministry unfortunately.

2. The supremacy of the Constitutional law over international agreements, according to Article 9 of the Civil Code, the decree laws, international agreements are as ordinary provisions of and on the other hand provisions of Constitution are superior to ordinary laws and dominant them. As a result, the Constitutional law is superior than and dominant on the international covenants of which Iran is member, and in case of conflict constitutional law shall be prior.⁶ And in this respect, in accordance with domestic law there is not in doubt in it. Articles of the two Covenants which are inconsistent with the Constitutional laws are as ordinary laws and constitutional law is prior to them. But there is regarding international responsibility of

¹ Mehrpoor, Hossein, International system of human rights, Tehran, Information, 1377, p. 416

² Strategy of Islamic republic of Iran in the field of human rights at the United Nations, ibid., P. 352

³ Mehrpoor, Hossein, , human rights in International documents and the position of the Islamic Republic of Iran, Tehran, first edition, 1377, p. 51

⁴ The strategy of the Islamic Republic of Iran, ibid., P. 355

⁵ Ziaee Bigdelli, Muhammad, public international law, Tehran, treasure of knowledge publication, twelfth edition, 1377, p. 124

⁶ Strategy of the Islamic Republic of Iran, ibid., P. 357

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government. In terms of international law when a country, ratifies an law which is against international law of which it is a member, has international responsible. However, the government can not act contrary to the constitutional law and is faced with internal liability.

3-Change in the basic situation of the country is one of affairs that a country, by citing it, can disclaim commitment in the international conventions, as Vietnam in 1955 has several times announced that change of political system of the country cause obsolete of contracts signed previously and many newly established countries after independence stated that they do not consider agreements signed before the establishment of new country because of the rule and government change ⁷. Islamic Republic of Iran also with regard to the profound change in the political system of the country, can claim that has no commitment to mentioned contrary articles of the covenant.

4. Reservation right: one view is that establishment of Islamic republic of Iran and adoption of a new constitutional law, and its fourth principle that has states all laws and regulations governing country must be based on Islamic criteria, on the one hand, and not declaring obsolete of the two mentioned covenants means that the government of Islamic republic of Iran recognizes the covenant officially with the reservation right in articles contrary to Islam.

Of course adoption of a new constitutional law and change of regime regarding nature is reservation right; but in terms of formalities prescribed in international law, Islamic Republic of Iran has not formally informed the UN and other members of the mentioned covenant and this matter has complicated the issue to some extent.

5. The total and partial exit: total exit of Islamic republic from two mentioned convention regarding the international situation and advertising, does not seem practical and also it is unlikely that Member countries accept. And items of two mentioned covenants that are against Islamic principles and other rules totally are determined and declared secretary-general of the United Nations so that Islamic republic of Iran, considering deep transformations made in government system, announce its partial exit from specified items of two mentioned covenants, as a result commitment of Islamic republic of Iran is accepted conditionally.

In final conclusion it can be said that the Islamic Republic of Iran does not have any commitment against all West or international human rights, and is only committed to those international human rights covenants and conventions which are signed and ratified by Iran government. About ten conventions and covenants on human rights have been ratified by Iran that six ones are related to before revolution and have not been obsolete by Islamic republic of Iran government ⁸, that from these six cases, two International covenant or conventions the on civil, political, economic, social, cultural rights, in some cases conflict with the Constitutional laws and Islamic rules for which solution has been presented and the Constitutional law is prior. In the case of four other conventions adopted after the revolution the either are not in contrast with constitutional law or are accepted with reservation right, that in any case constitutional law is prior and the government is obliged to implement the Constitutional law⁹

3. CONCLUSION

After the victory of revolution and the establishment of an Islamic government, the Islamic Republic of Iran not only did not deny the Covenant, but also tok the policy: "cooperating with" Human Rights Committee ". However, it is argued that with the establishment of the Islamic Republic and approve of constitutional law based on Islamic principles and the need to ratify

⁷ Philosophy, Mohammad Ali, paper on effect of fundamental situation on validity of international agreements and covenants, legal journal, No. 3, Summer 64

⁸ Mesbah Yazdi, Mohammad Taghi, law and politics, Qom, Imam Khomeini Education and Research Institute, first edition, 1377, vol. 1, S98108

⁹ Ibid

rules based on Islam law, how is commitment to the covenant that some of its articles contrast with Islamic principles and rules of Islamic republic of Iran justifiable?

According to one view, on the one hand the nature of the Islamic Republic and the adoption of a new constitutional law suggests that the laws and regulations of the country in all areas must be based on Islamic criteria, and on the other hand not canceling covenant means that Islamic republic of Iran government accepts the covenant with the conditions about articles contrary to Islam¹⁰.

However, regardless of what was discussed, in general it should be said that main points contained in the Covenant do not conflict with Islamic principles and many of the rights enshrined in it are also confirmed in the constitutional law of Islamic Republic of Iran. That is why the Islamic Republic of Iran prepared reports periodically and presented to the Committee.

It should be noted that the first report of Iran, as a preliminary report, was submitted to the Human Rights Committee on August 9, 1977 (1356 Solar calendar) and introduced and discussed in the mentioned committee in meeting on February 2, 1978, but because it did not match standards of committee, it was not reviewed and it was decided that Iran government prepare complementary report with respect to guidance of committee and present it in next meeting. Complementary reports was submitted to the committee in the May 29, 1978 was studies from 20 to 24 July in 1978¹¹.

After the Islamic Revolution, the first periodical report was submitted to the Committee in July in 1982 and in July of this year it was examined in Geneva. Since the committee was not satisfied with adjustment of the report and it was decided that a full report is prepared as soon as possible. However, due to internal issues, especially Iran-Iraq war, it was not carried out, so that the committee, through the Secretary-General of the United Nations asked the Islamic Republic of Iran for explanation several times about delay in reporting.

Finally the government of Iran decided to prepare the second report and assigned this important task to Judiciary and after preparation the Ministry of Foreign Affairs submitted it to the committee on May 22, 1992 and subsequently on 29 and 30 October that year it was reviewed by the committee at the first stage.

In the process of reviewing the report in the Committee, first some questions were raised that the representative of Iran were asked to response. These questions that were generally related to the principle of non-discrimination and equality, the right to life, treatment with prisoners, freedom and security of person, the right for fair trial, freedom of, freedom of traffic, freedom of religion and speech, freedom of association and assemblies and the rights of persons belonging to minorities. Due to time constraints continue of examining report of Iran was postponed the next meeting of the Committee for Human Rights, 7 April 1993. In this round of the survey again three questions were discussed:

(1) the substantive laws of the Islamic Republic of Iran, especially the rules on corporal punishments, execution, amputations, stoning, flogging and the like;

(2) the quality of trial and in particular the question of appeal, and giving chance of defense to the accused and using lawyer and openness of court ;(3) violation of the provisions

implementation and not respecting legal rights of individuals in some judicial and disciplinary authorities.

¹⁰ Hussein Mehrpour, human rights in international documents and the position of the Islamic Republic of Iran, pp 50-49.

¹¹ Ibid,p51

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With regard to the first question it was generally described that Iran does not have any voracity to extend the death penalty and considers its application necessary in a limited way in the case of serious crimes.

In addition, article 6 of the Covenant has not specified any criterion and reference for identifying the most serious crimes and while in some cases there is a common understanding of this concept, in some other cases, maybe considering specific conditions and culture of a society the notion of "most serious crimes" differ.

About questions related to trial procedure and appeal issue and the right to a lawyer, all required explanations were given considering existing provisions, especially the rule related to appeal enacted in 1367, laws and circulars as well as related judicial procedures and in this regard it was stated that the right to appeal exists even for provisions of the Revolution Courts; defendants have the right to take lawyer and to a number of judgments of the Supreme Court were mentioned that have violated rulings of the lower courts in terms of the absence of a lawyer.

In the case of practical violation from regulations and non-compliance with the legal rights of individuals, some cases that had been stated as untrue based on reports were well explained plausibly. At the same time it was admitted that the in judiciary and disciplinary system some people commit abuses of human rights and efforts to identify, prosecute and punish them are made.

At this stage also examining the periodical reports of Iran did not end was postponed next meeting from 12 to 30 July that eventually ended in three consecutive meetings and it was decided that the committee reflect its evaluation and the conclusions of this review through Economic and Social Council to General Assembly of the United Nations¹². And the conclusions of the review by the General Assembly of the United Nations Economic and Social Council to reflect. However, what mentioned above suggests Iran's cooperation with the Human Rights Committee, but this cooperation involves the following problems:

one is lack of attention to the religion factor in Islam as its role in Islam and the other politicization of human rights. In this committee, for promoting respect to human rights and the rights and freedoms of others, not enough attention is paid to development of moral and religious beliefs of the people, but rather in order to prevent religious discriminations and as religious tolerance, it has been tried to undermine the religious sense. Therefore, condition of compliance of domestic laws with Islamic standards is unacceptable by the human rights committee on principle, the principle on which Islamic Republic of Iran is based.

Another problem in the committee is dealing with the issue of civil liberties and laws and acting selectively in this area, so that the issue of human rights is used as an effective tool in the hands of some Western governments to put pressure on some governments, particularly governments of the Third world.

To monitor the implementation of the rules of the International Covenant on Economic, Social and Cultural Committee, a committee was formed, which, unlike the mentioned committee was not unexpected in Convention itself.

on the other hand in Iranian legal system, supremacy of international law over domestic law, is not known explicitly and ensuring the validity of international law or making it superior to domestic laws, that have been incorporated in new constitutional laws of some countries, has not been paid attention to by formulators of constitutional law of Iran. there are many countries that have still left unsaid the subject of the relationship between domestic law and international law. In fact, this silence can not be a permission for governments in violation of their territory

¹² Ibid, pp 84-83.

and violation of international law. According to Oppenheim, states have to respect international obligations. For example, domestic laws have to respect rules on political representatives, or limits of free sea and safe passage of foreign goods from the coastal waters. If a government enacts laws that should not have or does not enact laws that should have, in both cases has violated international law.

Charles de Visscher confirm this in a speech entitled: "International trends in new constitutional laws" in the Hague Academy of International Law. "and stated that " it can be said the principle (international law is part of the law of land)¹³, is a domestic law which is common in all civilized countries."¹⁴Therefore, it can be said that mentioning value and necessity of respect to international law in constitutional laws of countries, does not imply

that these countries are free from the shackles of provisions of these rights.

Berouz arouda In support of this says that "supremacy of international law does not have to be predicted in constitutional laws of countries. Several governments have stressed that the rules of international law which are universally known, are obligatory within the territory of their lands. But (mentioning this matter) is not necessary because now West-oriented doctrine and practice of international westernization recognizes superiority of international law over domestic law. According to this doctrine, governments are obligated to adapt their domestic laws with accepted principles of international law, that is the principles that regulate relations in the international community¹⁵. »

If this statement is accepted, the result will be that the government of Iran also willingly or unwillingly, like other governments and because is a member of the international community, must respect the rules of international law and respect principles of international law in codification of domestic laws, so that no paradox is created and in rejection of the constitutional law if there is a case for the revision and modification, explicitly recognize the supremacy of international law over domestic law. Conversely, if we do not believe this superiority, and accept cultural diversity or the "Theory of Relativity" in human rights, supremacy of Islamic law as the main source of human rights law is considered as the basis and what has congruity with religious law is accepted and other laws are rejected.

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