

Comparison of nation's rights in constitution of Iran and Turkey

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Abstract: Constitution of a country reflects the views, principles and general views governing it. One of the main issues stipulated in the Constitution is the rights and duties of nations in terms of advantages and limitations that the legislature intended for the people. In legal systems of Iran and Turkey, as two neighboring but different state systems, some rights and freedoms for their citizens in the context of their Constitution have been considered. Turkey maintains separation of religion from politics and benchmarking of a number of European Constitution and regards itself as the founder of modern western democracy among Islamic countries that give the most advantages and democracy in the Constitution to its people. On the other hand, Iran, by following Islamic law in the first place and then the Constitution of European countries in cases where there is no religious opposition, intended some rights and assignments for the people. Based on the theory of human rights, citizens' enjoyment of civil, political, economic, social and cultural rights are the criteria for measuring the realization of the rights of people in different countries. This study aims to compare briefly the rights and freedoms of people in two legal systems of Iran and Turkey.

Key words: *Constitution; Rights of nations; Iran; Turkey; Election*

1. Introduction

Constitution is one of the most important modern political institutions and the base of the structural changes of government and political institution-building rules as well as the determination of their fundamental rights in the countries. The first issue in the legal and political system of Iran and Turkey is the general principles that refers to a type of government that both are Republic. Republic structure of Iran is Islamic and religious but the republic structure of Turkey is non-religious republic having social system based on the rule of law with regard to the concepts of public peace, national solidarity and justice, respect for human rights, loyalty to Atatürk nationalism and secularism. In Turkey's Constitution, it is referred on the republic of the government, as well as being democratic, secular and social state based on the rule of law, respect for sovereignty, language, flag, national anthem and capital (Amid Zanjani, 1998). According to Article 6 of the Turkish Constitution, sovereignty belongs to the Turkish nation that delegated the power to the representatives and National Assembly and this right is non-transferable to others. Chapter II of the Turkish Constitution expressed nation rights in one hand and enumerates tasks of nation on the other (ibid, 1998). In chapter I of Iran's Constitution, the Islamic Republic has been expressed explicitly. In chapter three of the

Constitution for public, some rights and obligations has been stipulated. Government and people of Iran have the freedom and the rights and obligations under the law and Sharia. In Chapters and Iran Constitution principles as the Constitution of Turkey, some laws are considered for the nation. But unlike the Turkish Constitution, many freedoms are within the framework of Sharia and religion and sharia as a measure of the degree of freedom is used correctly.

2. Constitution formation in Iran

Constitution of the Islamic Republic of Iran was prepared after the revolution in 1357 and was approved by referendum in 1358. To modify this rule on 06/05/68, a referendum was formed on the amendments which was overwhelmingly approved by the nation and then were reviewed (Al Doustin, 2011).

3. The establishment of the Turkish constitution

Turkey's first Constitution in its modern sense was set up and developed in 1255, equal to 1875 AD in the time of "Sultan Abdulhamid II" (Asadi, 1970). Having issued a decree in 1920, Atatürk established the Turkish Great Assembly and a new Constitution was drawn up and submitted to the Great Parliament of Turkey. The Constitution adopted in 1921 AD and whereby the government assigned it to the nation without any conditions which applied it. This

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Constitution was removed or modified or new materials added to it.

In 1982 a new Constitution was put to a referendum. Because the absence of the referendum was illegal, 90 percent of qualified persons participated and more than 98 percent of voters expressed their satisfaction with the Constitution (Madani, 1980).

4. The rights of nation in the rules and doctrines

The new meaning of people took shape in Europe in the past two centuries, especially after the French Revolution and hence the need for a national awakening and the necessity to form a national government has not a long history. Europe's most influential event was this revolution that was accompanied by a huge wave of fundamental changes that its initial impact was creating the right to vote for many people and understanding their true position in the national and international arena (Babaie Zare, 2004). Although the elements that were efficient in the formation of the nation is complex and ambiguous, but of its most important constituent elements and the ideas proposed in this regard, we can mention a few of the following:

1) *German theory of nation*: this theory considers nation foundations as "race" and suggests that human races are pyramid-shaped hierarchy and the top is the "pure Aryans" race (German race). Hitler put this theory in its "National-Socialism" view (Abolmohammad, 1987).

2) *French theory of nation*: this theory does not ignore the significance of race, language, religion and other ethnic features, but they make it necessary historical, economic and spiritual factors for the formation of nation and creating national sentiments (ibid, 135). Of other main elements of nation can indicate "rights of Sovereignty" that is the achievement of the French Revolution which paves the way for "political independence" of the colonies (Khodaparast, 2012). Constitution of the Islamic Republic of Iran expresses cultural, social, political and economic institutions of Iranian society based on Islamic principles (Articles 68 and 13). Constitution of the Islamic Republic has also been used in 12 principles to the issue of nation (Beheshti, 1358).

One of the peculiarities of Iran's Constitution is the position of monotheistic, religious and holistic and cosmopolitan values of Islam against nationalist, religious, country-driven and national-driven values which somehow contradictions and paradoxes are created. Article III, paragraph 16, the eleventh, One hundred and fifty-two and one hundred and fifty-fourth principles are reasons for this perspective. It seems that locating the concept of nation against Islamic Ummah is an example of the contradictions found in abundance in the Constitution. But in Turkish Constitution, many attempts have been done to separate religion and government.

5. Women's rights in the constitution of Turkey

According to Article 50 of Turkish Constitution: "No person shall be employed that is not appropriate for one's age, gender and ability". Children, women and the physically and mentally disabled are particularly supported in terms of working conditions. The Turkish Constitution on fundamental rights, there is no distinction between men and women just in mentioned cases. So women, like men, have all the public rights. But one of the fundamental rights of women in Turkey that is the issue for challenges and conflicts is veil ban. The issue of banning Islamic veil in Turkey was first proposed in 1964 and until 1983, every so often it had been in been in the forefront issues of Turkey. In this regard, veil ban was located in the priority of opposition targets of Islamic dress in universities and centers of higher education in Turkey which Muslims more than 95 percent of the population and this ban was extended step by step to all public and government, especially military, places (IRNA, 2012). Subsequent to this operation, group of Muslim women were excluded from Turkey's political, economic, social and cultural facets in the country.

6. Women's rights in the constitution of Iran

Since 'woman' is seen in the family center, not apart from it, in many cases by Iranian Constitution, it has been considered by many as a traditional view. While in the Constitutions of countries such as America, Canada, France and Switzerland, no mention is paid to marriage and family status (Javan Arasteh, 2006).

It has been declared in the 10th principle of the Constitution of the Islamic Republic of Iran that:

"Since family is the fundamental unit of Islamic society, all relevant laws and regulations and programs must tend to facilitate the formation of a family, safeguard its sanctity and stability of family relations based on Islamic law and morality".

In the Assembly of Experts, the philosophy of establishing the 10th principle has been paraphrased as:

"The principle is for the importance of the family system that is a particular social system that family will remain safe in the society in a real sense. In this principle, rights of women against those of men is not particular, but "family" has been named as a fundamental unit that is against digestion of the family in society and destroying the family in a real sense of family. Of course women can work to an extent that does not compromise the rights of children and does not contradict to the duties of a married mother. Recruitment of women in the workplace, so that the affection between husband and wife, children, mother, mother's love and child rearing totally wiped out, must be prohibited (Ardebili, 1980).

Iran's Constitution in Article 21 obliges the government in a fairly comprehensive view at the state of women's rights, to do the following actions:

1. Creating a favorable environment for the growth of woman's personality and restore her

physical and spiritual rights (women in terms of being women).

2. The protection of mothers, particularly during pregnancy and child custody and support of orphans (Woman as a mother).

3. Establishing competent courts to protect and preserve the family (Woman as a spouse).

4. The special insurance for widows and orphans and elderly women (Women as vulnerable persons).

5. The awarding of guardianship of children to worthy mothers, in order to protect the best of their interests in the absence of a legal guardian from the above five cases, what is more related to the "human, political, economic, social and cultural" rights of women since she is a "woman" is the first case. Because these rights were emphasized for all citizens, both men and women in the twentieth Constitution, it seems the legislature did not need to express them again in the first paragraph of Article XXI and considered it enough just to express the general interpretation of "physical and spiritual rights of women" (Javan Arasteh, 2006).

7. Social welfare in Turkey

Insurance in Turkey's history dates back nearly a century and requiring to insurers to late nineteenth century was hardly felt, and even the concept of insurance for people was an unfamiliar word. But by 1916 in Turkey, there is no insurance company and only insurance companies were operated according to the domestic laws of their respective states. After 1916 AD, the law of insurance company establishment with Turkish nationality was adopted to protect policyholders and health insurance market and its supervision.

Turkish law guarantees equal pay for equal work and practically made all vocational and training programs for women free and left the way open. The reason for the developments in Turkey could be taking the social welfare of European countries as a model and also the application of this country to be a membership in EU, which one of the conditions for joining the EU is to raise the level of social welfare in the country. On the other hand, the higher the level of social welfare, the higher the level of peoples' satisfaction which means that it can be a barrier to the protests and strikes in the country.

8. Social welfare in Iran

In the twenty-nine principle, a broad protection of individuals from harm and social risks is considered. Benefiting from social security for retirement, unemployment, old age, disability, orphanage, homelessness, accidents, health and medical care services as insurance and so on are right for all people. The government is required, under the laws of public funds and profits from the participation of people, provides services and the above financial support for all people in the country.

9. Elections in Turkey

In Turkey, "Supreme Election Entity" supervises elections and is composed of 11 members, seven of whom were original and four alternates which will be elected for a term of six years. Six members are chosen among the justices of the Supreme Court and five members are chosen from government council members. Electoral bodies of downstream areas are also selected by the institution. Final approval of the elections is higher authority and in other words, Turkey's Constitutional Court (Fars News Agency, 2009).

10. Election in Iran

The requirement for the establishment of a democratic and republic government is to accept the rights of people and their informed involvement in determining social destiny. In this regard, the Constitution in paragraph 8 of Article III considered basic duty of government as the provision of "public participation right in determining their political, economic, social and cultural destiny" and it accepted in the sixth principle that state affairs should be governed by relying in on public opinion through elections, presidential elections, Parliament Representatives, members of councils and the like or by means of referenda in matters that other principles of this law is specified".

11. Political parties in Turkey

According research and reviews conducted, it is known that almost 33 parties were operating within Turkey from the past until now, some of them were major parties and others somehow have been associated with these parties and did not have political activity. According to recent announcement of Attorney General of the Supreme Court on November 11, 2013, 78 political parties were registered in Turkey. For a party is entered parliament, it must receive more than 10 percent of the total party vote given to the nation. Therefore, small and weak parties cannot obtain a quorum and enter the parliament. Now there are only four parties in the parliament among current parties (Mahdili, 2014). The special task of the parties in Turkish parties requires the success of democracy in Turkey. The parties have saved the country from chaos in different positions and thereby avoid the tyranny of the executive and the credit of the legislature. In addition, the function of political parties in Turkey causes an easy selection, coordination between government institutions, widespread public education in accepting democracy and the spirit of public discipline. The activities of the parties towards the association that intended for the political and economic development was led to the attention of Western Liberal governments headed by the European Union. They believe that progressive trend of liberal parties in a country like Turkey

demonstrates the tendency towards Liberalism and ideals of democracy. So the interaction of economic relations with such a country is devoid of any risks created in association with non-democratic countries or countries without political parties. In fact, attention of the EU to Turkey is led to the attention of other countries for economic interactions with this country (Mohammadi, Bita, 11). Concerning the dissolution of political parties, which are investigated by the Head of State Attorney General, the issue should be examined and made decision based on records and in accordance with the provisions of Criminal Procedure Code. In this case the defense provided by the Chief or designated representative of political party, which its dissolution is considered by the Head of the Attorney General, must be heard (Assadi, 1369).

12. Political parties in Iran

Article 26 of the Constitution states: parties, societies, political and trade and Islamic associations with known religious minorities are free; provided that they should not violate principles of independence, freedom, national unity, Islamic and basic criteria of Islamic Republic. No one may be prevented from participating in it or is compelled to participate in another party. The issue of parties and the possibility for their activities is also mentioned, including February 2, 1981, the legal proposal of parties was submitted to the Parliament and was approved in July 8, 1981, which some modifications were made at subsequent meetings. As a result, the parties obtained a permit according to the local laws and the announcement of the Ministry of Interior and more than 120 parties and political population have achieved operation permit according to the Commission under Article 10 (Ardestani, 1999). A significant number of parties have started their activities since the Islamic Revolution and yielded different functions. Role of parties involved in the monitoring of the power supply and aggregating national interests, gaining power and the political struggle to increase and maintain power, including the fields of parties' activity that has been covered in the Constitution and laws of the Islamic Republic of Iran. Since election is one of the most important areas of the emergence and presence of political parties and groups, parties or coalitions of parties and the formation of populations and various fronts can be seen on the eve of the elections. This indicates the importance from the view of parties and also the effective and efficient role of parties in in elections matter. Election laws have important influence on how the parties are participated and fulfill their role in electoral areas. But what rose about the phenomenon of party in Iran is lack of its progress along with many countries in the world (Salamati, 2009).

13. Spreading religion in Turkey

Turkey enjoys a rich and varied tradition on religious grounds. More than 98 percent of its residents are Muslims. From a Jewish community and very small minority of Orthodox Christians to a Sunni Muslim-majority country with a significant population of Alavian, all constitutes part of the religious identity of Turkey. Although Turkey is a Muslim country, but the 80-year life under the umbrella of secularism reduced religion to a private and personal sphere. Given the history of religion in Turkey, two key factors have played a role in social and political supremacy of religious leaders over political leaders; first, the Arab population of the Caliphate of the Ottoman Empire did not know the Khalifa as a symbol of unity of Sunni Muslims any longer, but considers it as symbol and a part of the Turkish colonial empire. Hence, they overtake their Christian rivals in the collapse of the Ottoman Empire and began to divide the spoils with Western partners. Second, promoting the modernization process and its consequences include the Young Turk movements gradually leads to the rise of secularism in Turkey (Zare, 2008). Dissolution of the caliphate by Ataturk in 1924 and the subsequently the implementation of some secular reforms and measures on the total supremacy of politics over religion in the public sphere. But some analysts on political Islam in Turkey believe that full adherence of religion from politics in the Republic period have a significant role in the re-rise of Islamic activities and there is the possibilities of a establishing a religious government even in modern Turkey (Kouseh, 1992). However, in recent decades, reform thoughts and religious tolerance were accepted among religious leaders in Turkey so that a new form of Sunni Islam known as Turkish Islam is was existed. Thus, modern Republic of Turkey placed a mechanism and structure to monitor and regulate religious affairs and institutions that have shaped in the Ottoman period (Mousavi and Nouraldin, 2004).

14. Religion in Iran

In principles 12, 13 and 14, it has been clearly spoken about various Islamic sects and religious minorities and this principle is apart from that principle. In the mentioned principles, observing rights of other faiths and other religions are recognized, as mentioned in the twelfth principle that:

"... Other Islamic schools (except duodecimal Jafari) including the Hanafi, Shafi'i, Maliki, Hanbali, and Zaydi should be of complete respect and followers of these faiths are free in a religious ceremony according to the law and have recognition in religious education and personal status (marriage, divorce, inheritance and wills) and related claims in court and in each area that the followers of each religion have a majority of members, local regulations will be in the jurisdiction of the councils according to those religions with protection of the rights of other religions' followers".

It has been stated in Article XIII that:

"Persian Zoroastrianism, Judaism and Christians are only recognized as religious minorities that practice their religious ceremonies within the limits of law and act according to their faith in personal affairs and religious education".

It has been stated in Article XIV that:

The Government of the Islamic Republic of Iran and all Muslims are duty-bound to behave with non-Muslims with good morals and principles of Islamic justice and equity and respect their human rights ...".

And it has been stated in Article sixty-fourth:

"Zoroastrians and Jews choose each one representative and Assyrians and Chaldeans Christians choose one representative and Armenian Christians, south and north each choose one representative".

15. Conclusion

In these two neighboring countries with common origins of Islam, there are two very different Constitutions from the baseline and the views of legislators which causes that the two countries have gone two different ways. Although Turkey is governed in a republic form and people choose their own representatives by election, army played a key role in the country and tries to maintain their power in the country with various coup and changing the Constitution and government. This cause a lot of people's rights in Turkey has been ignored. Although Turkey is looking benchmarking of European countries and all peoples in the Constitution are called Turkish nation, many of the country's ethnic and religious minorities such as the Kurds and Alevis do not enjoy the same rights, and their political and religious activities during the history of the past decade has been severely hit, for all activities and requests must be in accordance with Ataturk's vision. Because of Turkey's application for EU membership in Europe, it has been forced to retreat from its extreme views over the past two decades and considered a series of specific rights and privileges such as the right to vote and to teach the Kurdish language to Kurdish minority and also allow some kind of limited religious activity to Alavian. Unlike in Turkey, rights of ethnic and religious minorities since the beginning of history has been respected in Iran; a practice that are also respected after the Revolution in the case of other ethnicities and religions and their rights and privileges are equal compared to those of any other nation. In continuous, it should be said that vision of the founders of the government of Iran and Turkey are very different. One considers Islam as an obstacle to the progress and advancement and the other considers it as the way for success and enhancement of the country. Although democracy has made very good progress in both countries, the motto and goal of rulers and politicians are very different.

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