Status and legal rights of women in Iran’s politics

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ABSTRACT

Women’s political rights is included in the issues debated among Islamic jurists and experts so that the debate is less sensitive regarding the issues such as the individual, economic and social rights of woman and those for and against the entrance of women in politics have tried to explain their viewpoints by referring to verses, traditions and customs. Constitution has considered the participation of the public in determining the political, economic, social and cultural (Principle III, paragraph 8) fate as the basic condition by stating the equality of the citizens irrespective of racial, ethnic and gender differences (Principles 19 and 20) and the equality of all before the law (Principle III, paragraph 14). The right to determine the fate is considered as one of the cornerstones of democracy and it is been emphasized in many principles of the constitution. Principle 56 of the constitution, while acknowledging the sovereignty of God, has made the man sovereign over his own destiny. In the meantime, women are placed among those determining the political destiny and the rulers of the country. There is no condition in the existing election laws for the deprivation of women of selecting. Women and men have the same rights regarding being elected and appointed to political positions except for exceptional cases (leadership and presidency). Women’s rights in determining the political and social destiny are reserved via participating in the election or the in the form of political parties based on the Islamic view of the critical presence of women in the different fields of the society.

Keywords: Politics, Governance, Women's Rights, Civil And Political Rights, Islamic Republic of Iran.

INTRODUCTION

Political and civil rights are necessary in the social and political life and are one of the rights of human beings in the human rights that are different in different countries and every country has internal mechanisms regarding the issue. The human beings have rights such as the freedom, thought, innovation and the like from the beginning of their birth(U. Beck, 2015). These rights are considered to be the essential rights of human beings. The set of these humanistic rights and innovations and the norms based on which the people use their facilities are political and civil rights. The basis for the political and civil rights is the human innovations and the political rights that the human beings can have in their political and social lives are the selection of the rulers, political characters or by occupying the political and social positions in the government and be able to freely announce their ideas in the society. Political rights do not include foreigners in a country and only the residents have the governance participatory right(DiNitto & Johnson, 2015;
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Paxton & Hughes, 2016. In regard with human rights, there is no difference between men and women because both of them are human beings and have the right to choose their destiny. Women cooperate in the formation of the Islamic society as well as men and have the right to vote and be selected (Moghissi, 2016).

Studying the status of women reflects the gradual process of their civil-political rights in Iran. However, this development is actually started from the Qajar period, especially with the movement and the constitutional revolution and has continued during the Pahlavi period. The political activities of women during the Islamic revolution and after that are undeniable. However, the cooperation of women in the societal affairs and their fair share from the facilities in Iran is faced with legal, political, economic and cultural barriers (Hajizadeh, Masoumi, & Azhdari, 2016; Hussain, 2015). Researchers have analyzed women's political participation at both grassroots and elite levels. Participation in the mass forms is concerned with forms such as participation in elections of associations and the right to vote that will lead to the increase of the relationships between women and society and participation in the elite level such as presence in the legislative or executive levels is seen among the women with higher education and social commitment the most important characteristics of which is the presence at the level of decision making for the society (Rezai-Rashti, 2015).

Despite the formation and the emergence of a new system of human rights, the recognition of the rights and freedoms of women as human beings is still to be continued at the international level. Widespread conflicts and gross violations of the rights and freedoms of women happen in various civil-political, socioeconomic and cultural aspects. In this regard, the necessity of the development and adoption of special documents regarding the support of the rights and freedom of women in the international society is felt and in the meantime of the development and adoption of the public documents of the human rights, some activities were done in the field of the development and adoption of the special documents related to the women (Hussain, 2015). This study seeks the position and the legal position of women in the Islamic Republic of Iran with regard the previous discussions in order to have a comprehensive planning for the achievement of the rights of women.

WOMEN RULING RIGHTS IN THE ISLAMIC REPUBLIC OF IRAN

Due to the purposefulness of the creation and the responsibility of the human beings, we will explain the method of government in Islam and then express the aim of the government as the improvement of the human beings to the divine system.

The constitution mission is to provide the conditions in which the human beings are brought up with the sublime and universal values of Islam and since the aim of the government is to nurture the people in the way to the divine system (To him is the final goal) in order to facilitate the development and flourish of the talents for the manifestation of divine aspects of humans (Created as God’s features) (V. M. Moghadam, 1992). This cannot be met but through the active and full participation of all social elements in the process of social development. Due to this direction, the constitution provides the background for such a partnership for the implementation of the "Islamic state". Among the major issues in the implementation of the project is the issue of "qualification of women to rule the government" (Higgins, 1985).

There are excessive debate among scholars, jurists and lawyers on their arrival in the fields of political activity and government. They disagree in the field of the legitimacy or illegitimacy of women in the above mentioned area. There is no doubt that the highest and most sublime task that God has subscribed for women is forming the family, raising children and doing house chores. Now there is a question that whether women can be able to be active in governmental issues as
men in addition to doing the house chores? Many jurists know that men must govern the state citing from the Quran and traditions and referring to these jurists is questionable (Osanloo, 2009).

**Women and leadership**

The plan of the Islamic system on the basis of the supreme leader was presented by Imam Khomeini. He has emphasized the method of governing based on the ongoing governance and leadership of the supreme leader. The constitution provides the background for the realization of a comprehensive supreme leader as a leader in order to guarantee the non-diversion of organizations of their original Islamic duties (Higgins, 1985; Paidar, 1997).

The innovative plan of the Islamic Republic on the basis of supreme leader or the guardianship of the government has been approved in our constitution in an appropriate manner after the examination in the Assembly of Experts as: “during the occultation of Imam Mahdi (PBUH) in the Islamic Republic of Iran, the guardianship and governance of the nation is upon the supreme leader who is just and pious, knowledgeable, courageous, resourceful and manager according to Principle 107 of the Constitution” (principle five of the Constitution). The constitution has expressed in detail the conditions, attributes, functions and powers of the leader (V. Moghadam, 1988).

The present jurists in the Islamic lawyers in the Assembly of Experts know the leadership of the Islamic government a necessary field of men and due to the Islamic laws that leadership is specialized for men as one of the principles of the Islamic law (Afshari, 1994). “We cannot put aside the principles of Islam about the problem of rulers to be man and on the other hand, we do not want to insult women or to deny their rights. It is wrong to consider a right for women in issue of government and guardianship, it is duty and responsibility and it’s a heavy burden and in this regard women are not insulted or deprived of their rights”.

So, choosing a woman as the leader of Islamic government and applying guardianship with exhausting responsibilities and dangerous consequences seems to be ruled out.

On the other hand, choosing the leader is done indirectly and by the Assembly of Experts due to the Constitution (Principle 107 of the Constitution). Members of the Assembly of Experts should meet the following requirements:

"Faith reputation and credibility and moral competence, diligence, political and social insight, believe in the Islamic Republic of Iran system, lack of social and political bad reputation and etc." (Article 2 of the election law and the conditions of Experts). In this law, there is no mention to the condition of being a man for the members of the parliament. On the other hand, it should be noted that the Supreme Leader, as the representative of all segments of society, will manage the entire community. Political logic asserts that the experts in determining the leader should have a public identity and more comprehensive one than that of merely being a clergyman. According to this view as well as failure to clarify the law, women jurists, as the representative of half of the society, can be a member of the Assembly of Experts. This has not been achieved so far with the exception of only one representative in the Assembly of Experts drafting of the constitution (V. Moghadam, 1988).

**Leadership**

Leadership is been discussed in principles five and one hundred and nine of the constitution although none of them mention that the leader should be a man. Because the judgment is one of the main and first responsibilities of the leader of an Islamic society and the rest of judges are appointed by him and also most of the judges assert that the judge should be a man, the leader of an Islamic society should be a man consequently (Hajizadeh et al., 2016).
In the view of some experts, this position has judicial roots before having legal aspects. Due to the condition of being a man, we can claim the impossibility of leadership for women. But it should be mentioned that handing over serious responsibilities such as judging and ruling to men never means to lessen the dignity of women but it is due to observing natural fit in responsibility. It is not because of discrimination and injustice but because of protecting and preserving the essence of being a woman. Rules such as Hijab, dowry, alimony, custody, guardianship, martyrdom and the like are divine bestowments that have removed the heavy burden of social responsibilities of the shoulders of women in order to meet their main responsibilities as the fostering of generations since women are the sources of prosperity and the educators of society and the hosts of goodness (V. Moghadam, 1988). The verse reads: “the real pious people are those who have faith in God and his prophet and when they are with him in important situations, they do not go anywhere without his permission”.

Some Islamic thinkers know "the important situation" as any important occasion in which the community of the people is needed and their cooperation is necessary, such as protests against rebellion and arrogance, participation in the election, enjoining the good and forbidding the evil, jihad, the confirmation of the Supreme Leader and serving officials of the system and the like (Higgins, 1985).

**Presidency**

The legislature is in charge of implementing legislations and the directives of the legislature. The Principle 115 regards the Presidential conditions. A part of Principle 115 mentions: “the president must be elected from among religious and political men.” Interpretations are presented by jurists and lawyers on the word "men" that whether the word means males or its figurative meaning as any religious and political character is considered? (Ramazani, 1993; Shahidian, 2002) According to some authors, the word “men” has connotative meaning of gender and the literal meaning of the word should be considered. Moreover, there is a widespread belief regarding the basis of this Principle of the Constitution that presidency is actually a kind of custody and guardianship of matters and in accordance with Islamic law, the guardianship and the position of governing particularly at the presidential level has been specified for women. “In fact, because of avoiding problems and criticism, the clause that the president must be selected from among the political and religious men was chosen”.

In contrast, some of the authors to justify the possibility of taking women to head the legislature believe that: legislation has used the word “men” as its figurative meaning as the religious and political characters and figures and its literal meaning is not intended since the constitution is the interpreter of itself. With respect to paragraph 14 of Principles 3 and 20 that men and women are the same in the Law, we can infer that all people, including men and women, are under the protection of the law equally and all of them have human, political, social, cultural rights due to the conformity with Islamic rules (L. Beck & Nashat, 2004; Moghissi, 2016). Due to the fact that the gender is not the prerequisite for the membership of the Islamic Council Parliament, the Assembly of Experts and the Cabinet, it can be concluded that the meaning of “men” in Principle 115 of the Constitution is not its real meaning as the male gender. They believe that presidency is based on being selected and the basis for representativeness is not on being a man in Islam. Principally, presidency is a new phenomenon for which there are no particular judicial laws. On the other hand, by referring to the talks of the Assembly of Experts for drafting of the constitution, we realize that after discussing the condition of "being a man" and the other conditions listed in Principle 115, the proposed principle of the “principle inspection group” was not sufficiently voted for and adopting a decision was postponed to another meeting in which the issue of "religious and political personalities" (Principle 115) was adopted. Despite that, the Guardian Council, legally responsible for the supervision on the competence of candidates of the
presidential election, has not been able so far to confirm the competence of any of the women as presidential candidates (probably due to being a woman) (L. Beck & Nashat, 2004; Higgins, 1985).

So, on the basis of Principle 115 and with regard to the true and literal meaning of the word "men", it should be acknowledged that the nomination of women for the presidential election is problematic so that many experts emphasize this interpretation and the Guardian Council has confirmed it as well, albeit informally. Due to the negotiations of the Assembly of Experts, the Constitution and the comments of some member jurists, it becomes clear that the root of the debate should be sought in the religious beliefs of the judicial reasoning with this exposition that the president is a pillar of the sovereignty due to Principle 113 which states that the president is the second important figure after the Supreme Leader and women are prohibited from governing over the society and the administrative roles. Studies indicate that the nature of the presidency is not alleged guardianship in order to confirm “the principle of inexistence” and “the condition of being male”. But it is an optional guardianship given by the people to the person in which the principle is the license given by the people and not being a man (Bahramitash, 2004; Kian, 1997; Miller, 1996).

Even if there has been a particular benefit at the time of legislation of the constitution, this benefit does not work nowadays due to the present condition and the increase in the awareness of women and development in their role and position in the society.

The Legislature and Other Institutions
The legislature is an institution that has its roots in the popular vote. The Principle 58 is regulated as: “the actions of the legislature are done through the Islamic council Parliament that is formed of the selected representatives of the people etc”. Moreover, another pillar of the legislature is the Guardian Council. The council is formed in order to protect the Islamic rules and the Constitution to not to be violated by the directives of the Islamic council Parliament. The Principle 91 of the Constitution and the present laws do not define any limitation on the presence of women in the two above mentioned institutions. Nowadays, we see the presence of women in the Islamic council Parliament although no woman has entered the Guardian Council (Povey, 2001; Sedghi, 2007).

The municipal and the rural councils and the Expediency Assembly are two distinct institutions from each other but they are briefly discussed here since both of them cooperate in the decision-making and legislation in the country. According to principle 7, “The provincial, city, town, rural, and local councils are the pillars of decision-making and governance of the country”. In 1998, the first election of these councils was held and a significant number of women also found their way (Afshar, 2001; Hussain, 2015).

Expediency Council was legally found by the decree issued by Imam Khomeini (RA) in the form of Principle 112. This institution also does not have any prohibition for women but so far no woman has the opportunity to enter it.

In Principle 133 of the Constitution, the position of minister in the legislature is been mentioned: "the ministers are determined by the president and etc". In this principle, there is no condition for being a man. So women can also be selected as ministers as nowadays we can see that women have been chosen as the assistant of the president or the ministers (Hussain, 2015).

The presence of women in the Parliament
The Parliament is an institution that has its roots in the popular vote. The actions of the legislature are done through the Islamic council Parliament that is formed of the selected representatives of the people. Moreover, another pillar of the Parliament is the Guardian Council. The council is formed in order to protect the Islamic rules and the Constitution to not to be
violated by the directives of the Islamic council Parliament (Hussain, 2015; V. M. Moghadam & Haghighatjoo, 2016). The importance of this council is so much that without which the Islamic council Parliament does not have legal validity. From the perspective of the Constitution and current Law, there is no limitation for the presence of women in these institutions. As we witness the representation of women in the Parliament and their activities in the field of legislation of our country but no woman has entered the Guardian Council at least as a lawyer (V. M. Moghadam & Haghighatjoo, 2016; Paxton & Hughes, 2016).

Islamic councils and the Expediency Council, however, are not as the legislature, and are considered separate institutions, are briefly mentioned as a subsidiary issue since they are active in the process of decision-making and legislation. The council system based on the method of Islam and the tradition of Imams has been paid attention to by the Constitution due to the lack of concentration and monopoly of matters in their own favor. After the providing a favorable environment, the first period of Islamic Councils election was held in 1998 and a significant number of women found on their way. Currently, there is no legal limitation for the presence of women in this important institution. Expediency Council was legally found by the decree issued by Imam Khomeini (RA) in the form of Principle 112. This institution also does not have any prohibition for women but so far no woman has the opportunity to enter it.

The presence of women in the legislature

The legislature is responsible for enforcing laws and passed regulations by lawmakers. The legislature, or in other words the Cabinet, includes the President, Vice Presidents and Ministers and manages the mass organizations and huge government agencies. The Constitution, that has stated the significance and philosophy of the legislature at the beginning, has expressed that the responsibilities of the institution are met by the President and Ministers. Meanwhile, countless women are operating in the administration bodies and even at the highest levels. Although no woman could have occupied the position of a minister, there is no limitation in this regard (Hajizadeh et al., 2016; Rezai-Rashti, 2015). The widespread presence of women in important positions in ministries and public agencies is an emphasis on their competence in administration. The only issue of the debate is the explanation of Principle 115 of the Constitution regarding the presidential qualities. Presidential critical position and the massive powers and duties mandate to consider special attributes and conditions for the president. The above principle states that: “The President shall be elected from among religious and political men possessing the following qualifications: originally Iranian, the citizen of Iran, resourceful and manager, having good reputation and trustworthiness and piety, and faithful in the principles of the Islamic Republic of Iran and the official religion of the country”. The title “the religious and political men” and different interpretations of its meaning have caused much debate. On the one hand, the term may connote the meaning of religious and political figures regardless of gender (male or female) but on the other hand, the literal meaning means males as opposed to females and connotes the presidential candidates should be selected among males (Gholamimoghaddam & Rajabieh, 2015). There was no mention of the gender condition in the draft of the Constitution but in the condition of gender was added by the Principle Inspection Group. In the negotiations of Experts of constitution, the issue is been studied from two perspectives. The first view knows the right exclusively for men since it states the subject of law as guardianship (the Detailed Description of the Constitution). On the other hand, according to some, the mentioned position is an executive one and not the guardianship one (Karimi, 2014; Rosen, 2014). The vice president of the Assembly of Experts of the codification of the Constitution has stated regarding the above principle that: “For me, the evidence that is brought in the tradition that women cannot be president is not sufficient and has not been the case ever. I have done jurisprudential research in this issue from the beginning but the reasons have been inadequate for me”.

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Since the majority of the members of the Assembly of Experts have been the Islamic scholars and lawyers, who have traditionally known the ruling of women against religious beliefs, the above principle is been approved. May be the complexity and the critical responsibility and constant business with the job or its difficulty are the reasons for this approval but the Islamic reference and the judiciary limitation do not seem to be relevant.

**The presence of women in the Judiciary System**

The judiciary system in the Islamic Republic of Iran has the heavy responsibility of promoting justice and the rights of the public to comply with Islamic teachings. The critical position and the significant role of the Judiciary system is so that there is almost no jurist who has not mentioned the important role of judging and the features and characteristics of judges and the trial system in his works during the history. Constitution, inspired by Islam and given the massive injustice of the monarchy, has allocated many principles to protecting the rights of the public and judging and Justice (Osanloo, 2009; Ramazani, 1993). The accuracy of this critical occupation is so that there are specific features and characteristics for being a judge in the Islamic law such as being a man. Several reasons have been pointed out for disqualification of women: 1. verses and traditions, 2. Physical and psychological characteristics and strong and tender feelings as contrary to the judgment, and 3. The prohibition of the relationship of women with men and the necessity of generating children by women (Hussain, 2015).

After the victory of the Islamic Revolution and to the implementation of Principle 163 of constitutional rules, regulations of the employment of judges are mainly developed based on the above theories that women have not had any position in the judiciary system although the presence of women as the judiciary consultant in some courts is been confirmed due to some rules. This can be seen as a gradual flexibility but there is still the traditional thinking of the jurists based on the limitation of the judgment by women. The issues of Judges being a man is among the legal, reasoning and inferring issues of the jurists and agreement on that is not due to the idea of the Imam. On the other hand, the opinion of jurists regarding the competence of women in judging and issuance is mainly based on the views of the women in the past rather than having rational and written reasons (Gholamimoghaddam & Rajabieh, 2015; Hajizadeh et al., 2016).

It is obvious that the natural differences between men and women created by God have made either men or women more appropriate to address specific issues. Household management and parenting and doing jobs that are more compatible for women spirit is more appropriate and competent for women so that if women are deprived of their judging right, in case of approval, is a bonus for them. However, they should not be prohibited of judging in cases of families such as marriage, familial conflicts, divorce and the like with traditional and unreasonable justifications. Dynamic Shiite jurisprudence has been able to coordinate itself with the new changes and novel problems considering the various developments and requirements of each era (V. M. Moghadam & Haghighatjoo, 2016; Sedghi, 2007).

Now, as it was carried out, women are faced with less obstacles and deprivation in the field of personal, familial, social and political rights. There are still limitations that should be paved with open-mindedness in order for the Muslim woman to be placed in her highest legal aspects within the framework of Islamic teachings.

**CONCLUSION**

The constitution of the Islamic Republic of Iran explicitly confirms women's participation in political and social aspects. Some aspects of political and social participation of women have also been mentioned in the public law. It is clear that the most important types of women's participation
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in political and social affairs are the right to select and be selected in various elections including the Parliament. Due to the election law of the National Council Parliament approved in 1925, women did not have the right to choose. According to Article 10 of that law, women were among those who did not have the right to participate in the election and this issue was also proved in Article 13.

The evolution of women's rights in Iran after the revolution is toward the Islamic side. In fact, this time the circumstances of the time are considered in the understanding of the rules. The recent rules regarding divorce, dowry and the like are examples of this view. In other words, Iran's laws on women's rights and particularly the family rights have passed three different phases.

The initial period of legislation is related to the Marriage Act in 1931 and the Civil Code in 1934 in which the Islamic rules were enacted as the law. Legislators in this period mainly accepted and adopted the opinions of famous jurists.

The second period dates back to the years from 1967 to 1977. In this period, the law of the Family Protection Act and its regulations were adopted under the influence of precarious thoughts of women's rights and feminist movements. The trend of such legislations continued to the Islamic Revolution's victory.

The third phase of legislation on women's issues and family law was returned to the former civil system with little change. But during the years of Islamic revolution, due to the occurrence of practical conditions and accepting the influence of time and space in the inference and exegesis and the conditions and realities of the society, there were some change in the understandings. In the field of family rights, this evolution caused enactment of new legislations such as the law of divorce, dowry and the like.

A quick look at the actions of the United Nations in order to set international instruments and monitoring mechanism, one can find out that the issue of women and the protection of their fundamental rights and freedoms are among the most important issues and priorities during the past 50 years ago in this organization. It is been gradually tried to strengthen both the normative aspect of the adoption of documents and international conventions and the structures (establishment of monitoring mechanisms) of the field of women in this organization.

It is also important to note the subsidiary programs of the United Nations including the educational workshops and the like that have had significant cultural effects in different societies. Moreover, the point to be mentioned is that there are some criticisms by some governments about some programs and various documents of the United Nations in relation to women the most important of which relates to the pursuit of women's rights in the stability and strengthening of the foundation of the family and modifying rights and obligations of men and women mostly neglected in the UN bodies.

REFERENCES


