

Deviations from the Convention on the Elimination of All Forms of Discrimination against Women: A Case Study of Iran

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Abstract: *The Convention on the Elimination of All Forms of Discrimination against Women was formally adopted on 18 December 1979 by the United Nations General Assembly. More than 90% of the countries are a party to this convention from which 51 countries are from Islamic world. Yet, there are a few countries that have not ratified the convention. This study aims to examine the condition of discrimination on women in the Islamic Republic of Iran after its 1979 Islamic revolution. This article argues that at the time that other countries were ratifying the CEDEAW, Iran got into a new phase of Shari`h Law (Islamic Law) by which, new established Islamic policymakers implemented new policies such as Hijab towards women. The paper attempts to investigate not only the reasons of the rejection of CEDAW by Iranian government, but it also tries to evaluate the impact of the conventions on the status quo of women within the country. The findings of this analysis reveal that a major reason that Iran has not ratified the CEDAW is due to the fact that some terms of CEDAW are in conflict with Iran`s Constitution and Sharia Law. Moreover, CEDAW seems to be in contrast to the Collective Prosperity and Cultural Relativism of Iranian manpower. The study also uncovers that even though the CEDAW has not been ratified by Iran; Iranian women have employed it as medium to realize their rights and to follow their civil movements.*

Keywords: *CEDAW, Women, Collective Prosperity, Cultural Relativism, Shari`h Law.*

1. INTRODUCTION

The Convention on the Elimination of All Forms of Discrimination against Women was formally adopted on 18 December 1979 by the United Nation General Assembly. More than 90% of the countries are a party to this convention from which 51 countries are from Islamic world. Yet, there are a few countries, Iran among them, that have not ratified the convention for multiple reasons. Women discrimination in Iran has cultural and constitutional roots. The status of women entered into new dimensions and found a new place after the Islamic revolution of Iran in 1979. As a result, at the time that other countries were ratifying the CEDEAW, Iran got into a new phase of Shari`h Law (Islamic Law) by which, new established Islamic policymakers implemented new policies, such as Hijab, towards women.

This study aims to investigate not only the reasons of the rejection of CEDAW by Iranian government, but it also tries to evaluate the impact of the conventions on the status quo of women within the country. The paper argues that a major reason that Iran has not ratified the CEDAW is due to the fact that some terms of CEDAW are in conflict with Iran`s Constitution and Sharia Law. Moreover, CEDAW seems to be in contrast to the Collective Prosperity and Cultural Relativism of Iranian manpower. The study also confirms that even though the CEDAW has not been ratified by Iran, Iranian women have employed it as medium to realize their rights and to follow their civil movements.

In international instruments, UN resolutions and documents, women are always a part of vulnerable groups together with old people, children and the handicapped (Puechguirabal, 2004). Utilizing the

terminology of “women and children” together with vulnerability group is to get the world attention to a specific demographic group (Carpetner, 2013). The scholars that corroborate this special category of women as a part of the vulnerable group, usually discuss it in two dimensions. First, women and teenage girls in conflict zones are considered vulnerable because of the special role they are playing in a period of war. When the male households are deployed in the battlefield, women are usually not only regarded as the primary caretakers of infants and young children but they are also responsible to take the role of the male households as well. The second reason known for the allocation of women in the vulnerable group is due to physical reasons in detail: the women in their pregnancy and lactating time make them inferior to their other biological sex, that is their male counterpart (Carpetner, 2013). This view of the UN of women has been censured by some scholars like Gardam and Jervis (2001) and Nadia (2004).

Gardam and Jervis (2001) claim that “the vulnerability of women during armed conflict is a direct consequence of discrimination that women undergo throughout their lives” (Carpetner, 2013). In a similar way, Nadia (2004), as another critic of UN’s categorization of women as vulnerable group, argues that “it would be better to change language and talk about gender perspectives instead of using fossilized categories like women and children in order to have a better practice of the social and political flux within societies. Nadia goes on to say that we have to stop thinking of women as defined according to “a biological fate”. What these critics fail to note is that although there are no differences between men and women as moral agents, there is a need for special support for women because society treats men and women differently and these special supports are to correct these culturally constructed discriminations towards women (Lawrence, 2012).

Although the UN Charter realizes equal rights known for all women and men according to the international human rights treaties (Lawrence, 2012), women still suffer from numerous kinds of culturally-constructed discriminations. Both those who support and those who refute the notion of the women as the vulnerable group, unanimously affirm that there is an obvious discrimination towards women in the world. As a result, protection of women as a vulnerable group is an essential feature of the international human rights. Therefore, UN General Assembly with assistance of the Committee on the Status of Women (CSW) adopted a non-binding Declaration in 1967 and its binding convention was drafted by CSW in 1974. Later on in December 18th, 1979 the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly by a vote of 130 to none, with 10 abstentions (Lawrence, 2012). Among non-states parties, Iran, Somalia, Sudan, the United States of America and some other countries can be named (Piccard, 2010). This study will focus on the reasons why Iran has not ratified the CEDAW and investigate the impacts of CEDAW in general on Iran which are analyzed from constitutional to cultural points of view.

2. LITERATURE REVIEW

Iranian women have long been suffering from violation of their basic rights in the male-centered ideology and patriarchal culture of Iran. Woman is traditionally known as absurd and immature and the issued policies control them unfairly from birth to death (Mohammadi, 2013). Almost 36 years have been passed since CEDAW adaptation by the UN General Assembly till today, 6 March 2015, yet Iran is still not a party to this Convention (Alikarami, 2014).

Among the 188 countries who has ratified the CEDAW, 51 of them are Islamic countries. But Iran, as one of the aforementioned countries, is yet to ratify the Convention as CEDAW is at odds with the State’s collective prosperity and cultural relativism. This convention seems to be against Iran’s constitution. As a result women in Iran are still suffering from the discrimination in their public and private lives. For instance, in judiciary system the wergild for murdering a women is half that of a man’s. A woman is not allowed to be a judge. Women should cover themselves with hijab. The head of households are men who have the legal power to determine their wives’ occupation, prevent them from having passports and traveling abroad, to name a few.

From the beginning of civilization till today, the dominant culture has continued to marginalize women and patriarchy has been in charge of women (Zerzan, 2010). Such a system is still practiced in Iran: not only in the constitutional law of the country but also in the culture of people. This male dominant culture has also affected the political elites of the country. Consequently, it makes the CEDAW become far from the collective properties of the men in power within the State.

From Iran constitutional perspective, the CEDAW ratification seems a bit far from the reality. After the Islamic revolution of Iran in 1979, a new look at the country's constitution was based on Shari'ah law. From 1976 to 1986, by implementing new policies such as the enforcement of hejab and setting standard dress codes for women, decreasing the legal age of marriage from sixteen to nine and protection of women's purity as a responsibility of the government, the women's employment dropped from 11.1 percent to 6.8 percent and the rate of female representation in parliament decreased from seven to 1.5 percent. On the other hand, female primary school enrollment increased by 50 percent as well as at the university level; with the fact that there were limited fields available for women to study (Mohammadi, 2013).

Despite all these facts, Iranian officials tried to draw the attention to ratifying CEDAW in two different periods. First at the time of the presidency of Ali Akbar Hashemi Rafsanjani, 1995-1997, which unfortunately could not achieve any success as Iran was passing the post-Iraq/Iran war situation and the economic and social issues had priority over women's right. And the second time was at the presidency of Mohammad Khatami, from 1999 to 2003, which will be discussed in the next section.

3. DISCUSSION

The researcher argues that the justification Iran has not ratified the CEDAW is due to two major reasons:

- CEDAW is against Islamic Republic of Iran's Collective Prosperity and Cultural Relativism.
- CEDAW is against the Iran's Constitution and Sharia Law.

3.1. CEDAW is Against Iran's Collective Prosperity & Cultural Relativism

Some cultural relativists believe that the human rights are not universal since the doctrine of human rights is derived from Western European Enlightenment philosophy. Some other scholars also believe that this doctrine is biased against non-Western countries and cultures (Lawrence, 2012). This vision of most Asian countries is due to an ignorance of Asian writings and traditions (De Varennes, 2006). And this is not apart from the way that opponents to CEDAW in Iran think and instead they offer their own "Islamic" alternatives (Alikarami, 2014).

Nowadays, gender equality is considered a universal norm, but not in some parts of the Muslim world. According to some Iranian jurists such as Mortazā Moṭ ahārī, the discourse of gender equality is not a universal principle and it is more a Western concept. Hence, it is not Islamic (Schneider, 2013). Furthermore, Iran's Supreme Leader, Ayatollah Ali Khamenei's statement clearly explains that "Islam introduces Fatima [the daughter of the Prophet Mohammad] the outstanding and distinguished celestial being—as a model and an ideal for Muslim women" (Alikarami, 2014). Since it is mentioned by Iran Supreme that, Islamic Revolution of 1979 uplifted women's status to their rightful place in Iran, referring to Fatima as the role model manifests the Islamic collective prosperity of the state.

On the other hand, according to De Varennes (2006), "If women in Muslim countries are discriminated against, it is not enough to say that; a tradition, no matter how old and venerable, requires such discrimination" (34). There should be a set of "core" standards known for women which are universal regardless of women's cultural relativism (Jivan & Forster, 2005). Following this line of argument, some other researchers like the Nobel Peace laureate and women's rights activist, Shirin Ebadistates that "a basic right for women could be guaranteed within an Islamic framework of governance provided those in government were inclined to interpret the faith in the spirit of equality" (Alikarami, 2014). Ebadi maintains that maybe the real reason Iran has not ratified the Convention since the majority of the Islamic countries have ratified it, is more to the interest of male political elite than has anything to do with religion (Mohammadi, 2007). This also can be considered as another reason to the collective prosperity of Iran's government and even this male political vision is more obvious when at the time of the presidency of Mohammad Khatami between 1999–2003 during the "reform era," the reformist-dominated Sixth Parliament actually ratified CEDAW, but the Guardian Council rejected the bill. Though the Council claimed that CEDAW has a gap with religious factors, they have never explained what those gaps are.

3.2. CEDAW is Against the Iran`s Constitution and Shari`ah Law

After the Islamic revolution of Iran in 1979, when the so-called Autocratic Monarchy was replaced by an Islamic Republic based on the principle of rule by Islamic jurists (Sadjadpour, 2008), Iran officially became an Islamic state. Numerous analysts have declared that some Asian and Islamic states “naturally” reject the universal application of human rights (de varendes, 2006) mostly because in some points it is against shari`ah “Islamic religious law which tries to take control over every aspect of its follower`s life” (Sudduth, 2009). And as the government of the Islamic Republic of Iran has implemented a policy of unequal treatment of Iranian women under the law by referring to Islamic shari`ah and the Iranian traditions and norms (Mohammadi, 2013), Iran would have naturally rejected the CEDAW.

Shari`ah is obtained from Qur`an “the holy book of Muslims” and Sunna “the tradition of the Prophet Mohammad” and it is fixed and immutable. As a result, any kind of secular law which is in conflict with Shari`ah regarded as void and null in Muslim states such as Pakistan and so Iran where their constitution is mixed up with Shari`ah (Sudduth, 2009). In this study I have tried to highlight some of these remarkable differences between Iran Constitutional Law and the rights of women according to Convention on the elimination of all forms of discrimination against women (CEDAW) by making a comparison table as below.

Table1. *The difference between Iran`s constitutional law and CEDAW articles*

Iran Constitutional Law	CEDAW Articles
divorce, marriage, travel or leave the house without the permission of their husbands or fathers or brothers (Mohammadi, 2013);	Article 1: For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (UN, 1979);
women are not allowed to work without their husband permission (Mohammadi, 2013);	Article 16 section 1 (g): The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation (UN, 1979);
Denial of the right to obtain custody of their children from certain ages if divorced (Mohammadi, 2013);	Article 16 section 1 (d): The same rights and responsibilities as parents, irrespective of their marital status, in matters regarding their children; in all cases the interests of the children shall be paramount (UN, 1979);
Lowering the age of consent for marriage to 9 immediately after the revolution, and increase to 13 years old after two decades of women`s struggles (Mohammadi, 2013);	Article 16 section 2: The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory (UN, 1979);
Banning abortion except in some emergency situations (Mohammadi, 2013);	Article 12 section 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. (Margolin, 2007) & (UN, 1979);
Segregation of the sexes and gender apartheid stretched to every aspect of public life and separation of all services for men and women such as public buses, sport activities, educational institutions, and even some hospitals, health care and other medical (Mohammadi, 2013);	Article 4 section 1: Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved (UN, 1979);
A very strict and restrictive set of dress codes including enforcement of obligatory veiling (hejab) and requiring all women to wear dark and concealing uniforms (Mohammadi, 2013);	Article 5 (a): To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (UN, 1979);
Banning female singers` voices to be broadcast from the radio and television and	Article 11 (c): The right to free choice of profession and employment, the right to promotion, job security and all benefits

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distributed through CDs and audiocassettes (Mohammadi, 2013);	and conditions of services and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training (UN, 1979);
Forbidding women employed by the armed forces from receiving military ranks and reducing their employment status to that of office employees (Mohammadi, 2013);	Article 11 (b):The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment (UN, 1979);
Article 49, Islamic Punishment Law and Amendment 1 of Article 1210, Iranian Civil Law: Considering young girls of nine years of age (not boys) of criminal responsibility (Mohammadi, 2013);	Article 15 section 1: States Parties shall accord to women equality with men before the law. Article 15 section 4: States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile (UN, 1979);
Present laws give men the right to divorce a woman without her consent. But a woman can seek divorce only if her husband is a drug addict or impotent, which is almost always impossible for her to prove (Mohammadi, 2013);	Article 16 (C): The same rights and responsibilities during marriage and at its dissolution (UN, 1979);
Banning women from participating in the high ranking judiciary and administrative Officials (Mohammadi, 2013);	Article 11 (d): the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work(UN, 1979);

Although there are a number of terms in the law against the CEDAW, there are also some which are pro CEDAW such as the laws under Maternity Protection Article 11 section 3 (a, b, c & d) of CEDAW (Olang et al, 2009). Furthermore, Iranian women also enjoy their rights to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies (Mahdi, 2004).

3.3. CEDAW `Simpact on Iran

Despite the fact that CEDAW has not been ratified by Iran, it has invaluable impact on the movements of women rights in Iran. After the Revolution, for a decade, Iranian women were not organized to follow their causes and goals (Mahdi, 2004) because gender discriminations were so common in the country that they were engaged in the everyday life of female citizens (Lorber, 1994). Fortunately, later on between 1996 and 2000 women in Iran got familiar with their rights by participating in international and UN conferences (Mohammadi, 2013) and since then, they have played an important role in civil rights movement(Mahdi, 2004).

In addition to the fact that the ratification of CEDAW by Iran can have a great impact on women`s situation since it can provide the women`s rights advocates with a framework by which they would be able to induce state for better policymaking on women`s situation (Alikarami, 2014), only the existence of CDEAW can help the awareness on women`s human rights and equality in Iran in order to clarify their expectations over their rights (Mohammadi, 2007). One of the manifestation to this argument is the demanding of the ratification of CEDAW by Iranian women`s movement. Despite the fact that Iranian women have only achieved little success in fulfillments of their requests. Yet their greatest success is the prevention from getting their status worse (Tohidi, 2014). Gender is something which is being practiced every day and people would feel uncomfortable if they do not want to behave the same (Lorber, 1994). And some conventions and treaties such as CEDAW would help women to find out that there is another norm existing out of the country. For instance, the Female Genital Mutilation (FGM) in some parts of Africa is way too common and ordinary, but indeed, it is a violation of Women Rights. Therefore, if an African woman used to suffer from this tradition, but has felt uncomfortable about it, now they can see what universal rights they have in order to refer to and fight for it.

Yet what is more, from the governor`s points of view, it would also make the state to be responsible to give an overview of the country to the UN bodies. It can be easily seen in Morocco, Egypt and India that how CEDAW has enhanced the status of women within the country (Alikarami, 2014).In addition to that, in the analysis of Ivan & Forster (2005) on the impact of CEDAW on Asia Pacific region, it is aptly concluded that CEDAW has played an important role in women`s domestic litigation strategies in the region by giving them an opportunity and support to advocate their rights at courts. Another

factor which makes the existence of CEDAW as a positive factor is that while all the countries in the world has accepted it, those countries who are not a party to it would be in danger of isolation on an international level. The concern of Shahīndokht Mawlawverdi, Secretary of State in charge of Women's Affairs, to this matter is a proof to this argument (Schneider, 2013).

4. CONCLUSION

Even though majority of the countries worldwide have ratified the Convention on the Elimination of All Forms of Discrimination against Women formally adopted in 1979 by the United Nation General Assembly, a few nations, including the Islamic Republic of Iran, have been quite reluctant to adhere to the convention for multiple reasons. In an attempt to investigate women discrimination in Iran, the present study delved into the cultural and constitutional roots of the country's cold attitude to the convention. The new policies issued after the Islamic revolution of Iran have employed majorly Shari'ah Law to deal with the status of women regardless of the international efforts and policies of the UN, like the CEDEAW. The analysis came up with one major reason why Iran has not ratified the CEDAW so far: The CEDAW seems to be in contrast not only with the country's Constitution and Sharia Law but also with the Collective Prosperity and Cultural Relativism of Iranian manpower.

All the same, it is easy to note that the Iranian women civil movements are indebted to the CEDAW as it has provided the feminists in Iran with an overview of their basic rights as an equal gender to men and a voice to speak out, even though, the state has not ratified it yet. But women rights movement activists are hopeful that Iran will ratify CEDAW very soon in near future. The optimism in the country's upcoming political agenda is due to a recent change in the country's governmental system in which a more moderate and reformist candidate, Dr. Hassan Rouhani, has been selected as the president of the Islamic Republic of Iran. Rouhani's campaign promised to determine why CEDAW was rejected and would eventually ratify it. Moreover, the Secretary of State in charge of Women's Affairs, Shahīndokht Mawlawverdi has also stated that CEDAW might be accepted from an Islamic point of view.

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