

Explaining the Rights of Foreign Citizens Based on Social Justice: An Analytical Study

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Abstract— The form of relationships between persons and government is basically recognizable under various terms such as vassal, national or citizen and the quality and quantity of mutual rights and duties of persons and government are also evaluable based on this term. One of the legal resources of public rights and freedoms in Iran is the constitutional law. The Universal Declaration of Human Rights and international covenants can be count as resources. The public freedoms of Iranian citizens is explained as "Rights of Nation" from 19th to 42th articles of constitutional law of Islamic Republic of Iran. In recent centuries, foreign citizens have been entered and resided in Iran due to growing the communication technologies and special geographical and strategic position of Iran in the middle east, such as linking to warm waters of Persian Gulf and Oman sea and having long borders with critical points of the region (e.g., Afghanistan, Iraq, etc). This, in turn, has led to emerge social and security problems. The legal residents with foreign citizenship must have personal, legal and human securities, which declared in the law. By studying the laws in the current research, it was found that the legal residents with foreign citizenship have not enjoyed the equality against law and the current form of citizenship law is not satisfied the current demands and hence, it should be revised. Entering the foreign people to a country, due to any reason, would have political, security, economical, cultural, and geographical and population morphological effects. Particularly, if they were admitting regardless of facilities and demands of the society, the adverse effects induced by presence of them on the vital factors of the country would be more intensive and irrecoverable.

Index Terms— Rights, Foreign Citizens, Social Justice, Society, Constitutional Law, Public Law

1 INTRODUCTION

After Islamic revolution in Iran, and clearing the foreign policies of Islamic Republic of Iran, which one of its principles is helping and human aiding to all Muslims around the world, Iran is recognized as the cradle of Islam and the symbol of freedom and liberalism by liberals of the world, specially Muslims of neighboring countries, so that a large population of Afghan and Iraqi people migrate to Iran [1-8].

In this regard, in addition to 1.5 million Afghan citizens, who enter to the country as returner, refugee and homeless, about 400 thousands Iraqi refugees also enter Iran with various methods due to special situation of their countries and instability of internal security and clashes of power-seeking groups [9].

Today, there are special laws for foreign people in all countries so that it is clear that the foreign person has what rights in special cases such as migration, tourism, job mission, etc [10].

Although there is not a comprehensive set of laws for foreign people in Iran, it is considered discretely in civil law, civil judgment procedure, law of execution of civil sentences, constitutional law of Islamic Republic of Iran, code of acquisition of property by foreign people, law of extradition and law of entering and residency of foreign people legislated at 1310 along with the next revisions and its code of practice. These laws clear the situation of foreign people in the country from entering, residency, exit, deportation, personal conditions, and acquisition of property and so on and control these cases [11-15].

However, international life is an special form of national life which is emerged from international relationships of people and since the presence of foreign people in a country is directly related to the security and political regime of the country and hence, their limits and principles are determined based on national demands [11, 12].

Private international law is a branch of Jurisprudence, which regulates the private relationships between people in an international level [13, 15, 17, and 18].

Private international law is not completely private and some cases such as citizenship and situation of foreign people is more related to the government and public law than any other things. For example, although citizenship is a public law relationship, it is an element of character and is thoroughly related to private conditions and anyway, the private rights of people is always discussed in this field of Jurisprudence [13-18].

2 OBJECTIVE OF THE STUDY

It is declared in the 42th article of constitutional law of Islamic Republic of Iran about the rights of nation and public freedoms that:

Foreign nationals may acquire Iranian citizenship within the framework of the laws. Citizenship may be withdrawn from such persons if another State accepts them as its citizens or if they request it.

It is stated in the 15th article of the 1948 Universal Declaration of Human Rights that:

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The 6th article of Declaration of the Rights of Man and of

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the Citizen of France stated that:

Liberty is a power belonging to human so that he/she can do anything which does not harm others.

The basis of liberty is nature, its frame is justice and its support is law.

The nature of human and his/her value, position and condition necessitate that government determine minimum secular security for everyone so that he/she can have basic demands of life, food, home, treatment, health and education and regulates economical and social affairs and government also acts to remove injustice and discriminations [19-23].

The current study is aimed to investigate the rights of foreign people, according to social justice, to logically discover the facts and to find "if all are equal against law" and if they have right to support by law without any discrimination [24-29].

It can be found by studying the current research that if the rights and endowments of life and human security for all people, especially foreign ones, are substantiated and if the rights of people are equal at the eyes of law, justice and society?

3 PROBLEM DESCRIPTION

Today, the juridical life of people cannot remain in the national level due to economical, industrial and scientific progresses and anyway, some people of the society will be in contact with people of other societies for business, commercial, cultural or other relations [30-37].

Nowadays, Universal Declaration of Human Rights, international covenants and protocols make regulations and occasions that "members of United Nations" are charged to follow it [38-41].

Departing from a country to another one is simple in the current time due to good transportation facilities. However, it can be internationally problematic, although it would be for migration, refuge, tourism and or business [42, 43].

Now, the private international laws set of rules contains various aspects. However, the current research is focused on the law of entering and residency of foreign people in Iran, issued at 1310/2/19, and its next revisions [44-49].

The nature of human rights is peace- and security-finder and any misuse from it to endanger the human peace and security is illegitimate. "Any type of interpretation of human rights which endangered the peaceful human life and or hurt its security is against the soul of human" [50-53].

Law is the best possible method to make regulations, righteously, and hence, all types of law, from constitutional to usual laws, are the best way to realize the human rights and supporting it [54-59].

Nobody should be tortured and punished, harshly, inhumanly or pejoratively. All are equal against law and have right to support by law without discrimination. In the current research, realizing the legal rights of foreign people in the society is studied [60-63].

4 RESEARCH ORGANIZATION

The current research consists of abstract and introduction and is composed at the form of analytical and descriptive discus-

sions. The French method framework is used for collecting the issues and it is composed of two sections, each have two chapters and each chapter has two subjects and each subject has two article and each article has two or three paragraphs [64-67].

In the current research, the technical reports of experts are used in addition to review of the available resources including books, dissertations, articles, publications, laws and regulations [68-71].

The general scheme of the research is studying the presented juridical bases relating to the rights of foreign people in issued laws by lawmaker, codes and issues of cabinet and investigating the adverse effects induced by incompatibility of social justice and law-orienting and its effect on social mechanisms and vulnerability of society and "hearth". It is obvious that studying the principles of foreign juridical systems and analyzing the evolution of juridical methods and votes of juridical doctrines in other countries is valuable and significant in the current research.

5 RESEARCH METHODOLOGY

In addition, some questions corresponding to the above mentioned goals is presented and the library research method is adopted as the research methodology based on observation. Respecting to the principles of neutralism and evasion leads to removing any prejudice, unrealistic, fantasized and idealistic opinions from mind of researcher so that during collecting and analyzing of information and respecting to the principles of accuracy and precision, the valuable moral points and munificence of human are under consideration by researcher [72-79].

6 RESEARCH BACKGROUND

Considering the importance of nation's rights and public liberties, some dissertations has been studied the following subjects:

- (a) Comparative study of occupation of foreign citizens in Iran
- Juridical condition of children resulted from marriage of women;
- (b) Limitations of ownership of foreign citizens in Iran;
- (c) Marriage of foreign citizens with Iranian citizens in laws of Iran;
- (d) Laws relating to deporting foreign citizens in international laws and its application in the international tribunal;
- (e) Basics and conditions of claims about the civil responsibilities of Iranian citizens against persons;
- (f) Investigating the role of government in taking possession of real estate of foreign citizens, and some published articles and papers.

These publications are listed in the references [80-85].

7 RESULTS AND DISCUSSION

The natural foreign persons in Iran have the same private rights as to Iranian citizens; it means that foreign people have "capacity to acquire rights" except that cases which excepted by laws. The nature, value, position and condition of human necessitate that government determine minimum secular security for everyone so

that he/she can have basic demands of life, food, home, treatment, health and education and regulates economical and social affairs and government also acts to remove injustice and discriminations.

The international law does not necessitate any country to accept foreign people in its territory but when a country allow foreign people to enter and reside in its territory, the country should protect their live and properties and provide the minimum rights which is necessary for living of each person. This international behavior is known as minimum behavior with foreign citizens and makes international responsibility for the states, which the foreign citizen is resides in its territory.

It can be found from international protocols called (International Covenant on Civil and Political Rights) and (International Covenant on Economic, Social and Cultural Rights) that acquiring civil and political rights necessitate neutralism of states while acquiring economical, social and cultural rights need to effective and continuous support of state toward the removing of discriminations and injustice in the society. Nowadays, Universal Declaration of Human Rights, international covenants and protocols make regulations and occasions that "members of United Nations" are charged to follow it, and any type of interpretation of human rights that endangered the peaceful human life and or hurt its security is against the soul of human. It should be known that International Covenant on Economic, Social and Cultural Rights issued in 1966 in the United Nations can be pleaded for justice and an important revolution is created about supporting the economical, social and cultural rights by creating a system for following complaints.

All people, regardless of their citizenship, should have enjoyed natural rights. General rights are natural rights of human, which includes:

- (1) Freedom of entering, passing through, standing and exiting (depending on special permission).
- (2) Right of protecting of life and properties: it is stated in the 22th article of constitutional law that the life and property of the individual are inviolate and foreign people are among the people of the country.
- (3) Right of having personal security: it means supporting of person against arbitrary, illegal, and unlimited arresting (32th article of constitutional law), which includes foreign people.
- (4) Right of respecting to resident: in 22th article of constitutional law, lawmaker declares that residence is inviolate as life and property and by using the word "individual", gives equal right to Iranian and foreign citizens.
- (5) Freedom of belief: according to 23th article of constitutional law, the investigation of individuals' beliefs is forbidden. This is a general law, which involves all human being including foreign people resided in Iran.
- (6) Right to occupy any career and industry: generally, foreign people can be occupied any experiences, industry and career, except those that is legally exclusive to Iranian citizens and or is exclusive for government. The 120th article of work law explains that "foreign people cannot working in Iran, except that firstly, have passport with right for working and secondly, have receive license of work according to related laws and codes.
- (7) Protecting the dignity of foreign people: since foreign people are human, they are protected against any disrespect that blemishes their dignity.

(8) Right to referring to judicial references: in laws of Iran, there is not determined a certain reference to object against citizenship denial, although the sentence of unity procedure number 658, issued at 1381/1/20 from general council of supreme court of Iran aims to consider this problem and determine competent reference. However, it seems that this sentence has not been towards case laws.

(9) Other human rights:

Foreign people should have any right that is identified for all people, citizen and foreign, because of the character of human and protecting their dignity regardless of their nationality and citizenship.

Declaration of general freedom is not enough but it is necessary that government and lawmaker actively effort to remove discriminations, injustices and social inequalities and in this regard, provide necessary facilities and economical aids for social groups.

Professor Motahari was said that: the principle of justice is one of the Islamic scales; justice is not that whatever said by religion is justice but whatever is justice said by religion.

George Gordagh, the Christian author, said that: Ali Ibn Abitaleb was forced to accept caliphate since social justice was at risk.

Ali Ibn Abitaleb was said to his governors that: follow justice in works and abstain oppression since it forced citizens to become homeless and caused blades to rise.

Again, he said about justice that: there is no advice higher than right and justice and policy should not necessarily accompanied by trick and lie and dissemblance and it is not advisable that right and justice ignored for any advice such as applying tactical policies.

In this regard, the answer of the main presented question in this research, which is if all nation have equality against law, is that by considering that foreign citizens can give the citizenship of Iran if they have sufficient and necessary conditions the regulations of 3rd article of the law of entering and residing foreign citizens, issued at 1310, are not performed.

According to the issued law at 1310, regulations of 3th article, the foreign citizens can allow to reside permanently in Iran if:

- (a) Applicant has been legally resided in Iran for five continuous or alternative years and has 18 years old.
- (b) Applicant has been legally resided in Iran for two continuous or alternative years and or has a great scientific position and or is expert in productive and civil affairs with confirmation from competent authorities.
- (c) Applicant has been legally resided in Iran for two continuous or alternative years and has competent and valuable public works in Iran with confirmation from competent authorities.
- (d) Applicant has Iranian wife and child.
- (e) Applicant has been legally resided in Iran for two continuous or alternative years and has been invested in productive and civil affairs in Iran with confirmation from competent authorities.
- (f) Applicant has been legally resided in Iran for two continuous or alternative years and has personal income or wage or retirement salary with confirmation of one of the licensed banks of Iran.

In this regard, and according to observations, no one of refugees (Iraqi citizens) with obtaining the conditions of articles a, b, c, d and f and with obtaining the position of myrmidon of 70% in

forced war can obtain Iranian citizenship during last 30 years. It should be noted that the son of this myrmidon is obtained an Iranian ID card at the age of 25 in 1385?!

It should be pointed out that: according to law, foreign citizens that are legally resided in Iran are including: Emigrants, tourists, students, businesspersons, political agents and refugees.

The illegal foreign citizens are who: (1) Have not legal documents; (2) The credit of their temporary card is ended; (3) Have not legal documents and still working; (4) Their refuge is canceled and is illegally entered to the country; (5) Have legal documents but journeyed without permission.

8 CONCLUSION

Justice is the most important part of the duty and responsibility of Islamic government in establishing regularity and security and protecting the life and property of people against with cruelty and making social justice and trying for improving the society and battle against abnormalities. The principle of equality is the first basis and foundation of social system of Islam. Originality and legitimacy of human rights is accepted in the framework of justice. Justice is the second governing principle on the human rights after the human destiny and nature and its concept means that the human rights cannot be out of the framework of justice. Anyway, the citizenship law of Iran cannot satisfy the present demands and should be revised.

9 SUGGESTIONS AND FUTURE STUDIES

Laws should be made for specified nations so that its accordance with the laws of other nations counted as a random event.

(1) Many great and important decisions in the world, which are related to destiny of countries and nations, determine based on the reports that give to high ranked authorities including presidents, prime ministers, head of parliaments and supreme courts. Hence, these authorities, which should make important decisions, work and decide based on these reports. In fact, the responsibility of what that happened in the world is mainly for report makers than decision makers; decision makers are at the work office and report makers are at power office.

Wrong report is the basis of wrong policy and decisions. Therefore, reporting and report writing should be considered and thought foundations should be assigned for report writing and educational courses should be provided for report writers.

(2) All information should be clearly and simultaneously available for all people as the most important linking bridge between people and the government (National Inspection Organization and humanity communication center). It should be respond to any violation of government authorities as fast as possible so that empowered the people against the performance of authorities.

(3) Providing security, especially juridical security, by judges, which are an important part of national security, is very

critical. It is the reason why it is said that: the criterion of civilization in a society is its judicial system and if you want to know justice and security is governed in a society or not, visit its courts.

The duty of law in each society is regulating the relationships between people through composing rules and regulations. Law would be efficient when it follows by all people so that it has an effective operative warranty against disrespecting. The reason of deficiency in governing the law about general freedoms, especially 42th article of constitutional law, should be searched among three factors.

(a) Legislation factor: as previously mentioned about the ambiguities in the law of citizenship and its obtaining conditions, regarding that this law has been issued at 1310 and has not been revised and improved since that time, and considering the political, social and economical revolutions after Islamic Revolution and forced war, lawmaker should remove the ambiguities and deficiencies of "citizenship law" and according to the present conditions, should revise and improve the laws and increased his official and parliamentary controls.

(b) Educational factor: the juridical anthropology have been widely extended around the world for more than four decades and since 1978, the leader of this thought is pluralism, which is managed at "Human Rights and Juridical Pluralism Commission". Today, 350 anthropologists in Canada and USA are taught in more than 100 colleges and this branch of law is under developing in Netherlands and France. It should be tried to regulate this subject in the society education in all levels and using all communication facilities. As a result, a more effective performance would be performed than legislation towards anthropology and recognizing identities so that crimes and illegalities would be more effectively prevented.

The challenging today world needs to an education appropriate for human thoughts.

The juridical anthropology considers cultural capacity and its goal is not equalizing the content of juridical systems but it follows completing of juridical systems.

The juridical anthropology recommends that government and rights induced by its decision should be responsible to the society and this science wants a government that is at service for society not vice versa.

(c) Operational factor: in laws of Iran, Islamic Parliament of Iran is responsible for organizing the public freedoms mentioned in the constitutional law. However, government also can be established codes and systems to manage these freedoms if parliament delegated its rights to the government or be quiet.

Government should control the performance of administrative systems more effectively using National Inspection Organization or other inspection offices in administrative systems of the country. Unfortunately, in the operational level, responsible organizations and authorities for foreign citizen affairs are not familiar with its responsibilities and not only have not sufficient supervision on the performing of laws, but also themselves have violated the laws.

Finally, it is stated that: law making, education in all levels and pervasive and responsible operational control are effective steps towards obtaining forward-looking, dynamic and responsible law under supporting of social justice.

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