

The Basis of Freedom of Religious Minorities in the Constitution of the Islamic Republic of Iran

Gholamhossein Masoud¹

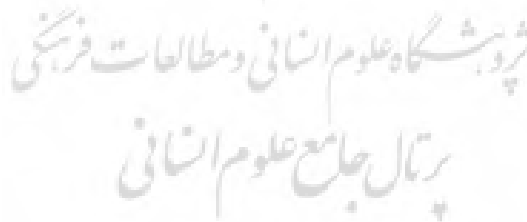
Received: 2011/6/26

Accepted: 2012/7/9

Abstract

In this paper we try to give a description of the juridical status of religious minorities, Muslim or otherwise, in the constitution of the Islamic Republic of Iran. We also deal with the question of whether non-Muslim minorities are free to perform their religious practices and the extent of their freedom.

Keywords: Freedom, Religious Minorities, Constitution, Islamic Republic of Iran.



1. Department Law, Najaf branch, Islamic Azad University, Najaf Abad, Iran. masoudsalimeh@gmail.com

Introduction

Iran is a country with an ancient civilization whose people while being tolerant, have always had their own independent tenets and have fought for these principles. Thus, on the occasion of the 1979 revolution they tried to establish a constitution that not only refers the needs of the Muslim majority but also those of other religious minorities. But, at practical level, some problems have arisen to which this paper pays attention and tries to offer solutions.

Juridical Status of National and Religions Minorities

The definition, determination and defense of the juridical status of national minorities have a humanistic dimension. Iran, like almost all other countries has foreign immigrants or inhabitants. The population of Iran includes Persians, Turks, Kurds, Arabs etc and all of whom are considered Iranians.

Thus, the constitution of Iran does not have anything under the title of national minorities, but since some of its inhabitants are non-Muslims, it is mentioned in the 13th article of the constitution that non-Muslim minorities are free to practice their own

religions. On the basis of this article, it has been mentioned in the article 1045 of the civil law that a man cannot marry his niece; however, since this is not forbidden in Judaism and Zoroastrianism, they are free to do this. The article 13 of the constitution thus says:

"Iranian Zoroastrians, Jews and Christians are the only recognized religious minorities that are free to do their religious practices, within the law; and in their personal by laws and religious teachings, they can act according to their own religion."

Here, the constitution has three considerations concerning the rights of religious minorities:

1. The freedom of religious minorities in performing their own religious rites.
2. The freedom of religious minorities in the juridical problems concerning personal by-laws.
3. Their freedom in executing their religious teachings.

As the religious minorities are free to perform their rites, their places of worship and their institutions of propagation and their mass media (such as newspaper, journal etc) are free, subject to the limitations mentioned by law.

Practical Limits of Religious Freedom

According the 23rd article of the Iranian constitution nobody can be reprimanded for having a certain idea. This, plus the fact that all religions have representatives in the parliament, indicates that religious freedom is exercised in the Iranian constitution.

But, before I articulate on this freedom, it should be mentioned that religious freedom is essentially the freedom of belief and thought. In fact, every religion has two basic parts: (I) Belief in the creation and understanding human beings' relation with God. (II) Religious rites. It is in the latter part that one should be careful that religious practices do not disturb society's order and do not violate the general principles ruling over the society.

What is the source of people's freedom in the practice of their religious rites?

The constitution of the Islamic Republic of Iran, which is the source of all laws of the country, mentions in its 4th article that all Iranian laws have to be based on Islam. But, in Islam the holy Qur'an is the source of all social and political affairs. Thus, to receive our response to the foregoing question, we should refer to Qur'an. Of course, to interpret the Qur'anic injunctions, we need to consult the traditions received from the

infallibles. In the case of novel problems, the judgment of qualified jurists is permitted, but, that has to be within the framework of the Qur'an and Islamic tradition. On the other hand, the requirements of time necessitate the legislation of new laws. The Iranian constitution has left this job to the parliament.

Furthermore, the article 177 of the Iranian constitution has left the approval of all international arrangements, treaties and agreements to the parliament. Among these, we can mention the declaration of human rights which provides the basis of religious freedom in Iran. The root of the rights of minorities in the Islamic jurisprudence is the following verse of the Holy Qur'an:

"Say: ' People of the Book, let us come to an equitable agreement among us that we shall worship none but Allah, that we shall associate none with Him, and that we shall not set up one another lords besides Him" (2:64).

There are other verses in Qur'an, which invite People of the Book to participate in dialogues concerning religious teachings, such as Ibrahim's prophecy or rightfulness of Islam. The handling of religious minorities by the prophet (S.A.) or Imam

Ali (A.S) is another source of the article 13 of the constitution.

After the establishment of an Islamic government in Medina, the prophet signed a peace agreement with the Jews and Imam Ali had such agreements frequently. According to Imam Khomeini: "All religious minorities in Iran are free to have their religious and social ceremonies, and the Islamic government is supposed to defend their rights and security, and they are to be respected as Muslim citizens of Iran" (Imam Khomeini, p. 103).

On yet another occasion, he talks about their 'natural rights': "Islam has given more freedom to mentioned religious minorities than any other religion. They, too, should enjoy their natural rights that God has bestowed on all human beings" (Imam Khomeini, p. 48).

The freedom of speech is among natural rights. Also, during prophet's time, the People of the Book benefited from their natural rights. They were free to talk to the prophet about their views and sometimes had disputes with him. In Qur'an they are quoted to have said:

"Be a Jew or Christian in order to be rightly guided" (2: 135).

It is a Qur'anic injunction not to argue

with the people of the Book but in the best manner:

"And do not argue with the People of the Book except in the best way." (29: 46)

The People of the Book were free to teach their religious instructions and to propagate their holy book among themselves. As far as their economic rights are concerned, they are not differentiated or discriminated once they are citizens of the Islamic state. The text of the prophet's agreement with People of the Book reads:

"Muhammad, the prophet of God guarantees their life, property, land, deeds and temples against any harm and damage and that they shall not go under any kind of imposition and humiliation and that their lands should not be occupied by soldiers" (Montazeri, p. 750).

In the economic domain, the range of their ownership right is even wider than that of Muslims. For example, the ownership of wine or ham is not permitted to Muslims, but it is recognized rightful for the People of the Book, and it has to be compensated if it is lost (Muhaqqeq Helli, P. 386).

The minorities have the right of choosing their place of residence and commuting. In the agreement between the prophet and the Jews of Bani Adia, their exile and

expatriation was negated.

In Iran, minorities have political freedom and they can participate in all general elections. The minorities can even send their own representatives to the parliament, and their representatives have equal rights compared to other members of the parliament.

It is said in the Qur'an that:

"Indeed, the faithful, the Jews, the Christians and the Sabaeans who have faith in Allah and the Last Day and act righteously, shall have their reward from their Lord, and they will have no fear, nor will they grieve" (2: 62).

According to this verse, the followers of holy Books who believe in God and resurrection and act righteously receive their reward from God and they don't have to fear or grieve.

In the first volume of the commentary on the Qur'an entitled 'Tafsir Nour', it is narrated that Salman Farsi said to the prophet:

"What is the condition of my friends, who were faithful, but did not see you to convert, in the Hereafter? Some body said that they are going to go to Hell. Then this verse (i. e. 2: 62) was revealed to the prophet" (Qaraati, Tafsir Nour, P. 26).

This verse implies that the believers in other religions who have no knowledge of Islam - whether before the appearance of Islam or after that - they are going to have salvation, provided they believe in their own religion and have good deeds (Qaraati , Tafsir Nour, P. 128). The belief in the beginning of the verse refers to the superficial belief, but the belief in the middle of the verse refers to the deep - seated beliefs, and this is the kind of belief that brings about salvation.

In short, those Jews, Christians and Sabaeians who believe in God and the Hereafter and have good deeds, receive their reward from God and should not worry. (Makarem Shirazi, p. 82). Similarly, it is said in the Qur'an that:

"Allah does not forbid you in regard to those who did not make war against you on account of religion and did not expel you from your homes that you deal with them with kindness and justice. Indeed Allah loves the just" (60:8).

And

"There is no compulsion in religion" (2: 256).

And

"And had your Lord wished, all those who or earth would have believed. Would you then force people until they become faithful?" (10: 99).

From these three verses we infer that religious attachment of people living under an Islamic government is free. The freedom in the declaration of one's belief can also be inferred from the following Qur'anic verse:

"Say, express your arguments, if you are truthful" (2: 111).

It is also said that the creation of man has been for voluntary worship of God. Otherwise, angels worship God, without any sin, and there would be no distinction between human beings and Angels. Angel's worship is instinctive, where as human beings' worship is arbitrary and since human beings can do sin, their avoidance of sin is important. The following verses emphasize the aforementioned point:

"Invite to the way of your Lord with wisdom and good advice' and dispute with them in the best manner" (16: 125).

"Do not dispute with the people of the Book; accept in a manner which is best." (29: 46).

"Say, O people of the Book! Come to a word common between us and you: That we will worship no one but Allah, and that we will not ascribe any partner to Him, and that we will not take each other as Lords besides Allah " (3: 64).

"Say, 'we have faith in Allah, and in

what has been sent down to us and what was sent down to Abraham, Ishmael, Isaac, Jacob, and the tribes, and that which Moses and Jesus were given, and the prophets, from their Lord. " (3: 84).

"Say, O People of the Book! You do not stand on anything until you observe the Torah and the Evangel and what was sent down to you from your Lord... " (5: 68).

The Basis for treatment of non-Muslims

The 14th article of the constitution says: "In accordance with the sacred verse 'God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and have not expelled you from your homes ...' [60: 8], the government of the Islamic Republic of Iran and all Muslims are duty – bound to treat non – Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or acting against Islam and the Islamic Republic of Iran. "

This article is more inclusive than the article 13th, and it seems that it even includes non-religious people, and

considering its content, it is not only a moral duty but a legal duty of the government to treat all people justly. It may be said that the basis of the article 14th is the verse (60: 84) quoted earlier, and one may infer the manner of its implementation from the verses (9: 5 and 9: 29). It may also be said that the article 14th of the constitution is based on the treatment of the Prophet toward non - Muslims, i.e. the followers of the holy Books or otherwise. In the letter of Imam Ali to Malik Ashtar, his representative in Egypt, we read:

"Habituate your heart of mercy for the subjects and affection and kindness towards them. Do not be over them like greedy beasts feeling satisfied by devouring them. They are of two kinds, either your brother in religion or one like you in creation. They will commit slips and face mistakes. They may act wrongly, willfully or by neglect. Extend to them your forgiveness and pardon in the same way as you would like Allah to extend His forgiveness and pardon to you "(Imam Ali, p. 456).

Article 14th of the constitution involves two points: Kind treatment of good people and serious encounter with the unjust. Concerning the second point, we read in the Qur'an: "Allah forbids you only in regard to

those who made war against you on account of religion and expelled you from your homes and supported [others] in your expulsion, that you make friends with them, and whoever makes friends with them – it is they who are the wrongdoers" (60: 9).

And in the letter of Malik Ashtar we read: "The virtuous and the vicious should not be in equal position before you because this means dissuasion of the virtuous from virtue and persuasion of the vicious to vice. Keep every one at the position which is his." (Imam Ali, p.459).

According to the Qur'an and the established tradition, non-Muslims have judicial independence in the Islamic government. Christians Jews, etc. are judged according to the rules of their own religions. Nevertheless, non-Muslims can refer to the Islamic courts if they wish. The tradition of the prophet was that in all cases that the two sides of the dispute belonged to different religions, Muslim judges gave the verdict.

The basis for the freedom of non-Muslims in their personal affairs can be inferred from the Qur'an and the prophetic traditions, but can also be seen in the treaties of the prophet with Christians (Bastenegar, P. 143). This can also be seen

in a treaty of Imam Ali (Bastenegar, P. 146).

Iran has accepted three international texts: "World declaration of human right", "International pact of civil and political law" and "International pact of economic, social and cultural law", and as they are approved by the parliament, these texts are to be implemented as national laws.

Now, if an inconsistency arises between the implementation of these texts and the Iranian laws, which one should receive priority? In my view, if the inconsistency arises between the implementation of these declarations and ordinary Iranian laws, priority should be given to these declarations, but if the inconsistency is with the Iranian constitution, the priority should be given to the constitution. Because, those declarations are at the same level as the ordinary local laws, whereas the constitution is at a higher level than ordinary laws.

To justify this view, we should note that what has necessitated the implementation of ordinary law is Iranian Parliament's approval, where as what has made the implementation of the constitution is both its approval by the parliament of experts, whose delegates were chosen by people,

and people's approval in a referendum.

It should not be forgotten that one of the principal rights of human beings is their choice of religion. Thus the implementation of their religious rights and ceremonies should be free, unless it disturbs public order and good behavior.

Now a question arises about the judgment between a Muslim and a non-Muslim who pays tribute. Should they be judged according to the Qur'an or according to their own religion? Considering the verse (9: 29), quoted earlier, we can say that people of the Book are to be judged according to their own religion in matters related to business affairs or penal cases, and the judge could be from their own people. But if there is a dispute between a Muslim and a non-Muslim follower of the Book who pays tribute, the judge should be a Muslim, and he should consider commandments of both sides, as the aforementioned verse prevents the judge from ignoring the commandments of the non-Muslim who pays tribute. (Hoseini Nejad, p.22).

Besides the limits put by articles 13th and 14th of the constitution on the freedom of minorities, the article 26th of the constitution talks about the right of

religious minorities in founding political parties or trade unions, and its limit is the non-disturbance of the government or the national unity. According to the article 26th of the constitution:

"The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic. No one may be prevented from participating in the aforementioned groups, or be compelled to participate in them."

A Historical Review

Here we want to have a look at the historical roots and grounds of the treatment of Non-Muslims by Muslims.

The respect for religious beliefs of minorities has its precedents in the Iranian history. The freeing of Jews from the Prison of Babylon by Cyrus and the presence of Darius in the ceremony of sanctification of cows by Egyptians was not free from political motivations, but one can consider it as a sign of broad-mindedness of Persians. In Iran, even from the earliest

times for which we have had historical record, people have tolerated each other both during the time that the majority were Zoroastrians and the minority were Jews and Christians and after the era that Islam became the dominant religion in this land.

After the victory over Egypt, Umar, the second Muslim Khalif, Kept all endowments dedicated to Churches intact and assigned wages for priests belonging to those churches. The best evidence for the temporization with Non-Muslims comes from a Christian source. During the Khalifate of Osman, the bishop of Merv, addressed the bishop of Fars in the following way:

"Arabs, whom God has given the kingdom, don't attack Christianity. On the contrary, they help us in our religion; they respect our God and the sacred and give gifts to our churches." (Bastenegar, p. 449).

No Muslim could take a land from those who paid tribute:

"Neither Imam nor King could dispossess a property of the person who had paid his tribute; Muslims and those who paid tribute were equal in the court of law. Imam Ali said: 'Their blood is like ours'." (Bastenegar, p. 449).

During the middle ages, there was a custom that when a foreigner's period of stay was over, they would not expel him immediately. Rather, they gave him extra time and this was expendable (Rashid, p. 77).

It is also narrated that the people of the Book were not only free to do their worship in their temples, but they could also enter Muslim mosques and do their worship there. They were even free to oppose Prophet's entrance to their synagogue, and the prophet respected their decision.

Most of the Muslim Jurisprudents have confirmed that religious minorities are free in performing their rites and observances. According to Imam Khomeini: "The Islamic government should protect the rights of religious minorities." The following Qur'anic verse is a clear example of the necessity of respecting the temples of all believers in God:

"... had not Allah repulsed the people from one another, ruin would have befallen the monasteries, churches, synagogues and mosques in which Allah's Name is mentioned frequently" (22: 24).

The prophet of Islam used to consult the People of the Book who were trustful, and sometimes gave them some responsibilities.

The Holy Qur'an has talked about some people of the Book who were trustworthy and has praised them (3: 199, 5: 66, and 5: 82).

Imam Ali, too, advised those in charge of military and political affairs to observe the rights of religious minorities and gave these minorities the right to reflect on their problems and complain to the relevant authorities (Rashid, p. 189). When the prophet conquered Mecca, he forgave the defeated. When the chiefs of Quraish tribes humiliated, the prophet said:

"What do you expect from a man whom you have insulted"?

They responded that they were hopeful of his forgiveness. The prophet said:

"Your hope is not non-sense. Go, as your life is protected and you are free. "

The prophet gave to his Christian citizens: Life security, freedom of commerce, the ownership of their properties and the freedom in performing their religious rites. (Ahmad Rashid, p. 189).

Comparison with Constitution of Some Other Countries

As we saw, there are some articles concerning religious minorities in the constitution of the Islamic republic of Iran.

But in the case of those countries that there is no reference to a particular religion in their constitution, religious freedom is admitted.

In the second article of the constitution of Canada, which deals with fundamental liberties, the freedom of belief and religion is admitted (Canadian Charter of Rights and Freedoms). In the fifteenth article of this constitution, the equality of all people in front of law is mentioned and so is the support of all people by law. A similar case is mentioned in the twentieth article of Japan's constitution (The Constitution of Japan). In the 16th article of Spain's constitution, it is mentioned that there is no formal religion in the country, but authorities should respect religious beliefs of the Spanish society and have collaboration with Catholic Church and other religions (The Constitution of Spain). According to the article 9th of Lebanon's constitution, there is absolute religious freedom and there is no formal religion. But people can run their personal affairs according to their own religion (The Lebanese Constitution). In Germany, the article 4th prescribes that the government should have an unbiased position regarding religion and belief and that there should be no limit to religious freedom (Basic Law

for the Federal Republic of Germany).

In the constitution of Islamic countries, Islam is recognized as the formal religion. For example, in the constitution of Algeria, Islam is recognized as the formal religion, but the freedom of religion and belief is claimed to be unbreakable (Algeria Constitution). In the constitution of Morocco, the government is claimed to be Islamic, but all people are free to perform their religious rites and ceremonies (Constitution of Morocco). In the third article of the Syrian constitution, the source of legislation is mentioned to be Islamic jurisprudence and the same article guarantees the freedom of belief. All religions are to be respected, but the performance of religious ceremonies depends on their being not disturbing public order (Syria - Constitution).

As we notice, the main difference between the constitution of Islamic countries, especially Iran, with countries like Japan, Canada, Germany and Spain is that the latter countries have accepted the freedom of religion and belief in an absolute sense and they do not recognize any religion as the formal religion of the

country, but in the countries which have recognized Islam as their formal religion, the followers of other religions are considered as minorities. Thus, it is natural for countries which have no formal religion to have no religious minorities. In such countries, all people are bound to follow the same laws, even if they are written on the basis of a specific religion.

Conclusion

Even though the Iranian government is a religious one and the Iranian constitution has required the observance of the Islamic criteria in all affairs of the country, all religious minorities have freedom in performing their religious rites and ceremonies and in their personal affairs, and they have the right to participate in their country's law making and, thus, they can send their representatives into the parliament, and there they have freedom to express their views.

Appendix

The article 26th of the Iranian constitution says:

"The formation of parties, societies,

political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted, provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic. No one may be prevented from participating in the aforementioned groups, or be compelled to participate in them. "

The first part of the article 22 of the international pact of civil and political law is among the texts that is a ground for the article 26th of the Iranian constitution:

"Everybody can join others (to form, e.g. a trust or a trade union) in order to protect his/her interests."

The article 4th of the declaration of human rights says:

"To protect one's interest, one can form a union with others and can participate in it."

The article 20th of the declaration of human rights says:

1. Everybody can organize peaceful associations or societies.
2. Nobody can be prevented from participating in social gatherings.

In the case of Islamic law, the lawfulness of the formation of party is based on the following points:

1. Observing justice and removing injustice.
2. Recommendation for consultation in the affairs.
3. Recommendation for and emphasis on helping People and participation in peoples' affairs.
4. Recommendation for and emphasis on doing the good.
5. Recommendation for and emphasis on forbidding the bad.
6. Recognizing the principle of legalization (of doing things unless explicitly outlawed).

The word '*hezb*', meaning party, entered Farsi from Arabic and it refers to a political organization whose aim is to achieve certain political goals and participation in the political power or improvement of power and government. But in the Qur'anic terminology, *hezb* refers to truthful and false groups, e.g. believers and unbelievers (Qadrdaan Maleki, p.261):

"The confederates of Allah are indeed felicitous" (54: 22).

"Each faction exults in what it possessed" (30: 32).

In the first verse '*hezb*' has been used for the felicitous group and in the last verse for the opposite group. But, when we look at

Imam Ali's government, we notice that he gave freedom to all people, even those who had not participated in allegiance to his government. That kind of allegiance can be considered a kind of referendum, in today's terminology. Imam Ali not only permitted people to criticize him, after allegiance, he even allowed his opponents to formally oppose him, and he did not cut their salary from the government.

According to the 20th article of the Iranian constitution:

1. Public gatherings and marches may be freely held.
2. No body can be forced to participate in social gatherings and according to the international pact on social and political law:

"The right for founding peaceful societies is recognized and it has no limitations, save those imposed by law, provided it is for the interest of present security or public order or for the sake of defense of public health or morality or the rights and freedom of others."

Part (b) and (c) of the international pact on economical, social and cultural law, say:

1. The governments participating in this pact are committed to guarantee the following:

- (a) ...
- (b) The right of unions to form national federations or confederations and the right of federations or confederations to form international unions or joining them.
- (c) The right of unions in acting freely with no limitation saves being within the law and for the sake of public security or order and being essential to the right and freedom of others.

In the discussion of rights and freedom of people, a clear example is the freedom of parties. The rightful and lawful way for using political right, e.g. Participation in election or in political gathering, is the formation of parties. Thus, a group of people who act within a coherent organization with a formal constitution is called a party. A party has the following characteristics:

1. It has definite aims in conformity with its constitution.
2. It has a founder and members and proponents.
3. It manifests political activity.
4. It has influence in the power or the government.

The Iranian constitution has set some limitations for becoming a member of a

party. The observance of these conditions is for the sake of the protection of public rights and the territorial integrity of Iran.

These conditions are:

1. Observance of the principle of Independence of Iran .The insertion of this condition is due to the fact that, in the past, some of the parties acted in such a way that indicated they were agents of foreigners in Iran. Tudeh party – the communist party of Iran- was such a party.
2. Observance of the principle of freedom of Iranian people. This is because there have been political parties that have advocated the removal of this freedom and exertion of limitations. “Taliban” and “al-Qaeda” are examples of such groups. The activities of such groups are unlawful.
3. The attachment of one to his tribe, group or religion should not disturb national unity. Any party whose activities are harmful to national unity is unlawful. Part 2 of the article 20th of the International pact on civil and political law says:

"Any kind of invitation (encouragement) to national, racial or religious hate which leads to discrimination or exertion of force

is unlawful"

4. The fourth condition on the formation of parties or associations is the observance of Islamic standards. The intention here is the concordance between lawful order and the basic principles of Islam. It does not apply to religious rites.

5. The expression " non-violation of the basis of the Islamic republic " is a bit ambiguous ; but considering articles (1) and (2) of the constitution, one can interpret it as the non-violation of the rule of ' truth ' and the rule of justice.

In the Iranian constitution, the following articles are related to human rights:

1. Articles 3, 19, 20, and 28 about equality.
2. Articles 3, 9, 14,23,24,26, and 28, about freedom.
3. Article 37, on the primacy of innocence.
4. Article 38, on the prohibition of harm and torture.
5. Article 38, on the invalidity of confession under force.
6. Article 39, on the prohibition of dishonoring people during trial, before trial and after it.
7. Articles 22, 23, 25, about the observance of private sanctuary of people, and prohibition of searching their internal affairs.

8. Article 25, about censorship.

9. Article 23, about the prohibition of inspection of ideas.

10. Article 24, about the freedom of the press.

11. Article 21, about women's special rights.

12. Articles 32, and 33, about the prohibition of unlawful imprisoning and exile.

13. Article 34 and 35, about the right of people in having attorney.

14. Article 165, about the openness of the trial.

15. Article 168, about the necessity of the presence of the jury in cases dealing with political and press offences.

16. Articles 36, 166 and 169, on the necessity of lawfulness of offences and punishments.

17. Articles 3, 6, 7, 59 and 100, on the right of people in participation in economic, social, and cultural affairs.

Besides the articles of the constitution dealing with human rights, there are items related to some international institutions which because of approval by the Iranian parliament, the Iranian government is bound to implement them. The presence of these numerous regulations indicates that

the subject of human rights is considerably under attention today and, the Iranian government is bound to observe them.

As religious minorities are part of the population of Iran, they should not be deprived from their rights of citizenship. In fact, the article 23rd of the constitution says:

"The investigation of individual's belief is forbidden, and no one may be molested or taken to task simply for holding a certain belief. "

Thought cannot be controlled by force. It is only through argumentation that one can change somebody's idea about something.

It is said in the Qur'an:

"There is no compulsion in religion" (2: 256)

"And had your Lord wished, all those who are on earth would have believed. Would you then force people until they become faithful?" (10: 99).

Human beings are not like a liquid which when you put in a vessel, takes its shape. The government is not permitted to search peoples' ideas to find out about their views. One can have any idea, unless its implementation is inconsistent with other people's rights: According to the article 18 of the international declaration of human rights:

"Everybody can benefit from the freedom of thought, conscience, and religion. This includes the freedom in changing one's religion, or idea and one's declaration of his views and faith and it includes the freedom in performing religious rights and ceremonies. "

The article 10th of the declaration of Islamic human rights says:

"Islam is the inborn religion and the application of any kind of unwillingness or exploitation of human poverty or ignorance for the sake of changing this religion to another one or to atheism is unlawful"

This might imply that other religions are not respected or recognized in this declaration, but the 18th article of this declaration says:

"Any body can leave in comfort, as far as his life, religion, and family are concerned."

According to the article 23 of the constitution, once some body's employment is concerned, any kind of question about his ideas is not permitted legally.

The 14th article of the constitution invites Muslims to deal with non-Muslims in a nice fashion:

“In accordance with the sacred verse ‘God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes ‘(60: 8), the government of the Islamic Republic of Iran and all Muslim are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic Justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.”

According to this article even, if the followers of the non-recognized religions want to build a temple for themselves, they are permitted to do so, as they are benefitting from their human rights. Even the government can help them. The only limitation is that they should not plot against the Islamic system-something that is forbidden for Muslims too-according to the law of punishment - and does not have to do with the matter of idea. Can religious minorities form a political party or a trade union? According to article 26 of the constitution, this is possible:

"The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted, provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basic of the Islamic republic. No one may be prevented from participating in the aforementioned groups, or be compelled to participate in them."

The first part of the 22nd article of the international pact on civil and political law has been one of basis for the article 26th of the constitution.

"Every body is permitted to join others freely (to form associations or trade unions) and can attract their support to save his interests."

The article 4 of the international declaration of human rights reads as:

"Every body can join others to form associations to defend his interests and can join their associations"

In the Islamic law, the basis for the legality of forming a party is the following:

1.To observe justice and to remove injustice.

2. Recommendation to consult about affairs.
3. Recommendation for helping other People.
4. Recommendation for enjoining the good.
5. Recommendation forbidding the bad.
6. The principle of legality.
7. Recommendation and emphasis on watching the government.

Another conclusion one can draw from the principle 24th of the constitution is that the censorship of the press is not permitted. That is when some body talks about an idea and its effect is seem, no court has the right to have a pre-Judgment on him.

At the moment there are numerous journals and periodicals published by the Iranian religious minorities; e.g. Armenians are publishing a newspaper entitled 'Alik'.

References

- [1] Algeria Constitution (http://www.servat.unibe.ch/icl/ag00000_.html)
- [2] Basic Law for the Federal Republic of Germany (<http://www.iuscomp.org/gla/statutes/GG.htm>)
- [3] Basteh Negar, M., (2002), *Huqouqeh Bashar az Manzar Andishmandan* (Tehran : Sherkat Sahamieh Inteshaar.
- [4] Canadian Charter of Rights and Freedoms (<http://laws.justice.gc.ca/eng/Charter>)
- [5] Constitution of Morocco (<http://www.al-bab.com/maroc/gov/con96.htm>)
- [6] Hoseini Nejad, (1994), *Huqouqeh Keifari Bain al- Melali Islami*, Tehran: Mizan Publication.
- [7] Imam Ali, (2000), *Nahjulbalaghah*, trans. by M. Ali Naqi-un-Naqvi (Qom: Ansaryian Publications.
- [8] Imam Khomeini, R.(2004), *Sahifah Nour*, Vol. 3 (Tehran: Ministry of Culture and Guidance.
- [9] Katouzian, N., (Undated), *Gaami be soye Idaalat*, Tehran: University of Tehran Publication.
- [10] Makarm Shirazi, (1997), *Bargozidehe Tafsire Nemouneh*, Qom: Dar al-Kutub al-Islamiyyah Publications.
- [11] Montazeri, H., (1988), *Deraasaat fi Velayat al-Faqih* , Trans. M. Salavati, Vol. 2, Tehran: Keyhan Publications.
- [12] Muhaqqeq Helli, (1984), *Sharaaye' al-Islam*, Ed. by M. T. Danesh Pazhouh, Tehran: University of Tehran Publication.
- [13] Qadrdaan Maleki, M. H., (2004), *Freedom in Jurisprudence and Its Limitations (Azadi dar Figh wa Hodoude an)*, Qom : Bostan Publications.
- [14] Qaraati, M., (2007), *Tafsir Nour*, Vol. 1,

- Tehran: Markaz Publications.
- [15] Rashid, Ahmad, ((1974), Islam and International Public Law, Tehran: University of Tehran Publication.
- [16] The Syrian Constitution (http://www.law.yale.edu/rcw/rcw/jurisdictions/asw/syrianarabrep/syria_constitution.htm)
- [17] The Constitution of Japan (<http://www.solon.org/Constitutions/Japan/English/english-Constitution.html>).
- [18] The Constitution of Spain (http://www.servat.unibe.ch/icl/sp00000_.html).
- [19] The Lebanese Constitution (<http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>).



اساس آزادی اقلیت‌های مذهبی در قانون اساسی جمهوری اسلامی ایران

مسعود غلامحسین^۱

تاریخ دریافت: ۹۰/۴/۵

تاریخ پذیرش: ۹۱/۴/۱۹

این مقاله سعی بر آن دارد که به توصیف موقعیت حقوقی اقلیت‌های مذهبی و غیرمسلمانان بر اساس حقوق ایران بپردازد و نیز این سوال را جواب دهد که آیا با توجه به اینکه ایران یک کشور اسلامی است و حکومت آن بطور رسمی و جدی، مذهبی است، اجرای عقاید و حقوق مردمی که مسلمان نیستند چه می‌شود و آیا اساساً از حقوقی برخوردارند و محدودۀ آن چقدر است؟

میدانیم که ایران از جمله کشورهایی است که سه متن حقوقی بین‌المللی اعلامیه جهانی حقوق بشر و میثاق بین‌المللی حقوق مدنی و سیاسی و نیز میثاق بین‌المللی حقوق اقتصادی، اجتماعی و فرهنگی را پذیرفته است و با تصویب آن در مجلس قانونگذاری، این متون را همچون قانون داخلی خود معتبر می‌شناسد. حال اگر بین اجرای قانون اساسی و متون مزبور تعارضی پیش آید اجرای قانون اساسی در اولویت است زیرا متون مورد اشاره از لحاظ ارزش برای قاضی ایرانی، قانون عادی محسوب می‌شود در حالی که قانون اساسی ارزشی بالاتر و مهمتر از قانون عادی دارد پس این متون در ایران کاملاً ارزشمند و مهم محسوب می‌شود مگر اینکه با قانون اساسی ایران مغایر باشد. باید فراموش نکرد که یکی از اصلی‌ترین حقوق انسانها حق گزینش دین است و بدنبال پذیرش چنین حقی مسلم است که دستورات و مناسک و آداب آن دین هم آزاد باشد، چنین بنظر می‌رسد که بر مبنای حقوق ایران به شرطی اجرای این آداب به صورت علنی آزاد است که مغایر با قانون اساسی نباشد.

۱. دانشگاه آزاد اسلامی، واحد نجف‌آباد، گروه حقوق، نجف‌آباد، ایران.