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## **THE LEGAL CONTEXT OF EMPLOYMENT DISCRIMINATION IN IRAN**

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### **Abstract**

Iranian law as a whole is founded on Islamic Shari'a Following the Iranian Islamic revolution in 1979, and the emergence of the new Constitution. Therefore, promoting equality by eliminating various forms of discrimination is necessary. Without the legislation outlawing employment discrimination in Iran and having agreed that equality and non-discrimination is a universally accepted principle, this article addresses the issue of employment discrimination that has become uncontrolled in Iran by deliberating the subject matter from the legal context. It is therefore suggested for the government, specially the Ministry of Human Resource, to introduce a workplace anti-discrimination policy or guidance in order to deal with the issue. In Iranian labour code and Constitution of Islamic Republic of Iran (revised in 1989) right to employment is foreseen. International law has introduced, most significantly through ILO standards of labor which purpose to protect the rights of individuals with regards to labor. The aim of this paper is to examine the different aspects of "Right to employment" which present labor standards, namely 'access to employment', non-discrimination in employment and occupation', and 'protection against dismissal' is examine in Iranian Labor law.

**KEY WORDS:** labour law, right to employment, Iranian law, Islamic law, discrimination.

### **Introduction**

The equality and non-discrimination are most fundamental human rights and described as the starting point of all liberties. Equality and non-discrimination are basically two sides of the same coin. The UDHR in Article 1 says: "All human beings are born free and equal in dignity and rights". And Article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. the International Labour Organisation (ILO) has established the rules of non-discrimination through the Declaration of Philadelphia 1944 that affirms: "All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity." in the Constitutions with the common position used are "equality before the law" and "equal protection of the



law”. The principles of equality and non-discrimination pervades international human rights structure including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights that protecting specific groups like children, women and people with inability. Article 1 of the Charter of the United Nations of 1945 proclaims: “All human beings are born free and equal in dignity and rights”. Therefore, promoting equality at the work place and combating employment discrimination are two necessary parts of promoting decent work. The Article generally prohibits discrimination against a person or class of persons. Some feature of labor standards and right to employment have been converse in Iranian Code of Labor but there are issues which require to be studied.

### **1. Iran & human rights treaties**

Iran is State party to four United Nations human rights treaties: “the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)” Iran has also ratified other human rights related treaties related to human rights at work including the “Discrimination (Employment and Occupation) Convention (1958 No. 111)” “Convention against the Worst Forms of Child Labour (1999 No. 182)” of the ILO<sup>1</sup> “the International Covenant on Civil and Political Rights (ICCPR)” and “the International Covenant on Economic, Social and Cultural Rights (ICESCR)” both ratified on 24 June 1975; and “the Convention on the Rights of the Child” ratified on 13 July 1994. Iran has not ratified several treaties, including: “the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)” “the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families” and three important ILO conventions, namely: “Freedom of Association and Protection of the Right to Organise Convention, (1948 No. 87)” “Right to Organise and Collective Bargaining Convention, (1949 No. 98)” “Minimum Age Convention, (1973 No. 138)” and “the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights”.

### **2. Domestic Legal Framework**

<sup>1</sup> Other Human Rights treaties ratified by Iran include the 1951 Convention relating to the Status of Refugees, ratified on 28 July 1976; the 1967 Protocol to the Convention relating to the Status of Refugees (28 July 1976); the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (14 August 1956); the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid (17 April 1985)



The IRI government has not taken the attention, and not adopted a single one of those recommendations by the CESC, CERD and the ILO Committee on Freedom of Association throughout the last two decade.

## **2.1. Constitutional overview**

Twenty years after first report was examined by the CESC, the IRI government's has quoted Articles 28 and some parts of Article 43 of the Constitution and made references to some other articles in regard to social security, education and housing. The articles of the Constitution related to the ICESC are as follows:

Article 20 of the Constitution appears to specifically guarantee all the rights for all the citizens:<sup>2</sup>

All nationals of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in compliance with Islamic criteria.

Article 21 on the rights of women:<sup>3</sup>

The Government must ensure the rights of women in all aspects, in conformity with Islamic criteria...

Article 28 of the Constitution of the Islamic Republic of Iran specifically deals with the right to work:<sup>4</sup>

Everyone has the right to choose any occupation they wish, if it is not contrary to Islam and the public interests, and does not infringe upon the rights of others. The Government has the duty, with due consideration of the need of the society for different kinds of work, to provide every citizen with the opportunity to work, and to create equal conditions for obtaining it.

Article 43 is also concerned with some of the related aspects and envisions a dream situation:<sup>5</sup>

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<sup>2</sup> J. Mansoor, *The Constitution of the Islamic Republic of Iran*, Tehran: Doran, 2003

<sup>3</sup> <http://en.sbu.ac.ir/ResearchCenters/Chpd/Documents/Constitution%20of%20the%20Islamic%20Republic%20of%20Iran.pdf>

<sup>4</sup> [https://www.constituteproject.org/constitution/Iran\\_1989.pdf?lang=en](https://www.constituteproject.org/constitution/Iran_1989.pdf?lang=en)



Provision of basic needs for all - housing, food, clothing, health, medical care, education and facilities required to establish family.

Ensuring conditions and opportunities of employment for everyone, with a view to attaining full employment; placing the means of work at the disposal of everyone who is able to work but lacks the means, in the form of cooperatives, through granting interest free loans or recourse to any other legitimate means... .

Respect for the right to choose freely an occupation; refraining from compelling anyone to engage in a particular job; and preventing the exploitation of another's labour....

At least three other articles of the Constitution impact the "right to work" even though this may not appear so clearly at first glance:

Article 12:<sup>6</sup> The official religion of Iran is Islam and the Twelver Ja'fari School<sup>7</sup> and this principle will remain eternally immutable. Other Islamic schools, including the Hanafi,<sup>8</sup> Shafi'i,<sup>9</sup> Maleki,<sup>10</sup> Hanbali,<sup>11</sup> and Zaydi,<sup>12</sup> are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites.

Article 13:<sup>13</sup> Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.

Article 14:<sup>14</sup> ... 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 activity against Islam and the Islamic Republic of Iran.

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<sup>5</sup>[https://en.parliran.ir/UploadedData/previmages/iran-parliament\\_English\\_SHR01.pdf](https://en.parliran.ir/UploadedData/previmages/iran-parliament_English_SHR01.pdf)

<sup>6</sup> Iranian Constitution

<sup>7</sup> A Shiite school founded on the teaching of the 6th imam, Ja'afar Sadeq

<sup>8</sup> Iranian Constitution

<sup>9</sup> ibid

<sup>10</sup> ibid

<sup>11</sup> ibid

<sup>12</sup> The first four are Sunni schools and the fifth is regarded as mainly a Shiite school

<sup>13</sup> Iranian Constitution

<sup>14</sup> Iranian Constitution



### **2.1.1. Discrimination in the Constitution**

Article 12 of the Constitution lays the ground for discrimination against all non-Muslims. Its emphasis that “the various schools of Sunni Islam are accorded full respect,” in combination with Article 28 despite its discrimination in favour of Islam – means that followers of non-Twelve Shiite or Sunni Islam should not face any discrimination in regard to the right to work.<sup>15</sup>

Article 13 has recognised three religious minorities, which means their followers should not face any problems. The specific conclusion is that Article 13 has categorically denied the right of existence of nonrecognised religious minorities, including the Baha’i as well as the Sufis, and the Yarsan.<sup>16</sup>

Article 14 does not usually receive much attention, but it is probably the worst of all. While Article 13 denies followers of nonrecognised religions the right to practice their religious rites without referring to their other rights, Article 14 categorically denies the ‘human rights’ of anybody who engages “in conspiracy or activity against Islam and the Islamic Republic of Iran”.<sup>17</sup>

### **2.1.2. Constitutional discrimination in accessing government posts**

The Constitution has strongly discriminated against non-Shiites, non-Muslims and women. Only male Shiite Muslims can occupy the posts of the leader, the president, head of the Judiciary, prosecutor-general and president of the Supreme Court.<sup>18</sup> Non-Muslims and women cannot become judges or occupy some other positions. Furthermore, Article 64 provides for a total of only five MPs to represent the three recognised religious minorities in the parliament, Islamic Consultative Assembly, i.e. members of those religious minorities are legally barred from standing for election to represent other Iranians.<sup>19</sup>

## **2.2. Discrimination in The Law for the Selection of Teachers**

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<sup>15</sup> ibid

<sup>16</sup> There are other groups as well, including the El-Yasin Community, followers of Psymetology.

<sup>17</sup> ; <http://www.fidh.org/spip.php?action=telecharger&arg=4896>

<sup>18</sup> <https://www.li.com/docs/default-source/future-of-iran/2012-future-of-iran-by-karim-lahidji-the-history-of-the-judiciary-in-iran.pdf?sfvrsn=2>

<sup>19</sup> <https://www.li.com/docs/default-source/future-of-iran/2012-future-of-iran-by-karim-lahidji-the-history-of-the-judiciary-in-iran.pdf?sfvrsn=2>



The Law for the Selection of Teachers (1995)<sup>20</sup> was later extended to cover all civilian employees of ministries and other governmental organisations in 1996. It contains provisions that discriminate specifically against all non-Muslims, as well as Muslims who do not believe in or have allegiance to the theory of velayat-e faqih,<sup>21</sup> Muslims who do not practice the decrees, those who do not take part in Friday or mass prayers, and women who do not wear the full-body length veil. These include: Article 2 of the Selection Law<sup>22</sup> provides some of the general criteria for moral, ideological and political selection of employees as follows:

- Belief in Islam or one of the religions stipulated by the Constitution.
- Practical adherence to Islam's decrees.
- Belief in and adherence to velayat-e faqih, the Islamic Republic of Iran and the Constitution
- Recognised religious minorities are governed by their own regulations, but they must not openly breach the Islamic decrees.
- Invalids of the war will be given priority, and in case of shortage of capacity, other priorities will be taken into consideration e.g. record of work for revolutionary organisations, record of participation in Friday and mass prayers, wearing of chador (full body-length veil) for women.

The discrimination outlined above has been further reinforced in Chapter 2 of the Rules of Procedure<sup>23</sup>, under the heading General criteria and criteria for selection of the best, enacted in 1998. Article 3 of those Rules defines 'Practical adherence to Islam's rulings' of Article 2 of the Law in the following manner: 1) Practicing the imperatives, e.g. prayers, fasting etc.; 2) Avoiding forbidden deeds.<sup>24</sup>

### **2.3. Discriminatory regulations applied by various organisations.**

#### **2.3.1. State institutions.**

<sup>20</sup> Raoof, A. (2000). The worldwide revolution in teacher training. The Ministry of Education Research Center.

<sup>21</sup> Faraj Nejad, Mohammad Javad. Velayat E Faqih Velayat Farzanagan. Qom, Iran: Partou Velayat, 2014.

<sup>22</sup> <http://www.dres.ir/safeschool/Downloads/FRDE.pdf>

<sup>23</sup> Raoof, A. (2000). The worldwide revolution in teacher training. The Ministry of Education Research Center.

<sup>24</sup> <https://core.ac.uk/download/pdf/82280158.pdf>



State institutions have their own discriminatory employment regulations against non-Muslims, but many of them seem to have increased or reduced the stringency. Some examples of the ‘general requirements’ for employment by state institutions are provided here.

**a) The armed forces**

The armed forces have very strict ideological regulations. The Police Force has regulations that are less strict than the Army’s, but it inquires into religious belief, ideological and political beliefs and the Constitution as well as the present and previous political activities. The requirements for joining the Police Force include:<sup>25</sup>

- Belief in and practical adherence to the holy religion of Islam;
- Belief in and practical adherence to the IRI Constitution and the absolute velayat-e faqih and readiness to sacrifice for them;
- Lack of previous record of membership in or affiliation to political groups and parties opposed to the IRI.

**b) The Conditions for employment in the Ministry of Education**

Conditions for employment in the Ministry of Education are also strict:<sup>26</sup>

- Belief in and practical adherence to the foundations of the Islamic Republic of Iran;
- Belief in and practical adherence to Islam and the IRI Constitution and the progressive principle of the velayat-e faqih;
- Faith in the holy religion of Islam or one of the constitutionally recognised religions.

**c) Regulations of the Ministry of Justice for employment of office staff**

Regulations of the Ministry of Justice for employment of office staff are not as strict as the Ministry of Education’s. The employees are required to:<sup>27</sup>

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<sup>25</sup>Employment of Non-commissioned Officers by the Police Force, 2012;  
<http://www.tebyan.net/newindex.aspx?pid=934&articleID=706295>

<sup>26</sup>[http://www.ibe.unesco.org/sites/default/files/Islamic\\_Republic\\_of\\_Iran.pdf](http://www.ibe.unesco.org/sites/default/files/Islamic_Republic_of_Iran.pdf)



- Believe in and have practical adherence to the holy religion of Islam or one of the constitutionally recognised religions;
- Have practical adherence to the Constitution.

Even the Municipality's requirements include:

- Faith in the holy religion of Islam or one of the constitutionally recognised religions.
- Belief in and practical adherence to the foundations of the Islamic Republic of Iran;
- Adherence to the IRI Constitution.

#### **d) the Fire Brigade and Safety Services Organisation**

However, the Fire Brigade and Safety Services Organisation of Tehran Municipality require its employees:<sup>28</sup>

- To believe in the Islamic Republic of Iran system and be faithful to one of the constitutionally recognised religions.

#### **e) The Social Security Organisation**

f) The Social Security Organisation has relaxed the rules a little. Its employees must:<sup>29</sup>

- g) • Believe in the Islamic Republic of Iran system and the holy religion of Islam or one of the constitutionally recognised religions.

#### **h) the State Tax Affairs Organisation**

i) The least discriminatory employment regulations seem to be those of the State Tax Affairs Organisation, which is concerned with the Constitution:

- j) • Adherence to the Constitution.

#### **2.3.2. Non-State institutions.**

The seemingly non-state organisations also have strict ideologically discriminatory employment rules. Here are a few examples:

<sup>27</sup><http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023234.pdf>

<sup>28</sup> Ibid

<sup>29</sup><http://www.ravanertebat.com/files/content/Social%20Security%20Law-IRI.pdf>





**a) the Islamic Azad University**

The Information and Communications Technology Office of the Islamic Azad University requires applicants to:<sup>30</sup>

- Be Muslim or believe in of one of the constitutionally recognised religions;
- Believe in and have practical adherence to the IRI Constitution and the principle of the velayat-e faqih.

**b) Petrochemical companies**

Petrochemical companies in the Asaluyeh port in the southern Bushehr province require the employees to have:<sup>31</sup>

- Faith and belief in the holy Islamic Republic of Iran system and velayat-e faqih, faith in the holy religion of Islam or one of the constitutionally recognised religions.

**c) The Industrial Projects Management Company of Iran**

The Industrial Projects Management Company of Iran requires employees who:

- Believe in Islam or one of the recognised religions, adhere to the Constitution and other applicable laws, compliance with Islamic tenets and dress code, lack of record of cooperation with or membership of illegal political groups.<sup>32</sup>

**d) Iran Khodro Industrial Group (ICKO)**

Iran Khodro Industrial Group (ICKO), the car manufacturing company will employ only people who:<sup>33</sup>

- Believe in one of the officially recognised religions.

<sup>30</sup>[http://azad.ac.ir/uploads/1\\_23\\_Logotype%20usage%20guidelines.pdf](http://azad.ac.ir/uploads/1_23_Logotype%20usage%20guidelines.pdf)

<sup>31</sup><http://openoil.net/wp/wp-content/uploads/2012/08/Iran-oil-regulations-PDF.pdf>

<sup>32</sup><http://www.estekhdamnews.com/post/3138>

<sup>33</sup><https://www.ikco.ir/en/Intro.aspx>



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## CONCLUSION

Employees who enjoy equal treatment would in some way lead to improved labour relations with positive implications for overall productivity of the organisations. By some means, this would contribute to higher economic growth and political stability of a country. Abolition of discrimination at work is main for the efficient functioning of the labour markets and for occupational competitiveness. For the individuals, non-discrimination may hinder retention and even promote their well beings. As far as Iran is concerned, without legislation banning employment discrimination, Iranian courts are prepared to hear the claims although within a limited scope. Perhaps a proper approach to the concept is workable if the word discrimination is clearly and appropriately defined. To deal with the issue when Iran has no clear explanation so far makes claims of employment discrimination unusable even though less favourable incidences are, to some extent, prevalent in the work specially when they arise in more covert and indirect ways. Meanwhile, legislative interfering with the purpose of protecting the employees is vital to ensure the effectiveness of the labour standards. At this point, discrimination at work, without a doubt, resulted in unfairness and diversity in labour market outcomes.

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