

INTERNATIONAL RESEARCHERS

INVESTIGATING THE TWO HUMAN RIGHTS COVENANTS
WITH REGARD TO GENERAL PRINCIPLES GOVERNING
THE LEGAL SYSTEM OF ISLAMIC REPUBLIC OF IRAN

Majid Ahmadi

Volume No.5 Issue No.1 January 2016

www.iresearcher.org

ISSN 2227-7471

THE INTERNATIONAL RESEARCH JOURNAL "INTERNATIONAL RESEARCHERS"

www.iresearcher.org

© 2016 (individual papers), the author(s)

© 2016 (selection and editorial matter)

This publication is subject to that author (s) is (are) responsible for Plagiarism, the accuracy of citations, quotations, diagrams, tables and maps. Corresponding author is responsible for the consent of other authors.

All rights reserved. Apart from fair dealing for the purposes of study, research, criticism or review as permitted under the applicable copyright legislation, no part of this work may be reproduced by any process without written permission from the publisher. For permissions and other inquiries, please contact

editor@iresearcher.org

INTERNATIONAL RESEARCHERS is peer-reviewed, supported by rigorous processes of criterion-referenced article ranking and qualitative commentary, ensuring that only intellectual work of the greatest substance and highest significance is published.

INTERNATIONAL RESEARCHERS is indexed in wellknown indexing diectories



with ICV value 5.90



Directory of Research Journals Indexing

and monitor by



INVESTIGATING THE TWO HUMAN RIGHTS COVENANTS WITH REGARD TO GENERAL PRINCIPLES GOVERNING THE LEGAL SYSTEM OF ISLAMIC REPUBLIC OF IRAN

Majid Ahmadi

Instructor, Law Dep., Shiraz Payaam-e-Nour University, Shiraz

(ISLAMIC REPUBLIC OF IRAN)

majidahmadi14308@yahoo.com

ABSTRACT

The International Covenant on Civil and Political Rights (ICCPR) is one of the most important international documents on human rights proposing a wide spectrum of rights and duties in the area of civil and political rights. Iran's government ratified the ICCPR in 1975. After the victory of the Islamic Revolution and the sovereignty of the Islamic Republic of Iran, the country faced many problems regarding its previously ratified international obligations. Therefore, lots of efforts have been made to determine how to resolve conflicts between these international covenants and Islamic principles. This study assesses the similarities and differences between the ICCPR and the Constitution of the Islamic Republic of Iran (IRI) and concludes that the constitution of the IRI and the West, despite their undeniable differences in theoretical and ontological foundations, have many similarities. Strengthening such similarities alongside a detailed explanation of the points of divergence can help us take effective steps to promote pure Islamic thoughts, which are based on the untainted divine nature.

KEYWORDS: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights (ICESCR), Reservation, Succession in treaties, treaties

1. INTRODUCTION

The IRI ratified the ICCPR in June 1975 and the ICESCR without any reservations or interpretative declaration. However, after the victory of the Islamic Revolution and the rule of Islamic law in all legal aspects of the Iranian people, doubts have raised regarding the agreement between all parts of the two covenants and the Islamic rules. As a result, citing the issue of succession of states in treaties, some scholars believe that these Covenants have no legal validity and some others consider entering a reservation in solving the issue. Unfortunately, unconditional acceptance of these treaties has led to a confrontation between Islamic law and the Covenants in an ambiguous way. The most scientific way to solve the issue is to determine the conflicting materials.

After the victory of the Islamic Revolution, application of reservation was also neglected and the subsequent behavior of the Iranian government attested to acceptance of the international obligations under the Covenants. However, there is no doubt that some of the provisions of the Covenants have been inconsistent with Islamic principles and domestic law and until we find a solution for this problem, a sufficient ground in the legal system of the IRI for implementing the Covenants will not be found. The only appropriate way to solve this problem is to announce reservation on some of the provisions of the Covenants that are inconsistent with domestic law and Islamic principles. As such, the objective of this study is to clarify this problematic issue.

2. DISCUSSION

The Iranian government ratified the ICCPR without reservations. Therefore, only through dialogue with the Committee for Human Rights and the Covenants member states and discussing the impossibility of implementing some of their provisions because of incompatibility with Islamic teachings, the counterparties may be convinced to accept specific reservations. For example, the US government ratified the ICCPR with a reservation to article VII and

so considers itself committed to avoid cruel and inhumane treatment or punishment contrary to human dignity in the sense specified in amendments to the US constitution. Paragraph one of Article 20 of the Covenant states: "Any propaganda for war shall be prohibited by law." The US government announced reservation on this issue so that it does not limit the freedom of speech and congregation supported by the US constitution and other US acts. The French government also has reservations regarding the definition of war under Article 20 -the propaganda of which is prohibited. In this article, war is defined as "violations of the international laws and regulations", but the French government deems the French legislation as a reference for determining the issue. Regarding Article 27 on the rights of religious minorities in adherence to their religious traditions and the freedom to practice religion, France announced that: "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned." (Emad Zade, 1987).

It is concluded from the above examples that in some cases these countries ratified the covenants with some reservations. Therefore, they should not force other nations to join the covenants without reservations. On the other hand, double and even manifold approaches taken by countries claiming the protection of human rights towards human right status in different countries have caused doubts about their intentions and motives in investigating human rights issues. This can lead to the loosening of theoretical and practical commitment to these rights.

The international covenants ratified before the Islamic Revolution, at the time of the Pahlavi regime, included six conventions and covenants: the Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the International Convention on the prohibition and punishment of mass destruction; and the Convention on the Elimination of Racial Discrimination; the **International Covenant on Civil and Political Rights** (ICCPR); and the **International Covenant on Economic, Social and Cultural Rights** (ICESCR). The Report of the Secretary-General of the United Nations General Assembly (2012) in respect to the situation of human rights in the Islamic Republic of Iran reveal the country's efforts in its commitment with the international covenants.

In terms of international standards, despite the change in the IRI government after the revolution, the government is continuing the legal personality of the former Iranian government that signed and ratified the Covenants and was committed to it without reservations. In addition, the IRI government was established by votes of the Iranian nation to form and administer the state based on Islamic principles. The IRI constitution, which was also approved by an absolute majority vote of the nation, requires the government to legislate and adopt all its laws and regulations compatible with Islamic teachings (Mehrpour, 1998). Meanwhile, the IRI has not officially announced that it is not committed to any of such covenants, but it has cooperated with representatives of the United Nations regarding human rights covenants. From the six covenants adopted before the revolution, two covenants are in conflict with the IRI Constitution in some aspects. The ICCPR and ICESCR are problematic in this regard, because they are inconsistent with four Articles of the IRI constitution that require the government to comply with Islamic principles in legislating and adopting all regulations. As Cress & et al. (2014) claim, "Iran's institutional structure, subsequent legislation and practice appear to be inconsistent with international legal obligations" (p. 6). There is no doubt that we cannot force the IRI to abandon Islamic regulations, because this would be in conflict with the basis and *raison d'etre* of the IRI (Mehrpour, 1998). The government is committed to implement the Constitution. In such situation, what is the solution for the conflicts between the IRI Constitution and the Covenants? How the IRI government does not have any international responsibility in cases where the IRI Constitution has priority? Some solutions are provided in this regard as follows.

2.1 Incomplete or irregular ratification

In general, a principle has been accepted in international law according to which states must act in accordance with their domestic law in the conclusion and ratification of international treaties. A question that is raised here is that if a state approves and signs a treaty by an incompetent authority or contrary to local regulations, will the treaty be void? According to the 1969 Vienna Convention, states cannot allege the invalidity of the treaty citing their internal regulations, except in cases where Article 46 of the Treaty is invoked. The two Covenants were ratified by the Iranian Assembly in the previous regime; therefore, the IRI is not committed regarding the unlawful acts of the former regime and is not obliged to implement these two covenants in contrary to its domestic law. As such, as Jazaeri, 2015, p.372 states:

Attention to concepts such as justice, the balance of crime and punishment, avoiding oppression and dictatorship and similar notions, led to a systematization of procedure rules and written into the laws and regulations in the title of proceedings codes. The proceeding judges were obliged to obey these proceedings codes and they were not allowed anymore to make a decision for or against one of the parties beyond their competencies.

2.2 The supremacy of the constitution over international agreements

Under Article 9 of the Iranian Civil Code, the international covenants have the force of law, but provisions of the Constitution are superior to and govern the law. As a result, the IRI Constitution governs and is superior to international agreements to which Iran is a state party. The Constitution shall prevail in case of conflict and hence, there is no doubt about it according to domestic law. However, in terms of the international responsibility of the State, there are some doubts. According to international law, when a state adopts an act contrary to an international treaty law to which it is a party, it will have international liability. However, the government cannot act contrary to the Constitution, because it faces civil liability then.

2.3 Fundamental change of circumstances

This is one of the principles that states can invoke to waive their obligations before international treaties. After independence, many newly established states announce that treaties signed before the establishment of the new state are void because of the change in the state. Similarly, due to the profound changes in the political system of Iran, the IRI may declare that it has no responsibility regarding the two Covenants (Hekmat, 1985).

2.4 Reservations

One position is that the establishment of the IRI per se and the adoption of a new constitution, the fourth Article of which states that all laws and regulations governing the country should be based on Islamic rules, on the one hand, and not announcing the two Covenants as void on the other hand, indicate that the IRI recognizes the two Covenants with reservations about the provisions contrary to Islam (Mehrpour, 1998).

2.5 Total or partial withdrawal

The complete withdrawal of the two covenants by the IRI does not seem practical given the current international situation and propaganda. Moreover, the state parties of the two covenants are unlikely to accept such a decision. However, partial withdrawal of the covenants by the IRI seems practical. Those provisions of the covenants that are entirely inconsistent with Islamic principles and other domestic laws should be specified. Then, via a written notice to the UN Secretary General, the IRI should announce that due to the profound changes in the system of government after the Islamic revolution, the state will partially withdraw the Covenants, and as a result, the commitment of the IRI will be accepted with reservations (Ziaei Bigdelli, 1998).

3. CONCLUSION

After the victory of the Islamic revolution and the establishment of an Islamic state, the IRI did not reject the human rights covenants, but followed the policy of cooperation with the Human Rights Committee. However, after the establishment of the Islamic Republic state and ratification of the constitution based on Islamic principles and the need to enact laws according to Islamic law, an argument was raised about the conflict between adherence to the covenants some provisions of which are in contrast with Islamic principles and rules of the IRI. How can this be justified? One position is that the establishment of the IRI per se and the adoption of a new constitution, the fourth Article of which states that all laws and regulations governing the country should be based on Islamic rules, on the one hand, and not announcing the two Covenants as void on the other hand, indicate that the IRI recognizes the two Covenants with reservations about the provisions contrary to Islam (Mehrpour, 1998).

However, regardless of what was discussed, in general, the main points contained in the Covenants do not conflict with Islamic principles and many of the rights therein, are approved by the Constitution of the IRI. That's why the IRI

have prepared periodic reports and presented them to the Human Rights Committee. In the process of reviewing the reports in the committee, some questions were raised and sent to the Iranian representative for a response. These questions were generally on issues like non-discrimination and equality; the right to life; treatment of prisoners; liberty and security of person; the right to a fair trial; freedom of movement; freedom of religion and expression; freedom of association or assembly; and the rights of persons belonging to minorities. Iran presented convincing responses to the Human Rights Committee. Due to time constraints, reviewing Iran's report was postponed to the Human Rights Committee's next meeting on April 7, 1993. In this round of review, again several questions were raised and answered by the representative of Iran. However, even at this stage, review of Iran's periodic reports did not end and was postponed to the next meeting held between 12 to 30 July. During three consecutive sessions, it was finally ended and the Committee was supposed to report the conclusion and evaluation of the review to the General Assembly of the United Nations Economic and Social Council (Mehrpour, 1998).

Although what mentioned above confirms Iran's cooperation with the Human Rights Committee, this cooperation involves the following problems:

One is the neglect of the role of religion as in Islam and the other is politicization of the issue of human rights. In the committee, due attention is not paid to people's moral development because of a focus on promotion of respect for human rights and the rights and freedoms of others. Rather, under the guise of religious tolerance and preventing religious discrimination, it has been tried to undermine the religious sense of people. Thus the condition of the conformity of domestic laws in Iran with Islamic standards is not acceptable for the Human Rights Committee, in spite of the fact that the IRI is based on this principle.

Another problem in the committee is that of politicization of the issue of civil rights and liberties and adopting a selective approach to the problem, so that today, the issue of human rights has become an effective instrument in the hands of some Western governments to put pressure on some governments, especially Third World states.

Therefore, we can say that lack of mention of the value and respect of international law in national constitutions, does not imply that these countries are free from the provisions of these rights. The result of adopting such a position is that being part of the international community, the Iranian government, like other governments, has to respect the rules of international law and guide its domestic legislation to respect the rules of international law to the extent possible. This helps avoid contradictions. In revisions and amendments of the constitution, the primacy of international law over domestic law should be explicitly recognized. Conversely, if we do not believe in this superiority and accept the cultural plurality or diversity or the "Theory of Relativity" in human rights, the supremacy of Islamic law as the main source of legislation would be the basis, and whatever compatible with Islamic Shari'ah will be accepted and other regulations are rejected.

REFERENCES

- Ashuri, D. (1978). The definition and concept of culture. Tehran, Asia Cultural Documentation Center.
- Cress, R., & et al. (2014). Rule of Law in Iran: Independence of the Judiciary, Bar Association, Lawyers and Iran's Compliance with International Human Rights Obligations. Essex: University of Essex.
- Emadzadeh, M.K. (1987). The use of reservations in international treaties. The Legal Journal. Office of international law, (8).
- Hekmat, M.A. (1985). The effects of fundamental change in circumstances on the validity of international treaties and agreements. The Legal Journal, No. 3.
- Jazaeri, A. (2015). Judicial Security and Its Components in the Iranian Criminal Law and European Court of Human Rights Jurisprudence. Journal of Applied Environmental and Biological Sciences, 5 (10S), pp. 372-385
- Mehrpour, H. (1998). International system of human rights. Tehran, Iran, Etelaat.
- Report of the Secretary-General of the United Nations General Assembly. (2012). Situation of human rights in the Islamic Republic of Iran. Sixty-seventh session, Item 70 (c) of the provisional agenda, Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives. Retrieved: www.unic-ir.org/hr/A-67-327, 1/4/2016.
- Ziaei Bigdelli, M. (1998). Public International Law. Tehran, Iran, Ganj Danesh Publications, Twelfth edition.