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**Advancing the Rights of Persons with Disabilities:
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Let's Disable Her Further, Shall We? The Cast of Gender on Disability Rights in the Iranian Context

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Introduction: Setting up the question

Contemporary human rights regimes afford individuals a myriad of identity choices to frame domestic and international rights claims. The diversity of internationally recognized claims to a decent and dignified life translates into fragmented modes of interaction between identity and recognition. At times, a single identity may impose similar demands on multiple international human rights fora and instruments. At other times, a particular identity may give rise to substantively different claims addressed to multiple human rights frameworks. The fluid function of identities, by virtue of which an individual can claim recognition and protection on the basis of her multiple identities, appears to attest to the optimal advancement of international human rights. But once one lifts the halo from universal protection of the individual, this hybridity presents difficult questions about the implications of the pervasiveness of entitlements for the very individual such rights are intended to protect.

This essay briefly examines the interaction between gender and disability, two identities that render women with disabilities a suspect group for enhanced discrimination. Specifically, it will consider the legal protection of the rights of women with disabilities in the Islamic Republic of Iran through two international human rights instruments, one resolutely opposed by Iran and the other acceded to on October 23, 2009: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD). The pervasive identity traveling between the two instruments here is gender defined as being a 'woman', for CRPD distinctly regards disabled women as vulnerable to higher levels of discrimination resulting from the compounding function of the twin factors of gender and disability.

It is precisely this assumption of compounded discrimination that this essay will call into question in the following way: gender and disability in disabled women, like any other combination of suspect identities in a particular individual, intersect and may lead to different forms and levels of discrimination. Yet such intersectionality does not necessarily have a compounding impact on the level of discrimination it brings about. The exact way in which suspect identities of gender and disability intersect, and the implications of that intersection, vary among different particular cultural, economic and legal contexts. The gender-specific provisions of CRPD, however, build on a universal assumption that gender

and disability always work in a compounding fashion, resulting in exponential discrimination against disabled women. This, this essay suggests, is a questionable assumption.

Absent reliable statistics, it is difficult to determine to what extent, if any, gender in fact results in compounded discrimination against women with disabilities in various local contexts with unique cultural, legal, and economic specificities. This is so because the historical and universal forces of gender discrimination and its manifestations are not absolute, and because the manifestations of disability discrimination are context-dependent too. So any disparate impact of disability on women in each context ought to be proven, rather than assumed.

That being said, this author's skepticism about the compounding function of gender and disability does not deny the possibility women with disabilities are disproportionately disadvantaged as compared to men with disabilities. Yet, even if clear empirical evidence confirms a disparity of opportunity in education, employment, health care and so on among people with disabilities solely based on gender, it does not automatically follow that gender and disability in fact work in a compounding way to negatively impact the status of the disabled woman and leave her worse off than the general population of able-bodied women and disabled men.

Put more clearly, given the long history of repression and exclusion on the basis of both gender and disability, it is not surprising that the twin factors are generally assumed to necessarily and universally reinforce one another in an impairing manner, leaving the disabled woman in the most vulnerable position of all four poles divided by gender and disability (the other three poles being the disabled man, the able-bodied woman and the able-bodied man). Yet, once this assumption of the compounded impact of gender and disability is relaxed, we may in fact be better able to acknowledge that the real interest of the affected group becomes meaningful only in relation to that of the other poles around the divide rather than as an abstract, compensatory response to the group's historically assumed vulnerability.

In the particular case of Iran, this recognition is of both practical and theoretical significance. From a practical viewpoint, Iran's blanket reservation to CRPD, to the extent that it contravenes Iranian law and relates to women's rights, may appear to deserve much less lament than what is generally held by human rights discourse, once it is acknowledged that gender-specific rights in this context may neither be necessary nor desirable.

By the same token, from a more foundational perspective—albeit with practical implications, an *a priori* placement of the disabled woman on the extreme end of vulnerability on the spectrum of gender and disability forecloses the possibility of recognizing her as a social and legal agent and understanding her interest as something that takes shape in an active interaction with the interests of all the other poles. In the interest of expanded human rights protection based on multiple suspect identities, human rights discourse tends to myopically consider disabled woman's interests relative to her immediately opposite pole, disabled man, leaving out the complexity of her direct or indirect interaction with the other two poles—able-bodied women and men. In doing so, it in effect reduces her to further passivity and understands her as one who has little agency in the dynamic process of forming interests, demands, and entitlements.

The remainder of this essay brings this point home by first reviewing CRPD's gender-specific provisions to determine how much of what Iran rebuffed in CEDAW, it has also rejected in CRPD by means of a blanket reservation.

With the reservation to CRPD's gender-specific provisions in place and the Convention in force, the next question is whether a CRPD devoid of gender protection is in fact a loss. Three venues, corresponding to a juxtaposition of the interests of disabled women with those of the other three poles, ought to be kept in mind to answer this question and demonstrate the scant likelihood of gender and disability functioning in a compounded manner to leave women with disabilities at the bottom of vulnerability spectrum. Disentangling the discriminatory effects of gender and disability will also provide further insight into some of the ways in which a heightened focus on gender and disability in fact masks the gains and losses of other participants as well as those of the disabled woman, the main object of protection.

Gender and CRPD: A minimalist solution in the absence of CEDAW?

Advocacy for Iran to join CEDAW has been an ongoing project for Iranian secular feminist movements. These voices have at times found allies in the more moderate religious establishment who, relying on dynamic Islamic jurisprudence, concede that “[c]hanges can be made in many of the laws that are considered discriminatory ... [and] that the rights that currently exist for women in Shi'i jurisprudence are not fixed, and can be changed ...” (*Ayatollah Boujnourdi*, *Azad Newspaper*, 17 Bahman1380/ February 6, 2002). Official sectors have entertained various assessments of the compatibility of the Convention with Islamic laws, although the government's official position since the latter part of the 1990s has been almost consistently antagonistic. In 2001, the reformist government of President Khatami went so far as to approve a bill for Iran to join CEDAW provided that it did not violate Islamic Law (*Zanan magazine*, no. 84, 18). Although the Cultural Commission of the Sixth *Majlis* (the reformist Parliament) subsequently endorsed the government's bill to join the Convention, the bill was not ultimately passed. Under the best circumstances, the Convention would have been accepted with conditions and reservations. Arguments to the contrary notwithstanding, sophisticated activists were under no illusion that a restricted CEDAW would either eliminate gender discrimination or quell international pressure on the government.

Notably, Articles 2 and 3 of CEDAW would require major constitutional, civil, and penal reforms based on a new reading of Islamic law. Suffice it to say that the Iranian Constitution fails to even pay a lip service to formal sex equality. Article 19, which guarantees equality for all regardless of color, race, and language, (with an ambiguous analogue of ‘the like’), excludes any reference to gender. The Constitution's reference in Article 3(14) to “securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law” as government's responsibilities, and its emphasis in Article 20 on the equality of all citizens, men and women, in the enjoyment of “all human, political, economic, social, and cultural rights” must be read in conjunction with the proviso in the latter part of the same Article that qualifies equality protection to “conformity with Islamic criteria.”

These same domestic obstacles to formal gender equality again arouse in the context of the CRPD. This time, however, disability rights being much less politicized than women's rights, the baby was kept and only the bathwater thrown out through the magic of a general reservation. The CRPD incorporates gender as a basis of further protection on two grounds: first, as an identity that in fact exacerbates discrimination on the basis of disability—what is referred to here as the consequence of the compounding function of two identities—and second, as a general basis of discrimination that calls for enhanced human rights protection. Both of these perspectives are clearly introduced in the Preamble of the CRPD: the former in Paragraph Q: “[r]ecognizing that women and girls with disabilities are often at greater risk, violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,” and the latter in Paragraph S “[e]mphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities.” At first blush, there seems to be a balanced emphasis on both perspectives throughout the Convention. While “equality between men and women” constitutes one of the general principles of the CRPD (Article 3(G)), and state parties agree to raise awareness about “stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age” (Article 8(1B)), the only provision in the Convention that specifically addresses the case of women states that “women and girls with disabilities are subject to *multiple* discrimination...” (Article 6(1)) (emphasis added). It is true that a reference to “multiple discrimination” in and of itself does not indicate a compounding interaction between gender and disability. However, when read in conjunction with Paragraph Q of the Preamble, in the last analysis, it speaks of the CRPD’s objective to target discrimination resulting from the compounded effect of gender and disability.

Iran’s generic reservation to the CRPD states that “... with regard to Article 46 [which disallows reservations that may be incompatible with the object and purpose of the Convention], the Islamic Republic of Iran declares that it does not consider itself bound by any provisions of the Convention, which may be incompatible with its applicable rules.” Gender equality, therefore, does not pose any more substantial complications for domestic law beyond some fresh ground for criticism by human rights activists and international groups. Just like with any general reservations to human rights instruments, the debate revolves around the implications of the reservations. If Iran’s reservation is in fact against the purpose and object of the Convention, as Belgium so holds, according to the CRPD’s Article 46(1) and also Article 19(C) of Vienna Convention on the Law of Treaties, it is null and should not be permitted. Plausible options in response to Iran’s reservation would be to either (1) accept the reservation as compatible with the spirit of the instrument, or (2) consider the reservation null and hold the reserving party bound by the entire instrument including what it has declined to commit to via a reservation, or (3) for the objecting party, to reject the reservation and refuse to consider the instrument binding between the objecting and reserving state.

Finding an answer to this question is not the interest of this essay. It is, in fact, the very posing of this question that must be challenged if we are to see beyond formal gender equality. It is one thing, and quite plausible, to deplore Iran’s resistance to the CRPD’s attempt to promote and reaffirm gender equality as a general principle—although it is hardly realistic to expect

Iran would have done otherwise given its history with the CEDAW. But it is a completely different position, and one that begs serious questions, to believe gender-specific rules deriving from assumptions about the compounding function of gender and disability will necessarily improve the welfare of women with disabilities. Under a minimalist approach, one could contend that if the CEDAW has been politicized beyond redemption, something might be salvaged through the CRPD's gender-focused rules. But as demonstrated below, that outcome is elusive, a hope in it illusory, and its underlying project potentially counterproductive.

What is at stake? Vulnerability and empowerment

As mentioned before, an accurate sociological assessment of the severity of discrimination against women with disabilities calls for statistics—a hard find in political climates where institutionalized transparency is a rare commodity. But even in the face of confirmed evidence of greater discriminatory treatment of women with disabilities, it is still necessary to unravel, so far as conceptually possible, the sources of that discrimination. In a legal culture of substantive gender discrimination, one would suspect there are obvious and identifiable forms of discrimination based on gender alone. Furthermore, there is no denying that despite undisputed progress in disability rights—both before and after Iran's joining the CRPD, full substantive equality for individuals with disabilities remains an unrealized ideal. So the disabled woman is naturally subject to the sum of the ill consequences unjustifiably and independently implicated in each of her two identities—sex and ability. What is questionable, however, is the underlying assumption of dominant human rights discourse that the two forms of discrimination necessarily compound one another to produce harms greater than the sum of their parts. The compounded assumption of discrimination casts the disabled woman as subject to exponential levels of discrimination that work in unison.

What is needed in order to open new windows onto the precise interaction of gender and disability in each societal context is cultural and anthropological observation, a keen understanding of social and economic development problems and prospects, insight into the details of existing domestic and international legal structures, and a recognition of the potentials of and impediments to progressive political change.

The case of Iran is no exception. How does, for instance, the peculiar commingling of tradition and modernity, Islamic convictions and Western ideals, secular feminism and religious-inspired gender reform impact the lives of women with disabilities? In what ways do social norms rooted in Islamic culture, if not necessarily in Islamic jurisprudence, produce and reinforce the physical, mental, and social vulnerability of women and the disabled? And, how does vesting responsibility for protection (and manipulation) in able-bodied men affect disabled women's sense of agency? How should one approach this culture of responsibility based on vulnerability, which ironically enough, as day-to-day life is concerned, may be more congenial to accommodating the needs of disabled women as compared to disabled men? In what sense do economic variables, possibly higher unemployment rates among the disabled, and hence their choice to continue higher education for a longer time affect the balance of power between disabled women and disabled men and also against able-bodied men and women? What about the stronger recruitment rate of disabled women

(and women in general) due to their presumed lower wage expectations and its bearings on the social organization and power relations?

These are all merely exemplary questions, but they remain entirely unnoticed so long as one has not questioned the common assumption of the compounded effects of gender and disability. If we shift away from the phenomenological questions of gender and disability studies to the legal domain, this interaction does not become any less complex. At any particular time, policies of preferential treatment for disabled women to ameliorate compounded discrimination might seem a sensible compensatory balancing measure. But such policies and regulations may reflect and reinforce a narrow view of the long-term interest of all stakeholders, including women with disabilities.

Consider, for instance, the post-Revolutionary reforms of Iranian family law. A series of ebbs and flows in women's rights through the evolution of family law has reflected an often questionable image of minimum gender equality in family law without any acknowledgement of the successes, as little as they might have been, along the way. A myopic focus on an ideal image of equality has cast a blinding shadow on the potential long-term costs to women – costs embedded in some of the much-applauded progressive reforms. An illustrative example is the *mahr* or dowry, which since the early 1990s evolved into a more strict and enforceable obligation for the husband towards the wife. The *mahr* as a legal enterprise is intended to increase women's financial security and bring balance to the husband's discretion in divorce. But in fact, it can become a sort of monetary iron-force in the hands of women used at will, eventually switching the power position from one to the other without a trace of balance. The upshot is an entirely new, complex map of the family economy, in which it is more straightforward to determine the winners and losers of the financial contest than those in the distribution of substantive equality and, ultimately, dignity.

Now considering the concern about compounded discrimination against disabled women and their vulnerability in family relations, disability rights activists might demand that the regulation of the *mahr* must take into account the imbalance which has historically favored men—disabled or not—in their relationship with disabled women. Such a proposal will not only ignore the above-mentioned complexities that the *mahr* brings to the institution of family, but also could skew the economics of marriage contracts with disabled women in contrast to able-bodied women in ways that in fact negatively bear on their access to the institution of marriage (confirmed by the CRPD in its Article 23). Rather than a pre-determined, absolute and abstract concept, as this example illustrates, the interest of women with disabilities is shaped and ought to be determined in an active interaction and juxtaposition with that of the other three poles around gender and disability.

The case of the *mahr* and disability is just a hypothetical exercise, but the spirit and reality of such protection are not. Mindful of disabled women's difficulty to exercise their right to marry, Iran's current law on the rights of individuals with disabilities, the Comprehensive Act for the Protection of the Rights of the Disabled (CAPRD), in the addendum to its Article 6 provides: "Spouses who support their disabled spouse, for the time that they are providing support, are exempt from military duty." All this disgrace of a law is meant to do is to offer an incentive, one that in the Iranian social context is strong, to men (the only subjects of

military duty) and to the society generally to ensure that more women with disabilities can marry.

With this last example, one hardly need say more on the unintended but inescapable consequences of gender-specific rules in the disability context designed to respond to compounded discrimination. To make matters more complicated, however, it should also be noted the definition of disability in the CAPRD is much more limited than the CRPD. The CAPRD plainly adheres to a medical definition of disability by recognizing “disability as any physical, mental or psychological disorder—or all three together—that have a permanent and considerable impact on the general function and health of the person and affect her social and economic independence” (Article 1(Addendum)). Post ratification, the CRPD stands on the same level of domestic legal status as the CAPRD, and being the latter of the two, it should take precedence over the former in the cases of inconsistency. So in effect the enforceable definition of disability must be the CRPD’s broader definition. Yet if the CAPRD’s Addendum to Article 6 were to apply to the subjects falling under its narrower definition of disability, a wide array of women qualifying as disabled under the broader approach of the CRPD would in effect not be afforded the same privileges in Marriage provided by the CAPRD’s Addendum to Article 6 given to women who are medically recognized as disabled. Although given the larger scope of gender inequality and disability discrimination, this may be only neglect rather than negligence, the question from a theoretical perspective so far as the consequences of gender-specific rules in the disability context are concerned is not moot.

Ultimately, this is all about empowerment, as Article 6(2) of the CRPD reaffirms. Just exactly how much protection is progress and how much would be an impediment is a work of trial and error. If this were how the human rights discourse on gender and disability viewed itself, all that is said in this essay would be no more than a trivial reminder. But the fact is we are so ingrained in fluid identities and multiplication of rights that a reminder such as this about what is at stake for stakeholders can scarcely be avoided. This is not merely a voice against paternalism—that is only a small part of it, but rather a question of functional norms that deliver what they promise. While institutionalizing over-protection leaves the objects of protection worse off in a further disabling manner, avoiding protection for the fear of a perplexing scheme of gains and losses among subjects also speaks of a desire to find the right answer prior to action. The right answer is nowhere but in the action itself, so long as there is a door open to get out of the prison house of old assumptions.