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The International Convention on the Rights of Persons with Disabilities and its Applications in the Iranian Internal Regulatory System

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Abstract

For any government to accede to an international convention, there are specific procedures to be followed according to their internal system. In some systems, conventions, upon ratification, are considered as a part of their constitution and are immediately effective in legislature and are enforceable in court. In other systems, especially those with two councils, most conventions must go through an extensive legal process. In this article, the legislature of Iran, which is in the first category, is observed for further research, in a realistic and academic manner, the effects of the country's ratification of the Convention on the Rights of Persons with Disabilities (CRPD).

Preamble

While the formalities of all announcements to accede and ratify a convention in the global arena are almost identical, transforming the convention into a part of the constitution of any country has its own specific procedure. These procedures, aside from political and social influences, have a purely legal format, and face issues of compatibility with other legal ratifications and procedural processes of the parliament in each country. In courts, there is the question of whether the convention should be handled as an individual international law or be added to the already existing internal constitution of the country. Therefore, it can be said that there is an important legal question on the matter of whether an international convention, ratified by the parliament, should be considered part of the internal law of the country. Another question is if the articles of the new law differ from previously legalized articles, are the original articles considered automatically annulled? Or should there be more alterations made to make the convention compatible with existing laws? If this is the case, what is the point of acceding to the convention?

CRPD, which is short for the Convention on the Rights of People with Disabilities, is the 8th instrument of international human rights in the 21st century. Due to religious sensitivities, the Islamic Republic of Iran has refused to accede to some of these eight treaties. However, a lack of religious and cultural barriers has facilitated the ratification of the CRPD in Iran, making accession to the convention seem rather simple. This instrument, according to its designers and authors, does not create new rights for the disabled, but its goal is to obligate governments who join it to alter their internal system in a manner that does not discriminate

against the disabled. Therefore, when analyzing internal laws, whether to determine legality or from a legislative perspective, the aim is that as soon as the convention is joined, all previous discriminating laws are considered ineffective. This is so that from then on, when settling disputes in court about discrimination, the convention can be referred to directly without the need to rely on any other internal laws, possibly annulling certain executive decisions or rulings for the compensation of damages.

In the legal system of Iran, Article 9 of the civil law, which dates 80 years back, governs issues regarding the current topic. Passed in 1928, this article states that: according to constitutional law, obligatory regulations between Iran and other countries are to be considered as the law. The regulations of the current constitutional law and its comparison to that of the previous political regime are not the concern of our discussion.

What is important is that the ratification and accession of the Islamic Republic of Iran to any international convention is equivalent to adding the treaty to the national laws of the country; therefore, if it is ratified, it must be enforced and obeyed in the same way as it would be if ordained in the country. Thus, if the international law is ratified and is in contradiction with laws preceding it, it nullifies and replaces those laws and there is no need for new legislature. Aside from this being accepted legal procedure, it also follows logic. If it were required to alter the convention after a country joins and add it to its national constitution, or go through extensive legal procedures to alter other national laws to be compatible with the convention or their own cancellation, in reality, the legal value of the convention would be compromised. It would be left without legal sanction and would be considered merely advisory for governments rather than law. In this case, considering it as part of the law also damages the legal system, as what has been accepted into the legal system has no sanction and does not render its preceding laws ineffective. Obviously, no legal system would accept this unreasonable situation. It is necessary to remember that the legislature of Iran considers all international conventions, after being ratified through legal procedures in parliament, as internal law, unlike governments whose legislature demands yet another procedure in order to legalize these conventions. The latter process is more customary in governments with two councils.

However, it is not enough that after ratification, conventions are considered as law in Iran's legal system and to rely on the fact that the process followed is that of a country with a single legislative council; there are certainly other legal issues at hand. We will observe an example of these practical and theoretical issues by choosing one article from the CRPD. It is stated in the convention that governments are obligated to aid the disabled by providing equal career opportunities in the society by removing discrimination and obstacles and applying this anti-discrimination policy to all career venues. On the other hand, Article 28 of the electoral law in Iran forbids blind and deaf individuals from running for parliament. Upon ratification the convention is added to the Iranian constitution and all discriminating laws are automatically superseded. However, in Iran, a council exists that aside from ensuring the compatibility of legal regulations with religion, also examines the eligibility of candidates in parliament elections. Therefore, even if Article 28 of the election law is considered ineffective in legislature and executive regulations, it is not clear how the aforementioned "council of guardians" would respond to the application of a blind or deaf candidate. Another point is that the decisions of this council are irrevocable and closed to complaints, and no claims on

the basis of violation of Article 28 can be made before another council. This is an example of theoretical and practical issues that arise in the application of the convention. However, by considering the international convention as internal law, the legal procedure protects the convention law against contradictory regulations.

All that was said is with the supposition that we disagree with the common verbal interpretation of Article 9 of civil law and do not take the stance that “international treaties” cover bilateral or multi-lateral conventions, and that international/regional treaties are not included. Of course this interpretation does not have many subscribers and more lawyers prefer to interpret convention regulations to include all international affairs. To consider the convention as an internal law and leave it bereft of international support, considering all that was said of international conventions, is not free of a danger.

This is illustrated by the fact that before joining the civil-political rights and social-cultural rights charter in 1975, the government of Iran tried to prepare national laws for accession to conventions. Consequently, the law banning arrest of citizens with civil debts was passed. Convention regulations also necessitated this ban as well, and with its ratification in parliament the legal procedure was reinforced. However, 23 years later, in 1998, a law was passed that directly orders the arrest of citizens with civil debts! It is usually said that conventions after ratification are considered part of the internal law of the country and the national law is subject to alteration by the legislature. This example highlights that the CRPD does not guarantee anti-discrimination rights for the disabled upon inclusion in national laws. Even with its addition to the constitution, the contradictory laws are rendered ineffective. For example, if Article 28 of election laws against the participation of blind and deaf people in parliament elections were to be annulled, and if we overlook the irrevocable decision-making abilities of the council of guardians, the legislative power still has the authority to pass a law against the convention. In the legal scene, it may defend the decision on the grounds of conflict with internal law and is irrelevant to the international obligations of the government since it is now a national law. Therefore, accepting the regulations of the convention as part of the internal law and considering its preceding laws automatically ineffective is a double-edged blade and the wrong side of it must not be allowed to impinge negatively upon the spirit of the international interactions of the government. That is not possible except by keeping the international aspect of the convention—at least in the executive obligations of the government.

Perhaps political sensitivities, and more so the fact that any convention upon ratification is a part of constitutional law and previous contradicting laws are automatically annulled and no future ratifications may conflict with them, have caused the government of Iran to be cautious about the CRPD, as it has been with other human rights charters it has eventually ratified. The Iranian government has accepted this convention with reserved rights, which have been considered for ratification with a statement that is inclusive in most human rights documentation: “if it is not in direct contradiction with national laws.”

In the opinion of its designers and authors, the new convention, which is an extension to the United Nations charter of human rights, might not add anything to the rights of the disabled, but its focus is removing discrimination. If the convention is to be accepted as law under the condition that it does not contradict previous discriminating laws in the legal system,

then its main purpose is lost. The convention itself prohibits the right of reserve and this is an intrinsic characteristic of human rights treaties and their anti-discriminatory nature. Lawyers hold that stating rights of reserve in international conventions is not credible and holds no legal effect. With this analysis, the main struggle of people with disabilities in our legal system is to compel the government to annul the right of reserve stated in the conditions of joining the convention and not hinder its enforcement. This effort, of course, will be coupled with much activity that will eventually resolve the practical and theoretical issues mentioned in previous paragraphs. Another point, which seems to be theoretically problematic, is that Iran has not joined some of the human rights conventions in the past such as the convention to forbid discrimination against women, wherein the current convention, discrimination against disabled women is strictly prohibited. Analysis of this duality in fundamentals is beyond the scope of this article and requires a study of its own.

Conventions in the legal system

Now we consider the convention in the legal system of Iran from another standpoint and the manners in which international conventions are referred to in the legal system of Iran. Unfortunately, research in this field is difficult, since access to court rulings is nothing short of impossible. That is perhaps due to the Roman-Germanic nature of Iran's legal system and its underdeveloped structure. Although references to international conventions are not abundant enough to be researched extensively, they are in the process of being compiled. As the CRPD is a recent addition to our legal system, and there is no traceable reference to it in our legal proceedings yet, through other examples we may observe the orientation of judges towards such cases.

The Iranian legal system is recorded history and the procedure is that cases are typically not referred to unless in special circumstances or for exceptional persons. Perhaps for any or each of these reasons, the Honorable Judge Yazdani, in compliance with the convention on the rights of children, which states that they have the right to receive education, and with emphasis on the fact that the convention is part of the internal law, ruled an elementary school in Tehran be obligated to register a child despite the lack of identification documents. This was itself because of a case in progress regarding the child's identity, which could take very long to resolve and deprive the child of the chance to be educated. His Honor insisted on this statement in his ruling, stating that "based on the content of the convention, education is one of the rights of any child, whether legitimate or illegitimate."

As another example, during the proceedings of what came to be known as the Hemophiliacs Case, involving people who had been afflicted with Hepatitis and HIV through the use of contaminated blood products, the Honorable Judge Nasirayee sentenced the government to pay financial and spiritual compensation to those affected. The ruling was made on the basis of the charter of political, economical, social and cultural rights, and with the Judge's insistence that upon joining the conventions, they are now a part of Iran's internal law.

Considering the insignificant amount of experience in the matter and the understanding and experience one gains in the legal system, it seems that the part of anti-discriminatory actions where it concerns the civil and political rights, is less relied upon in the courts of Iran. However, considering economic, social and cultural rights, and prohibition of discrimination

in issues of welfare, (and the fact that the legal system of Iran has had a comprehensive law regarding the welfare of the disabled since 2004—an instrument solely focusing on welfare) it can be assumed, with reliance on this law and the records that have been produced in courts, particularly those of the Administrative Justice Court, that parts of the convention that pertain to these issues will be referred upon in courts. At any rate, according to the cases of such reference that have occurred in our legal rights cases, the activities and labors of disabled individuals in this field can be the right support and the sanction that is needed to fully enforce this convention.

The fact that Iran has not acceded the additional protocol, (the government has used the optional nature of the protocol and has not signed it) may also cause problems in the administrative sense for enforcement. In the prologue of a document written in the parliament, which permits accession to the convention by Iran, the executive institutions are the same as administrative ones. It seems the lack of development in NGOs dilutes the effects of unofficial reports as well. Investigating the issues of DNGOs (NGOs for people with disabilities) and offering guidelines to work specifically in accordance with the new convention, is the discussion for another paper.

Instead of summing up the results by recapturing the essence of what was said, I prefer to shortly discuss a matter with reference to a newly established law in Iran, which holds great importance in the matter of international conventions in the legislature of Iran. Perhaps mentioning it would end this paper with an open ended question and hopes for further research in the matter. Article 62 of the law on Patenting Inventions, Industrial Plans, and Marketing Brands, established in 2007, states that in the case of the contradiction of these laws with those stated in international treaties regarding business ownerships that the Islamic Republic of Iran has acceded or will accede, the aforementioned treaties take precedence. It must be noted that treaties regarding business ownership and trades have an economical aspect, and the sensitivities that surround human rights all around the world, and especially Iran, do not apply there.

In any case, the question remains whether Article 62 is a general regulation that has always existed in our legal system and is merely being restated by the legislature? Or is it specific to this particular law? Lawyers, by gathering legal views and expanding on the essence of Article 62 and its effect on all treaties and conventions, can insist that a convention, upon ratification and addition to internal law, automatically annuls its preceding laws, and from that time forward laws contradictory to the international conventions cannot be passed. Even if they were passed, they would not have any legal effect. The sensitivity of the government of Iran about the CRPD was much less than other human rights conventions, and so within a reasonable amount of time the government urged the NGOs to accept the convention within their working charter. The reasons for this ease in acceptance and its effects are beyond our current discussion; however, whatever they are, with reference to the fundamentals of Article 62 of the aforementioned law, at least within the context of our discussion of the CRPD, it can be assumed that in the world of theory and legal knowledge, the convention has rendered all of its contradictory laws, in the past and the future, ineffective. Prohibition of discrimination can truly be achieved, although there is a great gap between theory and reality; a great gap that lawyers, and more importantly activists for the rights of people with disabilities can surely fill.