



Reflection of Electoral Equality in Iranian Electoral Code

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ABSTRACT

Citizens equality is considered one of the major indexes of evaluation of a true democratic regime. Accordingly, all individuals should be able to enjoy the same electoral rights in the same conditions so that on the one hand, to defend their primordial and natural rights via choosing the political system, governing rules as well as the authorities and representatives, and on the other hand, to have the privilege to present themselves to their fellow citizens and nominate a candidate. Thus, the fulfilment of such ideals requires the prediction of equality principle in codification and adoption of law and its close observation in management of elections. Democratic regimes usually seek to satisfy this key requirement by extending the scope of equality and indiscriminate among citizens, doing so, to establish the best relationship between individual rights and electoral rights. But in Iranian legal system in spite of a hundred years of electoral records there are still deficiencies and weaknesses in the area of electoral equality. No doubt, these problems, if endure, can cause serious difficulties in the enforcement of electoral rights of Iranian citizens. Having recognized some of the existing deficiencies in this area and analyzed them, then, this essay struggles to provide some solutions and suggestions for better implementation of equality principle as regards the general electoral rights of citizens via recognition and explanation of various aspects of electoral equality in international documents and procedures and evaluation of their reflection in election rules.

Key Words: Equality Principles, Election, Vote, Electorates, Elects.

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INTRODUCTION

Human being is a creature that enjoys higher values as compared to other creatures due to the exclusive and special qualities that have been endowed upon him by God. These values have distinguished man from other creatures because he is able to provide decent social, political and cultural conditions for himself thanks to these values and attain the noble status of human perfection. However, the most important bounty which have been conferred on man is his inherent (primordial) dignity. In fact, all rules, social orders and human rights are designed to protect this human quality. Human dignity implies that man is an end as such and should not be used as a means. Accordingly, we can consider man the possessor certain rights regardless of his position through which he can rule his destiny and consciously and willingly design and implement his own future way of life. Since man is of such qualities as inherent dignity, self-consciousness, and free will, then, he has the right to choose his own way of life and decide his own favorite political regime, rules and policies using certain democratic mechanisms like election. Thus, whereas all human individuals indiscriminately enjoy the same existential qualities like inherent dignity they have to be given an equal right of participation in collective affairs of society. To put it otherwise, we should give an equal value to all individual votes and provide everyone with an equal opportunity to freely elect and to be elected. Therefore, equality principle is one of the basic principles in political election that has been

continuously supported by the legislators and administrators in democratic regimes. Election plays a great role in power transition and formation of political institutions and reflects people's free and tactful will. Given the fact that election manifests people's participation in determination of their sociopolitical destiny and represents the way that brings us to the desirable political system, people have to have an active, conscious, free and equal participation so that a congenial and democratic regime to be formed; for as long as various aspects of equality are not settled among the citizens, social justice and freedom are impossible to be attained. Then, those institutions that are involved in legislation of election rules should act with utmost care and precision when they are enacting these rules. The administrative body in election must avoid all kinds of discrimination among the electorates. There should be also a supervising committee to monitor the correct administration of election rules as regards the citizens in order to prevent from all types of discriminative and limiting actions. The current research is a study of the equality principle and its relation with election as a relevant area of public law and its reflection in Iranian election rules.

Research Literature

Electoral Equality

Electoral equality, terminologically speaking, implies that every citizen has an equal opportunity to exercise his political rights and take an effective part in the formation and administration of the political system. To this end, all citizens should have an equal value and status in exercising their right of political participation. To put it differently, every citizen

should be able to participate in the formation of political system and government decisions. Then, a democratic regime can play more effective role than any other political system in realization of such notion of equality; because, a democratic regime is a political system that confers an equal right on every citizen to have a major influence on decisions. Accordingly, one of the fundamental and valuable principles of a democratic system and free and fair election is equalizing the preferences and interests of all citizens. This significant point can be epitomized in the following way: every individual has one vote and is equal before the law and enjoys an equal right of freedom of speech. Such an understanding of equality leads us to its philosophical notions and in this area, the ideas of John Rawls and Immanuel Kant might be of more scientific and philosophical value than those of others; for these ideas are based on human inherent dignity and rational understanding of humanity. Then it seems worthy to deal shortly with the ideas of at least one these two thinkers.

According to John Rawls, since human beings have been created free and equal they have to enjoy equal rights. Rawls believes that those people who are considered equal and have an equal right to take part in the administration of public affairs should enjoy an equal opportunity and position to play their role regardless of their social and economic status. Then, when the right to vote is limited to property, ownership or social status, this principle is breached. It is noteworthy that in John Rawls' view, equality principle refers to equal opportunity for effective influence not equality in efficient impact. Thus, influential efficient inequalities are unquestionable in some cases; because some citizens are of more consciousness and influence due to their deeper knowledge of policies and political rights. Moreover, in elections when an individual is of a deeper and more dependable knowledge of the existing options he will have naturally more efficient and influential selection. Finally, John Rawls is of the belief that electoral equality is an advantage according to which democratic structures and systems should provide their citizens with equal opportunities for exercising their influence on political decisions and actions.

Generally speaking, one can argue that electoral equality means every citizen's unexpressed political preferences in the processes of political decision making and election based on an equal standard. The reflection of such a principle can be seen not only in equal right to vote and political participation, rather in the whole process of election like the conditions of electorates and elected one, election management and so on and so forth (Khosrawi, Hassan, 2008).

Equalitarianism in Election

If we review the qualities of Greek democracy we would find numerous similarities between it and the contemporary democratic states. However, it is an undeniable fact that Athenian democracy was far more away from the modern standards of democracy, because although the state was deeply rooted in the lives of its citizens, only a small portion of the total population enjoyed citizenship rights and countless inhabitants of Athens were not considered competent enough to take part in official political activities. In fact, it was only Athenian men over twenty years old who were regarded citizens and Greek democracy had deprived women, foreigners, slaves and immature people from all types of intervention in government affairs and social decision making (Hold, David, 2005). The significance of Greek democracy lies in the fact that it has crucially inspired the modern ideas of democracy and it was indeed ancient democratic experiences that have paved the road for the emergence of religious reformism, renaissance, and modern

forms of democracies in contemporary world (Qazi Shariat Panahi, Abulfazl). Like Athens, in Roma participation right was also confined to men and the women, slaves, and workers were all deprived from this basic right. Even those citizens who enjoyed this right could not reach administrative and legislative positions. Economic capability and social relations of citizens played a decisive role in determining their share of this right or possibility. Only those could become a member of the major political center of Roma (senate) who had the necessary wealth and capital to guarantee their inclusion during the member selection (Lipst, Simor Martin et al, 1450).

After ancient Greek and Roma, Britain is the oldest country that has been introduced into democracy and its institutions. No doubt, the reason for this primacy is that initial efforts for establishing democracy in Britain were made during medieval dark ages in Europe. Indeed, since twelfth century A. D. a series of rites against kings was started by elites, aristocrats and spiritual leaders and at some point, kings were forced to seal some pacts and charters.

Given the spread of the idea of equalitarianism in Iranian election, various election rules have been passed and enacted in different periods of time, some of which date back to the pre-Islamic Revolution era. Thus, the laws and rules legislated on this category have undergone through major changes and reforms due to regime change and Islamicization of government. The royal proclamation of Mozaffar ad-Din Shah that agree the Constitutional monarchy was issued on August 5, 1906. "The manuscript was written on August 9 but it was dated on August 5 the King's birthday (Kermani, Nazim al-Islam, 1997)." This royal proclamation has clearly ordered the authorities to establish the National Parliament and provide a code for election. Nevertheless, constitutionalists rejected the royal proclamation after reading it because there was no mention of the role of masses (nation).

After the inauguration of the second National Parliament, the MPs decided to revise the deficiencies and unclearities of the existing two degrees electoral code. They thought that it is their right to codify a better new code for elections.

Thus, the "commission for revision of election code" was established in May 1907 and after six months of continuous work it codified a new set of laws for election that finally was legislated and passed by the representatives of people as the Code of Election of National Parliament on 22 October 1911. Only two months after the enactment of the code a new tide of political events engulfed the country and the parliament could not manage to use its six months term (Saali Kordeh Deh).

In the fourth parliament of Iran it was suggested that a commission to be established for the revision of one-degree normal Election Code. The negotiations over this was kicked off on 20 April 1922 and Muhammad Taqi Bahar was chosen as the spokesman for the commission. The issues that needed to be discussed in commission's view consisted of changing the conditions of electorates, influence of the governors and governmental authorities, the extent of constituencies, the shortness of two years long parliament term, and the necessity of prevention from the interregnum between the two periods of parliament (Etehadieh, Mansoor, 1996).

Thus, long debates and heated negotiations over the issues and their solutions were started in the Fourth Parliament, but due to the deep ideological gaps between the groups and various fractions inside the parliament, the decision was tough and the negotiations did not reach a desirable result until 21 June 1923. Eight parliamentary elections (from seventh parliament to the thirteenth) were held during the Pahlavi King I, and with the direct intervention of Shah and his court, then in this era people were truly deprived of a free election. Then, people's participation in the fourteenth parliamentary election held

after the fall of Reza Shah, was the nation's first experience in taking part in a semi-free election (Morvarid, Yunis, 1998).

The remarkable point that can be noted as regard these periods (from fourteenth to seventeenth parliaments) is that thought no major revision was made in the Election Code, two major acts were passed in fifteenth and sixteenth parliaments that were really decisive in the nation's destiny and future. In the fifteenth parliament, the act of permission of implementation of Election Code of Senate as the second parliament of Iran was passed in the form of a single article on 4 May 1949 and this prepared the ground for the sixteenth national parliament and first Senate joint elections in 1949. These two parliaments were officially unveiled on 9 February 1950 by Muhammad Reza Shah Pahlavi and started their work on 18 February (Morvarid, Yunis, 1998). The most striking event that happened during the sixteenth parliament was the nationalization of oil industry.

With 19 August 1953 coup that was orchestrated by USA and UK and their mercenaries, Iran's national government was toppled and its leaders were jailed or sent to exile (Faqih Haqani, Musa). Thus, the eighteenth parliamentary election was held by the coup administration (Zahedi) in the winter of 1950. But this election was held in such conditions that before the election the coup administration levelled more pressures on society and to distract the public opinion from the superficially engineered election it started the martial courts of Dr. Mosadeq, Riahi, Shayeqaq and others.

Reflection of Electoral Equality in Iranian Election Rules with a View of International Documents and Procedures

Convention on Elimination of All Forms of Discrimination against Women (1979) includes the basic articles of the Convention on Women Rights (1952) and announces in the article 7: "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country (Amir Arjmand, Ardashir)."

International Convention on Elimination of All Types of Discrimination adopted on 21 December 1965 defines racial discrimination in its first article as follows: "any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (Ibid: 136)". The article five this convention announces: States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (Ibid: 138)

Given the content of the article 18 of The Universal Declaration of Human Rights, article 18 of International Convention on Civil and Political Rights and Declaration of Elimination of All Types of Intolerance and Religious Discrimination, one can feasibly argue that one of the key features of the modern world is recognizing the inalienable right of all human individuals in accepting or denying a belief or statement and leaving the belief and religion outside the limits of state intervention (Soroush, Muhammad, 2002). Accordingly, belief and religion cannot ban anyone from participation in political activities and cause inequalities.

Conditions of Candidates and Electorates in Iranian Election Rules

Conditions of Candidates and Electorates in Iranian Islamic Councils

According to the article 26 of the code of constitution, duties and election of Islamic Councils and Mayors passed on 21 May 1996 the candidates have to have the following conditions when they are registering for the election:

First- Nationality of Islamic Republic of Iran

Second- Being at least 25 years old.

Third- Belief and practical commitment to Islam and absolute authority of jurist.

Fourth- Expression of loyalty to the constitution of Islamic Republic of Iran.

Fifth- Having the literacy of reading and writing for rural councils (of up to two hundred population) and having diploma for the rural councils (of more than 2 hundred population).

Sixth- Having military service card for the men.

The code of constitution, duties and election of Islamic Councils and Mayors passed on 21 May 1996 has also stipulated other conditions the existence of each one of which can disqualify one from entering Islamic Councils election:

First- Those who have certain deprivations due to their vocation and position.

Second- Those who have certain deprivations due to criminal record and conviction for committing crimes.

Third- Those who have deprivations due to registering in more than one constituency.

The electorates should have the following conditions:

1- Nationality of Islamic Republic of Iran.

2- Being at least 18 years old at the election day.

(Revision dated 18 November 2007)

3- Being the resident of the constituency for at least one year except the cities with more than a hundred thousand population.

Condition of Candidates and Electorates in Presidential Election

a- Conditions of Candidates

1- Being of religious and political men.

2- Being of Iranian origin.

3- Being an Iranian subject.

4- Having the ability of management and leadership.

5- Having good reputation, trustworthiness and piety.

6- Being faithful and a believer in the foundations of the Islamic Republic of Iran and the official religion of the country.

Based on the article 36 of presidential electoral code of Islamic Republic of Iran the electorates or voters have to have the following conditions:

- 1- Having the nationality of the Islamic Republic of Iran.
- 2- Being at least 16 years old.
- 3- Being sane.

Sanity has been stipulated as one of the necessary conditions of the presidential election. Given the generality of the mentioned conditions and the lack of any kind of further stipulation the legislator has construed insanity in its ordinary sense that disqualifies one from being an eligible electorate (Bozorgmehri, Majid, 2006).

CONCLUSION

In Iranian legal system, there is no clear mention of equality principle in electoral codes. However, we can use a broad interpretation of equality principle in Islamic legal foundations as a basis to infer the equality principle in such fields as election. The implementation of equality principle in political elections code can be discussed from various perspectives: 1- Legalization of the process of administration of elections is the first step towards the fulfilment of equality principle in electoral codes and of course prediction and observation of equality principle during the law enactment is the next step. Since the election rules are among the fundamental principles resulting from the inherent dignity of man as an autonomous and conscious creature, equality in electoral codes refers to formal and absolute equality and all types of violation from it is banned except with justifiable reasons. It is far more evident that justifiability of reasons varies depending on the conditions, principles and governing values in all political systems. Iranian constitution and electoral codes insist on the generality of political election in the country. This generality indicates the equality of individuals in being eligible to enjoy the electoral rights (including the right to vote and to be voted). Then one can feasibly argue that equality principle has been implicitly included in the electoral system of Islamic Republic of Iran both for the electorates and candidates. To guarantee the equality principle for voters in electoral codes one need to consider the votes of all electorates of equal value. According to Iranian electoral codes, all citizens have equal right and the basic equation in elections is one individual=one vote. Secondly, the fulfilment of this condition requires an objective and intelligible understanding of the right to vote so that no citizen would be ever deprived from this basic right. Nationality, maturity and psychological preparedness are among the preconditions of right to vote in Iran that are usually considered by most state-countries as the necessary conditions for the candidates. One's deprivation from social rights due to criminal records and prosecution has direct effect on one's right to vote. Then it is only judicial deprivations that may result in one's deprivation from the right to vote and no moral consideration would cause any major discrimination against an Iranian citizen in this regard.

To ensure the equality of candidates the state is required to set intelligible and justifiable limitations for candidates in order to make sure that no single candidate have been illegally banished from his rights. Secondly, the candidates have to be provided with equal opportunities in various fields. Of course, the conditions of masculinity and being of an Iranian origin in presidential elections are against the principle of equality. However, other conditions have no contradiction with the equality principle for the candidates.

Moreover, it should be mentioned that equality principle requires the legislator to insist on the minimum preconditions so that the citizens to be able to have the possibility to be active in political scene of the society.

Iranian legislator has enhanced his expectations in some cases including the nationality requirement and age limit in all

parliamentary elections. In addition, many people are deprived from this opportunity due to their disqualification based on these difficult conditions.

The Guardian Council of Constitution studies the enacted electoral rules and compares their congruity or incongruity with the baselines of the Constitution regarding the limitations and equality concerns and freedom issues of the candidates.

2- Equality principle in electoral codes requires firstly all citizens to use exert their electoral rights based on the existing legal codes of the right to vote and right to be voted, secondly, the electoral players to be provided by the necessary equal conditions for exerting their electoral rights, and thirdly, the electoral managers to implement and supervise the correct implementation of the codes.

Determination of the objective and evaluable conditions for benefiting from the right to vote and the right to be voted is among the necessary and basic requirements of the exertion of the electoral rights of all qualified ones. These conditions in Iranian electoral code are based on clear and quantifiable standards, but the condition of ideologic-social competency for candidacy in Iranian political elections can give cause major discriminations in qualification of the candidates and thus breach the law due to the unclarity and intangibility of the criteria. Then it is suggested that the legislator to explain this type of conditions and standards of evaluation so as to prevent such misunderstandings.

REFERENCES

1. 19Revision dated 18 November 2007.
2. Ahmadi, Ali, *ibid*, pp. 76-77.
3. Amir Arjmand, Ardashir, UNESCO Chair of Human Rights, Peace and Democracy, International Documents on Human Rights Series, Tehran: Shahid Beheshti University Press, 2002, p. 175.
4. Bozorgmehri, Majid, Comparative Study of Conditions of Candidates and Electorates in Iranian and French Presidential Electoral System, *Journal of Constitutional Law*, no. 6, Winter 2006, p. 47.
5. Etehadieh, Mansoor, Parliament and Election: From Constitutionalism to the End of Qajarid Era, Tehran: History of Iran Press, 1996, pp. 209-220.
6. Faqih Haqani, Musa, *ibid*, pp. 54-55.
For the proclamation's text see:
7. Hold, David, *Democracy Models*, translated by Abbad Mukhbir, Tehrn: Intellectuals and Women Studies Press, 2005, p. 43.
8. *Ibid*: 136.
9. *Ibid*: 138.
10. Kasrawi, Ahmad, *History of Iranian Constitutionalism*, Tabriz: Akhtar, 2006, pp. 137-138.
11. Kermani, Nazim al-Islam, *History of Iranian Awakening*, first part, vol. 3, Tehran: Peykan, 1997, p. 564.
12. Kermani, Nazim al-Islam, *History of Iranian Awakening*, first part, vol. 3, Tehran: Peykan, 1997, p. 564
13. Khosrawi, Hassan, *Law of Democratic Election*, Tehran: Majd, 2008, pp. 124-126.
14. Lipst, Simor Martin et al, vol. 3, *ibid*, p. 1450.
15. Morvarid, Yunis, *From Constitutionalism to Republicanism: A Review of Iranian Parliaments during Constitutionalism*, Vol. 3, Tehran: Ohadi Press, 1998, p. 47.

16. Morvarid, Yunis, From Constitutionalism to Republicanism: A Review of Iranian Parliaments during Constitutionalism, Vol. 3, Tehran: Ohadi Press, 1998, p. 254.
17. Naqibzadeh, Ahmad, Politics and Government in Europe, Tehran: Samt, 2000, p. 87.
18. Qazi (Shariat Panahi), Abulfazl, Constitutional Law and Political Institutions, *ibid*, pp. 640-641.
19. Saeli Kordeh Deh, *ibid*, pp. 58-59.
20. Soroush, Muhammad, Freedom, Reason and Belief, Experts Council of Leadership Secretariat, 2002, p. 15.
21. This code had numerous deficiencies including people's indirect participation in the election of representatives, deprivation of a great many number of people from political participation, discrimination among the poor and the rich due to the inclusion of the wealth and property condition, reconciliation with the king and court, the absence of by-elections in order to fill elected MPs who have died or resigned between general elections.