

Comparative Labor law: Labor Standards in Iranian Islamic Law and International Law

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ABSTRACT

Iranian law as a whole is based on Islamic Shari'a. Following the Iranian Islamic revolution in 1979, and the emergence of the new Constitution, new legal "Codes" have been created, examples of which are Islamic Penal Code (November 1991), Foreign Investment Code (May 2002) and Civil Procedure code (April 2000). Iranian Labor Code was adopted in October 1990 by Iranian Parliament and the Expediency Council. In this code and also in Constitution of Islamic Republic of Iran (revised in 1989) right to employment is foreseen. International law has introduced, most importantly through ILO initiatives, standards of labor which aim to protect the rights of individuals with regards to labor. The aim of this paper is to survey the differences of Islamic Labor law and International Law and to highlight the issues and points of difference for comparative purposes. Thus the different aspects of "Right to employment" which introduce labor standards, namely 'access to employment', 'non-discrimination in employment and occupation', and 'protection against dismissal' is surveyed in Iranian Labor law and in International law.

KEY WORDS: labor law, right to employment, Iranian law, Islamic law, International labor standards

INTRODUCTION

Since the formation of International Labor Organizations, labor standards have been introduced and promoted through the instruments presented by ILO, namely Conventions and Declarations which altogether comprise the concept of International Labor Law". In 1998 ILO codified labor standards in "Declaration on Fundamental Principles and Rights at Work". The principles presented in the Declaration included: non-discrimination in respect of employment and occupation; the eliminations of forced labor (freedom of access to work); the elimination of child labor (right to have appropriate conditions of work) and the freedom of association and the right to collective bargaining. Some Instruments on the United Nations and Article 23 Universal Declaration of Human Rights (UDHR) elaborated the concept of right to employment. Thus labor market is no longer able to continue without considering the essential rights of the employees.

Many states followed ILO initiatives and ratified ILO conventions. Government of Iran had previously ratified some of these conventions in previous political regime and has ratified some others in post-Islamic Revolution period. New Iranian Labor Code has been ratified by the parliament and the Expediency Council in 1990. Some aspects of labor standards and right to employment have been transposed in Iranian Code of Labor but there are issues which require to be studied. Of these issues, the fundamental concept of *worker* can be spotted at the first stage. Iranian Civil Code (contradictory to Labor Code) has defined labor contract as a contract of lease. It means a person can be leased in order to work for another. Other issues related to 'right to access' and 'non-discrimination' and 'dismissal of employees' which are studied separately in the paper.

I – Definition of worker in Islamic Law

A section in Civil Code (Volume I, Book III, Section III)¹ is called 'on specified contracts'. *Specified Contracts* are contracts whose rules are specific and are in contrast with 'general contracts'. Specified contracts are those whose framework is recognized by law and the effects of which are determined by law, all other contracts are non-specified contracts. Non-specified contracts are authorized to be made and are considered as general contracts.² According to the principle of Freedom of Contract³ in Islamic law people are free to make any sort of contract not contrary to the law. Examples of Specified contracts in Iranian law and Islamic Fegh'h (part of Islamic Shari'a) are: Sales Contract, Contract of Lease, Contract of Representation, and Contract of Marriage, Contract of Guarantee. In elaborating Contract of Lease, Article 447 of Iranian

¹ - Iranian Civil Code includes 3 Volumes, namely: Volume I (of Property), Volume II (of Person), Volume III (on Proof of the Claims)

² - According to *article 10* of Civil Code, "private contracts which are concluded by the person, not contrary to the law, are in effect.

³ - A lot have been written on Freedom of Contract and Laissez-faire principle. For recent publication on freedom of contract see: Collins, Hugh, "**The law of contract**", Cambridge University Press, 2003, p.25

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Civil Code, which is wholly based on Islamic law⁴ proclaims: "Subject of the Lease Contract can be either a property or a person". In article 446 Lease is defined; according to this article lease is contract by which the leasee would own the profit of the lease subject. Then a person's force (which is the profit) is owned by the employer (which is the leaser). It should be mentioned that according to Iranian Civil Code every sort of working for another person entails pay, unless it is proved that the work was done for free (Tabaro' iee). According to article 333 of the Civil Code "every person who does any work for another and by the order of him, if the work conventionally entails payment, the person performing the work entitles imbursement for the work, unless it is proved that the person intended the free work.

Definition of *worker* in Iranian Labor Code is another point of argument. Article 1 of 1960 Code of Labor states: "from the viewpoint of this Code, worker is a person who works by the *order* of employer and in return for a salary or payment". In new Code (1990) worker "is a person who works by the *offer* of employer and in return for a payment which includes salary, wage, profit and every other advantage, notwithstanding the title of this payment".⁵ Thus in new Code the employee works not by the order but by the offer of the employer. Some scholars believe this is consistent with the evolution of right to employment debate, but some scholars believe the word order, when comes along with the phrase in return for a payment indicates that the freedom to work is implicit.⁶

II- Employment Contract from the Shari' a point of view

In this section employment contracts are surveyed through related Islamic law rules. For this purpose the definition of Contract in Islamic Law is studied first. The different kinds of contract in Islamic Law and the characteristics of employment contract (the Lease of Persons Contract) is studied in this section.

(a) Contracts in General

From Islamic point of view a contract is made [when] two or more persons agree on a subject which is [legally] accepted by them. Article 190 of Iranian Civil Code proclaims that "the Required Ingredients of a contract are: 1- Intention and consent of the parties 2- the subject of contract which should be specified 3- the Capacity of the Parties 4- The legality of the purpose of the contract, if the purpose is specified".

(b) Sorts of contract

In Islamic Fegh'h, contracts are divided from different points of view. From one perspective contracts are divided as contracts of promise and contracts of proprietorship. *Contracts of proprietorship* are contracts in which a party will own a good, and *contracts of promise* is a contract whose subject is doing something.⁷ From another perspective contracts are divide as being either reciprocal contract or *Tabaro ee* which means Article 801 of the Civil Code represent example of a reciprocal contract. Lease contract is from one perspective a contract of proprietorship, because one party will own something. What is owned by the employer is the "benefit" which is the work force of the worker. The consideration for the part of the employee is "the earnings". This is dealt with in section (d) below.

(c) Employment Contract

There is no definition of employment contract, except "Lease Contract" in Islamic law; a lease can have the subject of using a "person", instead of a Property⁸. This has been introduced in Iranian law (discussed in part I. of the paper). Many scholars inside Iran have criticized the wording of article and proposed that it should include the phrase "Lease of the Services of Persons" or "Hiring of Persons" instead of "Lease of the Persons"⁹. A lease has been defined in Fegh'h texts¹⁰ as: A lease is a contract in which a specified benefit is owned for a specified consideration. Thus "Lease of Person Contract" is a Contract of Proprietorship and also a reciprocal Contract (see section (b)). Only in article 7 of Labor Code the employment contract is defined. Article 7 of the Code provides: "Employment Contract is a contract in parole or written contract in which the worker works for the employer for a fixed period or permanent work in return for the earnings". Existing of two definitions about the same concept might create complexities; many have suggested that the definition in Civil Code and the introduction of the concept of "The Lease of the Person" reminds us of the slavery period and thus is practically revoked. Observing the same evolution in French law and the emergence of the concept of *Employment Contract* instead of the *Lease of Person Contract* in Iranian Labor Code many believe that this evolution is of the results of evolution of human perspective over time¹¹.

⁴ - Sources of which are Fegh'h texts, and among those there stands the one of most important and valid source of Shee a' Fegh'h (Islamic Law and Jurisprudence) is: Shahid Aval, Maki al- Ameli, '[Fegh'h Texts] Lom e' damesghi a' , translated by S. Abbas Hosseini Nik, Majd Publication, Tehran, 2010.

⁵ - Article 2 of Labor Code.

⁶ - Araghi, Ezatollah, "**labor law**", SAMT Publications, Tehran, Iran, 2010, p. 124.

⁷ - Katoozian Naser, "**Introduction to civil law: Legal Acts, Contracts and Eegha**", 1989, Enteshar Publication, Tehran, p. 34.

⁸ - It should be kept in mind that Employment Contract is defined in Labor Code, but Labor Code definition is not based on Islamic law; because of the lack of such definition, Labor Code terminology is based on comparative study of French law and also the ILO instruments.

⁹ - Araghi, Ezatollah, "**Labor Law**", Mizan Publication, Tehran, Iran, p. 162

¹⁰ - Shahid Aval, *Op. Cit.* p. 106.

¹¹ - Araghi, Ezatollah, *Op. Cit.* p. 163

(d) The Requirements of the Conclusion of the "Lease of the Persons"

Capacity - In Lease of the Person, both parties should have the majority, should be sane. Also they should have to be "Rashid";¹² and this means a person whose dealings in his/her financial issues are sane. Thus Rashid in Islamic Law concerns with ability to descend and preserve personal benefits¹³. This requirement is also of the general requirements to make contracts¹⁴. There may arise some doubts on the requirement of being Rashid in Contract of Lease of Person, because in Islamic Law the requirement of being Rashid only related to financial benefit of persons, but it should be kept in mind that the Lease of the Persons – that is hiring of a person- also has a financial dimension, because what is hired is the work force of the person¹⁵ and the work force of any person has a financial value and thus hiring a person has a financial dimension too¹⁶. Thus in Islamic Fegh' h Lease of the Persons has the same requirements as the general contracts (see (a))

The Benefit – Lease of Person, is a Reciprocal Contract. Thus the benefit (which comes from the work force of the worker) is the consideration, and when –according to article 190 of Civil Code- subject of contract should be specified, the benefit of the employment contract (Lease of Person's Contract) should be specified¹⁷. The specification of the benefit is twofold. Article 514 of Civil Code, declares when the criteria for the Lease is the period of time, the period should be specified; otherwise the consideration (the benefit) is vague and this results to invalidity of the contract.¹⁸ The Lease of Person might be seen as contrary to human integrity. Article 960 of Civil Code recognized this problem according to this article and declares that being hired for a lifetime is seen as waiver of personal integrity and is illegal. Thus no Lease of Person Contract can last for a life-long time. Specification of the subject of Lease contract can be done by the specifying the *work* which should be done. Then by specifying the work there is no requirement that the period be determined. From the Articles 509 -517 it can be deduced that if the subject of contract is not done in the specified period, the employer can subtract a portion of the payment, and this is true about all sorts of the Lease of Persons Contracts¹⁹.

Legality – The subject of employment contract (Lease of Persons Contract, as the Code refer) should be doing something legal. Debate has been made on the concept of "legality" in Iranian legal order. Some scholar believe legal is whatever not contrary to law (here means statute and judicial precedents); others believe the concept "legal" (Mashroo) refer to what is not contrary to statutes, judicial precedent –formal sources of law- and also not contrary to Islamic Shari' a. This debate would result in the conviction that the Judge should endeavor not only to search the law from the statutes and judicial precedent but also the judge has the duty to observe rules of Islamic Shari' a separately. According to the fact that by the order of article 4 of the Constitution all laws (civil, penal,...) should be consistent with the Islamic Shari' a and that special body named "the Guardian Council" has been created for the harmonization of laws with Islamic Shari' a, conducts of persons not contrary to law (formal sources) should be deemed "Legal" and it is thus unnecessary to search again for the accordance of the conduct with Islamic Shari' a.

III- International core labor standards

International labor standards can be found in ILO instruments which are Conventions and Recommendations.²⁰ The most important social economic rights related to labor are as follows:

(a) Access to Employment in International labor law

From the paternalist point of view, labor market is a market under the control of state²¹. Thus the legal norms of state interfere in labor market and oblige the employer not to discriminate in employing the applicants. Article 23: (1) of Universal Declaration of Human Rights proclaims that "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment".

Apparently every person has the right to access the employment, but reviewing the case law reveals that there are many occasions in which applicants are limited to access the employment. In a case in European

¹² - Katoozian, Naser, "Lessons on Specified Contracts", 8th Edition, Ganj-e-danesh Publication, Tehran, Iran, 2006, p.245.

¹³ - Opposite to the concept of "Rashid", there stands the term "Safi'h".

¹⁴ - Article 190 of Iranian Civil Code proclaims that "the Required Ingredients of a contract are: 1- Intention and consent of the parties 2- the subject of contract which should be specified 3- the Capacity of the Parties 4- The legality of the purpose of the contract, if the purpose is specified".

¹⁵ - Langaroodi Jafari, Mohhammad Jafar, "Detailed in Terminology of Law", Tehran, Ganj-e-danesh Publication, 2000, First Publication, Volume 1, p.118.

¹⁶ - Article 214 of Iranian Civil Code.

¹⁷ - Ahmadi, Mohhammad Hussein, **The Lease of Person Contract**, Bagher-al-ooloom Research Centre, Tehran, 2011.

¹⁸ - As the specification of the subject is one of essential ingredients of any contract in Islamic Law (and is declared in article 190 of the Civil Code), non-specification of the period of the Lease Contract- as the subject of the Lease Contract- would result in invalidity of the contract.

¹⁹ - Katoozian, Naser, Lessons on ..., *Op. Cit.* p.248.

²⁰ - Till the end of October 2011, 201 Recommendation and 189 Conventions have been adopted by ILO.

²¹ - Rolf E. Sartorius, "Paternalism", University of Minnesota Press, 1983, p.189 ; see also: Lee J. Alston, Joseph P. Ferrie "Southern paternalism and the American welfare state", Cambridge University Press, 1999.

Court of Human Rights the court made it clear that the government ban on former agents of the previous regime accessing employment market in public sector and part of private sector fell within the scope of article 8 of European Court of Human Rights, since it affected their ability to develop relations to the outside world to a very significant degree and has created serious difficulties for them in terms of earning their living without obvious repercussions on the enjoyment of their private life²². Thus right to access to the labor market has become a social policy issue and state institutions including judicial institutions of the state are concerned about access of people employment and labor market. Right to access to employment would entail right to a non-discriminatory conduct which is studied in next part.

Freedom and right to work in Iranian and Islamic Law

Islamic law scholars – so-called Faghi' hs- believe that some extracts of the Holy Koran indicates to labor. In Najm Soorah (39 to 41) it is declared that: "Nothing would be for Human unless he labors". Some scholars believe that this is announcing the right to work. However, the extract announces *duty to work* rather than right to work. There have been enormous debates in social sciences if there is a *right* to work or a *duty* to work for the people of the society. It is argued that every person has the duty to work as a sort of contribution to the welfare of the state. In Canon Law there are rules (canons) about the duty to work. *Code of Canon Law #211 states*: "All the Christian faithful have the duty and right to work so that the divine message of salvation more and more reaches all people in every age and in every land"²³.

Principle 28 of the new Constitution provides: "Every person has the right to choose a job he/she wishes, a job which is not contrary to Islam [laws], public policy and the rights of others. The state, with the observance of the need of society to different jobs, is under duty to provide the opportunity to work and equal conditions for the access to employment."

(b) Non-discrimination in International law

Reaching to the idea of full employment in society is met by the equality among the applicants of work and also among the employees. Thus a system of rules under the title of Non-discrimination law has been created.

Discrimination is prohibited in several International Labor Organization conventions. ILO's No.111 convention (1958) declares: "for For the purpose of this Convention the term *discrimination* includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Article adds "Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination". The article then elaborates different aspects of employment and occupations and ads: "For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment".

In European labor law, social and economic rights of people are primarily recognized by the principle of non-discrimination in labor market. It means that the non-discrimination is at the heart of social and economic rights of people. The aim of non-discrimination law is to allow all individuals an equal and fair prospect to access opportunities available in a society²⁴. According to article 13 of EU Treaty, Article 141 of European Council emphasizes non-discrimination in case of payment. According to this article each state must ensure the principle of equal pay for women and men for equal work. Along with EC treaty and article 14 of ECHR and Protocol no.12 of the European Convention of Human Rights, there are important measures taken in EU level prohibiting discrimination in labor market. Of these measures are:- Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women - Council Directive 2000/78 of 27November 2000 establishing a general framework for equal treatment in employment and occupation -Council directive2000/43 on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Despite different directives on non-discrimination in labor market, the only directive which comprehensively include all sorts of discrimination is "Council Directive 2000/78 of 27November 2000 establishing a general framework for equal treatment in employment and occupation".²⁵The Anti-Discrimination Directive providing for a general framework for the realization of equal treatment in employment and occupation prohibits in Article 2 any indirect or direct discrimination in the employment relationship based on religion or belief, disability, age or sexual orientation. Grounds for discrimination are thus various. From thses grounds discrimination based on *gender* and discrimination based on *religion or belief* which are of the most prominent issues of contemporary legal discourse in Iran would be examined.

a- Discrimination based on gender

²² - Sidabras and Dziautas Case, European Court of Human Rights, 2004.

²³ - Coriden, James A. Coriden, *et.al. The Code of Canon Law: a text and Commentry*, Paulist Press, 1985, p. 48.

²⁴ - European Court of Human Rights, Handbook of European Non-discrimination Law, 2011.

²⁵ Blanpain, Roger, *et.al.* "New developments in employment discrimination law, *Bulletin of Comparative Labour Relations*, 2008, p.71.

Article 1 of the Convention 111 of International Labor Organization "Convention concerning Discrimination in Respect of Employment and Occupation" defines discrimination. Article 1 reads: For the purpose of this Convention the term discrimination includes a) any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies. There exist no special convention which is created under the auspices of ILO dealing with the issue of non-discrimination based on gender; the Convention 111, however, seems to have the potentials of effectively protect the female workers against discrimination.

European Union law includes a series of directive in the field. Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion, and working conditions (as revised by Council Directive 2002/73/EC of 23 September 2002); Council Directive 79/7/EEC of 19 December 1978 on equal treatment in social security; Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for women and men in occupational social security schemes; and Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between women and men engaged in an activity in a self-employed capacity, and on the protection of self-employed women during pregnancy and maternity.

In a case²⁶ in HCtHR the applicant complained that she was paid less than her male counterparts, despite undertaking identical employment duties. The ECJ held that this was clearly a case of sex discrimination. In reaching this decision, the ECJ highlighted both the economic and social dimension of the Union, and that non-discrimination assists in progressing the EU towards these objectives.

b- Discrimination based on religion or belief

Direct discrimination involves less favorable treatment on grounds of religion or belief. Factual examples will include where employers refuse to employ religious staff altogether, or employ some religious staff, but refuse to employ those of one particular religion. For example, an employer may have Christian staff, but refuse to employ a Scientologist. Direct discrimination will also arise where religious organisations refuse to employ those who do not share the faith of the organisation²⁷

The Framework Directive does not define 'religion'. By the religion or belief, the Directive presumably means to encapsulate both religious beliefs and other philosophical beliefs on major issues such as life, death, and mortality and thus a belief in a divine being or deity would appear to be unnecessary²⁸

A study²⁹ shows great majority (over 95 %) of Polish society declares itself as Roman Catholic. And people who belong to the Orthodox Church make up about 1.43% of the population, while less than 0.5 % Poles are Protestant and of Protestant tradition. In comparison, around 0.14% people are attached to the Old Catholic Church.

Article 6 Para 1 of the 1989 Law, guaranteeing Freedom of Conscience and Religion prohibits discrimination or granting of privileges on the basis of religion or beliefs regarding religious issues. According to their right to freedom of religion pupils are supposed to have the choice between religious instruction and ethics. However, the Ombudsperson for Civil Rights states that in most schools, ethics courses are not offered due to financial constraints. Helsinki Foundation for Human Rights reported that religious minority groups encountered problems in trying to rent premises for their routine work, to organize open meetings and religious celebrations (Ludwig Boltzmann Institute, 2004).

Non-discrimination in Islamic and Iranian Law

Iranian Constitution – principle 3 of the Constitution stipulates: "the government would endeavor to utilize all the possibilities for the following purposes: ... 6- the elimination of undue Discrimination and creation of just possibilities for all".

Principle 19 of the Constitution calls for equality of all races. . Principle 19 provides: " the People of Iran, form every race and ethnic origin are equal before the law".

According to principle 13 of the Constitution the only recognized religious minority in Iran would be those Christians, Judaists and Zardoshtis. A lot have been written on criticism of the provision as not to include other religions or beliefs. Article 14 of the constitution provides that Iranians must treat fairly with the Non-Muslims. The freedom of aggregation *recognized* religious minority is declared in Principle 26 of the Constitution.

²⁶ - Defrenne v. Sabena Case, 1976, European Court of Human Rights.

²⁷ - Lucy Vickers, Religion and Belief Discrimination in Employment - the EU law, **European Commission**, 2006, p. 12

²⁸ - Vichers, Lucy, "Religion and Belief Discrimination in Employment-the Eu Law", European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G2, November 2006. P.38

²⁹ - Barbara Liegl, *et.al.* Ludwig Boltzmann Institute, 2004, **Brochure on Anti-Discrimination Legislation and Policies in Poland**, 2004, p.4.

Principle 20 of the Constitution stipulates: "all the persons of the nation, whether woman or man, are equally under the protection of law and would have all the human, political, economic, social and cultural rights, with the observance of Islamic norms". As seen by the wording of the principle giving of every sort of rights is subject to the accordence of those rights with *Islamic norms*.³⁰ Principle 28 exactly relates to non-discrimination issue in employment. Principle 28 of Iranian Constitution stipulates: "Every person has the right to choose a job he/she wishes, a job which is not contrary to Islam [laws], public policy and the rights of others. The state, with the observance of the need of society to different jobs, is under duty to provide the opportunity to work and equal conditions for the access to employment."

(c) Dismissal of Employee

Protection of the workers against dismissal is of another important initiative of labor law.

In all labor markets *dismissal* of an employee cannot be arbitrary and with the breach of employment contract. Payments for dismissed workers are widely observed. About 50% of OECD member states had legal entitlements to severance pay for individual dismissals in the early 1990s. Private and collective agreements can constitute the basis for such transfers.³¹ ILO Convention No.158 addresses the issue of dismissal. Article 4 of the Convention declares: The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service". So dismissal is either justifiable or unjustifiable. article5 continues: The following, inter alia, shall not constitute valid reasons for termination: (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours; (b) seeking office as, or acting or having acted in the capacity of, a workers' representative; (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities; (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; (e) absence from work during maternity leave. Similar rule exist in Iranian Labor Code which is discussed later.

Collective dismissals- In European level the Collective Redundancies Directive obliges employers to inform and consult the respective employees' representative in case of dismissals of a large number of workers affected for one or more reasons not related to the individual workers concerned within a certain period of time. It is left to the Member States how to sanction this obligation to consult. Many countries have laid down provisions in this regard. For example German law has included corresponding provisions in 17 et seq. of its Dismissal Protection Act (Kündigungsschutzgesetz) for a long time.³²

Protection of pregnant women against dismissal

Some groups of employees are protected against dismissal. Convention 2000 of the International Labor Organization (convention no. 183) guarantees the right of pregnant women of protection against dismissal. Article 8 provide: "1- It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer. 2- A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave". Iranian Labor Code has similar regulations which will be examined later.

There exist certain provisions in European law in this regards. Article 8 Council Directive 92/85/EEC concerning the implementation of measures to encourage improvements in the safety and health of pregnant workers, women workers who have recently given birth and women who are breastfeeding reads: 1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice.2. The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice."

Many States have adopted measure to protect the rights of this kind of employees. For example Spanish law provides for 16 weeks of maternity leave, which can be taken before or after the birth as the woman decides, but at least 6 weeks must be taken after the birth, during which time the woman may not work. In Sweden women are entitled to 7 weeks off work before the birth and 7 weeks after the birth. They

³⁰ - This is the autonomy of Principle 4 of the Constitution. Principle 4 declares: " All civil, penal, financial, administrative, cultural, military, political and other laws should be in accordance with the observance of Islamic Norms". In Iranian law-making process, Guardian Council would review all the ratifications of Parliament for ratification and no law would be in effect without the ratification of the Guardian Council. The Guardian Council is made by 12 persons. 6 persons of which appointed by the Leadership and 6 remaining members are introduced by the Head of Judiciary and approved by the parliament.

³¹ - Goerke, Laszlo, "Redundancy pay and Collective Dismissals", Norwegian-German Seminar on Public Economics, June 2001. P.2.

³² - Manfred, lowich, "labor law in Europe", *Ritsumeikan Law Review*, No. 20, 2003, p. 108.

are also entitled to leave if they are breastfeeding the baby. Thus there is no period of compulsory maternity leave in this country³³.

Dismissal in Islamic and Iranian law

Iranian Labor Code has effective rules protecting the rights of the employees against dismissal. Article 27 of Code stipulates that when the worker bears a *failure* in performing his specified duties or breaches the workplace's codes of conduct, the employer has the right to, after the written notice pay the worker a sum equal to the receiving wages of one month for each year of his working record and to end the contract. As seen above dismissal in the Code has been classified as being either justifiable or unjustifiable. In case of the failure from the worker, the dismissal if proceeded in due manner can be justified and would entail less compensation. Both justifiable and non-justifiable dismissal would entail compensation. Article 165 stipulates that if the worker –after being dismissed and having litigated- no longer wants to return to work, the employer has to pay compensation as equal to the wage of 45 days per working year. It means that a worker receiving 1000\$ per month, with 10 years of experience would receive a compensation equal to 1500 \$ per year and 15000\$ overall (in case of just dismissal the compensation in the mentioned example will be 1000\$ for the worker). Such regulation which is now practiced and observed in case law in Iran appropriately protects the right of the employee being dismissed.³⁴ This provision is stipulated because most workers litigating for dismissal don't wish to return to work and the provision helps the dismissed worker to tackle with the prospective possible social problems. Pregnancy and maternal leave is recognized in article 76 of Labor Code. According to the article maternal leave is 90 days. And if possible 45 days of these 90 days should be granted after the giving birth. After the rest period woman worker would return to work (article 76 (1)). This means the dismissal of the woman during the maternity leave is forbidden and this is in accordance with the ILO convention no. 183.

VI - Conclusion

Labor law in international level has evolved during the past century. Several labor standards have been adopted through international conventions. International labor law has introduced standards of labor which aims to be universally implemented. Most important rights established in international level are a-access to employment; b-non-discrimination in employment and occupation and c- protection against dismissal.

Iranian labor law is primarily derived from the principle sources of Islamic Fegh' h. Freedom of access to employment is recognized through article 10 of Civil Code and article 2 of Labor Code. Principle 28 of Iranian Constitution stipulates: Every person has the right to choose a job he/she wishes, a job which is not contrary to Islam [laws], public policy and the rights of others. The state, with the observance of the need of society to different jobs, is under duty to provide the opportunity to work and equal conditions for the access to employment". Thus in terms of access to employment, Islamic and Iranian Law has modern and effective rules. The definition of *worker* has evolved in 1960-1990 period.

Non-discrimination is included in Islamic Republic of Iran Constitution principles 19 on racial equality, principle 20 on gender equality, and principle 28 on equality with respect to employment. There still remains the need for the clarification in non-discrimination area in Labor Code.

Dismissals are dealt with in detail in Labor Code, rules of which only apply to workers in permanent employment. Appropriate protection of workers against arbitrary dismissals requires the Code wordings to be clear and unambiguous. The concept of *failure* of the worker, when dealt with broadly, creates the possibility of being misused by the employer. Despite this some aspect of limitation for dismissal is in conformity with international norms made by ILO. The limitation of dismissal of a women during the maternity leave is of the examples where the international norms have been observed.

The Iranian law altogether can be seen in consistent with international norms in many aspects. The points of differences, many of which have been dealt with in this review, require the attention of the state in order to reach the maximum limit of protection.

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³³ - Wiebke Düvel, Protection of pregnant women from dismissal, **Baltic Labour Law Project**, 2003, p.8.

³⁴ - Araghi, Ezatollah, *Op. Cit.* p.300

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