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**JUDICIAL SUPERVISION OF WELFARE RIGHTS (ECONOMIC, SOCIAL AND CULTURAL) OF WOMEN IN ADMINISTRATIVE JUSTICE COURT VERDICTS**

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**ABSTRACT**

Administrative justice court can play a unique and highly important role in the realization of those rights which are referred to as the second generation of human rights (welfare rights). The philosophy of administrative justice court and one of the main objectives of its formation indicate the fact that it has an important role in institutionalizing welfare rights. However, different areas of the cited rights should be distinguished from each other. Despite the important role of administrative justice court in the field of social rights such as the issues associated with different kinds of insurance, retirement, pension, etc., its procedure in relation to cultural, health demands and economic rights of individuals in its real sense, especially the affairs associated with women's rights as defined in international deeds, is not very good.

Weakness of court verdicts in favor of women's rights is quite obvious. The fact is that the main part of the court procedure has focused on the annulment of decisions that are purely administrative and the affairs related to women's welfare right that are law oriented have been overshadowed.

**Keywords: Welfare Rights, Women's Rights, Justice Court, Economic, Social, And Cultural Courts**

**INTRODUCTION**

Today, the major violations of economic, social, and cultural rights are attributed to poverty. Therefore, paying attention to

poverty is highly important to prevent human rights violation. "Eradicating poverty should be our primary goal in the new millennium.

The governments should commit themselves to taking steps to reduce poverty and to eradicate extreme poverty through different strategies and programs. Ignoring human rights is in correlation with poverty."<sup>i</sup>(Mary Robinson (Former United Nations High Commissioner for Human Rights)

It should not be assumed that poverty is defined just by considering material factors. "While poverty was defined only by considering material factors for a long time (for example, people who make their living by less than one dollar), actually non-material aspects of poverty are terrible. Such factors are increasingly applied in statistics that are used to describe poverty. Throughout the world, one billion people lack proper shelter, adequate food, education, and access to safe drinking water and fundamental medical services. Every day, 34000 children under five years lose their lives because of hunger and preventable diseases. These are not new facts, and the gap between the rich and the poor is still increasing."<sup>ii</sup>(Manfred Nowak et al.)

"Poverty reduction and human rights are not two separate projects, but are two mutual reinforcing approaches of one project."<sup>iii</sup>(Office of the United Nations High Commissioner for Human Rights)

Poverty has taken an entirely new and distinctive concept and nature. In this new concept, there is a mutual and close relationship between the violation of human rights on one hand, and the deprivation of access to economic resources on the other hand. In other words, there is a specific attitude towards poverty nowadays that indicates the neglect of human rights without denying the deprivation of economic resources."<sup>1</sup> Such an approach in the definition of poverty is referred to as "Capability approach" which was introduced by an intellectual named Amartya Sen. Capability approach demands that social arrangements efficiency be judged in terms of their impact on the fertilization of human rights<sup>2</sup>. Therefore, emphasis and focus on human rights are the overall elements that connect the two approaches.<sup>3</sup> Caring about poverty in terms of capability approach, should provide a bridge to move from poverty to human rights.<sup>4</sup> The concept of "capability" refers to each person's right or opportunities to access welfare.<sup>5</sup> A prominent feature in the identification of a poor person is that they have limited opportunities to pursue their

welfare.<sup>6</sup> Therefore, poverty can be defined as the low levels of capability or "deprivation of basic capabilities to enjoy minimum acceptable levels". "Capability approach defines poverty as the absence or inadequate realization of certain basic rights such as the rights of being free from hunger, diseases, illiteracy, etc."<sup>7</sup> However, why should the concept of poverty be defined in relation to fundamental rights? The answer is that the aforementioned rights are especially important for human dignity.<sup>iv</sup> Every human being owns dignity. Dignity is a part of his essence and poverty undermines such dignity. Another question is whether poverty should be defined in relation to ignoring or failing to meet any rights. In response, it is argued that ignoring human rights is considered poverty if: first, the considered rights are among those human rights that are in relation to essential features and capabilities in a certain community; second, inadequate enjoyment of economic resources should play a role in chain of reasons that lead to ignoring human rights.<sup>v</sup>

One of the most obvious issues that arise in the field of welfare rights is the women's welfare rights. In this regard, in addition to a

large amount of international figurative and substantive resources el, there are many national rules and regulations and procedures and policies in each country. Iran is not an exception, in this respect. In judicial area, administrative justice court certainly plays an important role in this regard. However, this institution is facing several obstacles and defects in this area which are analyzed and criticized in this article. The article contains two major topics: the first topic is about the general principles of international law on women's welfare right and the second topic follows the same discussion in domestic law. Nevertheless, the second topic focuses the capacities, opportunities, and challenges of administrative justice court.

### **Principles Governing Women's Welfare Rights in the Global System of International Law**

As a peremptory norm of international law, gender should not be a criterion for benefiting from the rights. Each government must guarantee equal enjoyment of men and women from all civil, political, economic, social, and cultural rights. Creating equality for men and women indicates the necessity to take some practical steps and a series of special measures governing accurate and

efficient legal, regulatory, and executive decisions by the governments.

From the perspective of international law and according to the consensus among countries and experts in this regard, there are numerous things that cause a kind of discrimination against women. Such cases usually originate from wrong traditional, historical, religious, or cultural attitudes that might have influenced every community. The following examples can be considered as some discriminatory practices:

- Risks such as rape, kidnapping, and other events that occur based on gender during armed conflicts;
- Risks resulting from mandatory abortion, traditions about killing children, household violence and mandatory sterilization;
- Women trafficking, prostitution, and forced labor;
- Forcing women to compulsory accommodation at home as a custom;
- Lack of separation between men and women in prisons, absence of female guards, or special protections for pregnant prisoners and lack of training and educational measures in the aforementioned centers for their re-adjustment after releasing from prison;
- Restrictions to attend courts and or deprivation from principles such as presumption of innocence;
- Restrictions on property rights, the possibility to make contracts, or the right of full enjoyment from legal entity;
- Lack of special protection against rape, forced sterilization, and forcing them to take pregnancy test as the pre-requirement for employment;
- Pornographic methods that depict women in humiliating or inhumane conditions;
- Limited access to education and health care;
- Lack of provisions to guarantee and promote equal access to participation in public affairs and posts;
- Customs and traditions that prevent women's access to better job opportunities and equal payment;
- Gender-based restrictions that ban access to government services such as education;
- Cultural, religious, or linguistic rights for minorities that somewhat restrict women's access to their own rights;

- Some barriers to women's marriage<sup>vi</sup> (United Nations Human Rights Committee, CCPR General Comment No. 28)

Among the necessary measures that governments should take in relation to practicing men and women equality, teaching human rights to state employees, making them aware of the special needs of women in relation to child bearing, and the necessary measurements to ensure their health and hygiene can be referred to. This is also true for training other people within the society<sup>vii</sup>.

Women's right to work and employment in international standards has considered several rights for women in terms of employment that are referred to in the following categories:

A. Women's right to work and employment equal to men's

Universal Declaration of Human Rights (Article 23) and the International Covenant on Economic, Social and Cultural Rights (Article 6) refer to the right to free job selection for all people. This right is expressed in more details and explanation in paragraph 1 of Article 11 of the convention of 1979 in relation to eliminating discrimination between men and women as the following: Member nations are committed to take appropriate measures to eliminate discrimination against women in

employment so that similar rights, on the basis of equality of men and women, could be provided particularly in the following cases:

- Right to work as an inalienable right for human beings;
- Right to use the same career facilities such as observing the same conditions for career choice;
- Right to chose profession and career freely, right to promote and to benefit from job security and all career advantages and conditions and the right of professional training and retraining including internship, improving skills, and constant education;
- Right to receive equal pay and equal treatment in jobs with equal value;
- Right to benefit from job security particularly about retirement, unemployment, illness, disability, elderly pensions or other cases of decreased ability to work and the right to use paid leave;
- Right to receive health protection and safety of work condition;

B: Women's Special Support for Work and Employment

According to paragraph 2 of Article 4 of the Convention of 1979, "Taking special

measures by the member states such as the measures that are included for the protection of women are not considered discriminatory". Therefore, Article 25 of the Universal Declaration of Human Rights declares. "Mothers are entitled to benefit from especial care and assistance". Moreover, according to Article 10 (2) of the International Covenant on Economic, Social, and Cultural Rights, "Mothers should enjoy special support during a reasonable period before and after the childbirth. During that time mothers should enjoy pay leave and or leave with adequate social security benefits."

Taking into account the specific situation of women, the Convention of 1979 in Article 4 has emphasized the need for the adoption of specific regulations such as supporting women during their pregnancy and childbirth (Hashemi, 2005: 529).

### **Mechanisms to Protect Women's Welfare Rights in the Legal System of the Islamic Republic of Iran**

Preserving women's welfare rights is one of the main objectives of the founders of the Islamic Republic of Iran. In this regard, according to the Article 21 of the Constitution, the government must guarantee women's right in all respects in conformity with Islamic criteria and do the followings:

- Creating a decent environment for the growth of woman's personality and the restoration of their material and spiritual rights;
- Supporting mothers particularly during pregnancy and child custody and supporting orphans;
- Establishing competent courts to protect and preserve the family;
- Providing special insurance for widows, women without protectors and the elderly;
- Granting guardianship of children to worthy mothers, in order to protect them in the absence of a legal guardian;

With these law arrangements it seems that among three methods of identifying and ensuring welfare rights, identifying welfare rights in the constitution of the Islamic Republic of Iran is associated with strong fundamental rights, particularly that in paragraph (1) of the Article 43 of the Constitution, Housing (as the minimum), food, clothing, health (basic and primary sanitation), treatment, education (basic) and the necessary facilities for all people to raise the family are defined as the basic needs and are discussed as the criterion of the economy of the Islamic Republic of Iran. In other

articles (Article III, Chapter III) it is predicted how to supply them, but for the other welfare rights it seems that the principle of gradual supply has been accepted (Arjmand and Hemati, 2009: 50).

Social security systems are often developed based on the employment-based assumption of social security. This means that social security benefits are associated with individual contributions in an employment contract. Since women often work part-time more than men or take care of children, relatives, and family completely out of the formal labor market such benefits tend to favor men. In order to address social security problems that women are typically faced with social aids such as cash payment services are often necessary. Such services and payments including legal social assistance payments are based on the needs or, according to discretion, housing benefits and child care services (Osborn, Catharina Krause, Allen Rosés, 2010: 333).

At the institutional level, one of the most important institutions responsible for the protection of women's rights in general and their welfare rights in particular is the administrative justice court. This court, which under Article 173 deals with the complaints of people and natural and legal persons against

the decisions and actions of government agencies and public authorities, plays an important role in the revival of women's rights. However, the described institution records in this field should be reviewed to see the results it has achieved since its establishment until now. Perhaps at the first sight it seems far-fetched and strange to consider a role for the administrative justice court in relation to women's welfare rights; however, it seems like that administrative justice court is the most important judicial institution that supports women to achieve their welfare rights against any aggression and encroachment. Before we examine this issue more specifically it is necessary to briefly refer to the role and the stand of this institution and its duties in this regard.

According to Article 173 of the Constitution, "in order to investigate the complaints, grievances, and protests of people against government agents or units or regulations and to realize their rights, a court named administrative justice court is established under the supervision of the head of the judiciary. The authority and the practice method of this entity are determined by law."

Despite the critical and important role of administrative judicial court in the establishment, formation, and enrichment of

public law – as a primary principle and a well-known rule in public law in general sense- administrative judicial institutions that fulfill their duties in macro and national levels in each country and legal system, play an important and remarkable role in the formation of public law through their decisions and actions. Moreover, since the aforementioned entity includes a group of senior, impartial, educated judges with very strong political and sociological intuition, it has a key role in directing political life, social changes, and legal reforms.

In proportion to such great tasks, such institutions must benefit from stable rules, efficient procedures and efficient organizations.

Administrative justice court in its general sense as an administrative supreme court in any legal system, due to its firm decisions and the establishment of the rule of law and transparency in all fields and arenas, will create a very strong barrier against the violence and aggressions made by the holders of political power towards the rights and freedom of citizens. It is assumed that administrative supreme courts in each country have three main responsibilities:

A. protecting human rights through the annulment of those decisions and actions that

are made by the law enforcement agencies on the pretext of carrying out their duties and that actually undermine the extent of individuals' rights. For example, the annulment of the decision of a ministry that has convicted or banned a march can be referred to.

B. Addressing all the issues and differences arising from administrative contracts or the contracts that are made between individuals on one hand and governing institutions or public authorities on the other hand.

C. Dealing with recruitment complaints of state employees such as matters relating to the recruitment contracts, different vacations, issues relating to financial receipts, pensions, administrative penalties, etc.

D. Reviewing certain decisions of administrative courts or quasi-judicial bodies such as the decisions of tax courts, etc.

E. addressing the decisions made by institutions possessing public authority or by agents that are issued through regulations, circulars, instructions, etc and their conflict with law is clear.

A look at the performance of Iranian administrative justice court from the inception until now indicates that the court has had a homogeneous performance. That is, the court decisions have concentrated on certain themes

and no evolution or changes or ups and downs have been observed in this regard, so far.

The court decisions have been such that they have made it as of a mere administrative entity or a senior administrative organization and not as a mere judicial entity in the exact legal meaning of the word. The life of supreme administrative courts in some countries is extremely influenced by the political and social atmosphere and even the economic developments of the country, and by changing or rotating interpretations and procedures they have made a remarkable contribution to the formation of countries' lives. However, administrative justice court has been in a kind of procedural inaction and legal monotony. Administrative justice courts has been less observed to have any role in shaping social affairs and political events and it seems as if the aforementioned entity has remained in ignorance or has moved in a specified direction like a robot without any initiative, creativity or innovation.

Study on the nature and content of the verdicts of the court branches and its general board only shows broad and misleading and impersonal masses of decisions and judgments that are made in relation to the annulment of regulations, circulars, instructions or decisions related to mere

administrative affairs or recruitment affairs. No clear or specific approach in relation to protecting women's welfare rights is observed.

Jurisprudence of the court is not based on the claim of right and is merely administrative in nature. Administrative justice court verdicts are in relation to individual demands and complaints, individuals' complaints about recruitment affairs, their financial relations with institutions, retirement, pensions, insurances, and the like and nothing can be seen in relation to women's welfare rights.

Administrative judicial court procedure in relation to the verdicts and provisions of administrative courts is the same. Nothing is found that insures human rights particularly in the area of women's welfare rights.

Verdicts of the administrative justice court branches and staff in relation to economic and social affairs in general and women's welfare rights in particular is neither directly related to welfare rights as mentioned in international documents and conventions nor is going beyond the mere administrative nature and never gets the form of human right-based or claiming demands as long as administrative rights from the point of view of administrative justice court are just limited to matters relating to retirement, pensions, employment

contracts, insurance claims, repurchase, or annulment of regulations and circulars that merely violate the law. However, dealing with the complaints of individuals and civil society entities about the right-claiming issues of women should be one of the work priorities and jurisdiction of the court. This originated from several factors:

The first factor is the decrease of the court jurisdiction that has happened during several steps of the amendment of administrative justice court. In none of the amendments a serious will is found to strengthen the position of justice court as the guardian of welfare rights generally, and women's welfare rights, particularly as mentioned in international deeds and conventions. This matter has affected the performance of the court negatively in several areas:

A. one of the areas is the lawsuit right in the field of women's welfare rights. That is, in the field of women's welfare rights active, fair and efficient trials by the court are not seen.

B. The second area has shown itself in the form of the limitation of civil society institutions in lawsuit arena about women's welfare right, so that they have not had the possibility to raise their complaint in administrative justice court in the area of women's welfare rights or public institutions.

Providing such a possibility will be a valuable step in improving women's welfare rights and strengthening the spirit of the constitution of the Islamic Republic of Iran in relation to promoting the role and status of women as stated in Article 21.

The second factor is that the judges of administrative judicial court have not received academic and systematic training in the affairs related to women's welfare rights, the nature of those rights, obligations arising from them, and the way to deal with cases that arise in this regard. This has caused the court performance to face a kind of solidity and monotony and has marginalized and isolated women's welfare rights.

The third factor is that the court is always waiting for some errors in the positive measures and ongoing actions of law enforcement agencies, so that a compliant might arise in the field of women's affairs due to such errors and it could investigate the matter and make decisions. It never addresses the events when due to the lack of taking measures by the government, failure in making policy or silence about taking positive steps the women's welfare rights are harmed. However, unlike civil and political rights, welfare rights are mainly violated when the

government takes no positive or reactive measures in relation to such rights.

This has mainly caused the administrative justice court to avoid addressing such cases directly under the pretext of lack of authentication of loss resulting from action.

The fourth factor is that the court jurisdiction in general and as an institution that acts at national and state level is very trivial. Does the court have jurisdiction over all decisions and authorities and entities without exception? The court jurisdiction is so limited that a significant number of authorities and institutions that significantly influence the policies related to women's affairs by their own decisions are excluded from the court proceedings. For instance, the decisions made by the Supreme Council of the Cultural Revolution (SCCR) can be referred to.

The above points were mentioned to overcome challenges and to provide opportunities for the institutionalization of administrative court of justice in order to protect women's welfare and human rights. It is hoped that in addition to overcoming the existing challenges and conditions, administrative justice court promote the court status such that women will have no concerns about justice or their own welfare rights.

## **RESEARCH METHOD**

The material and data were collected from the library and through taking notes.

## **CONCLUSION**

In response to the question raised in the introduction, it seems like that the administrative justice court approach in relation to protecting women's rights is very pale because the cases filed in the court are mainly about the issues other than women's welfare rights and are more about the demands of corporate personnel and government employees and issues such as recruitment, pension, mission, overworking, etc. Nevertheless, the government must use all its resources to provide welfare rights for women.

Administrative justice court has deeply engaged itself in administrative affairs so that it has ignored right-based issues. Justice court should not be considered as a mere administrative court. Its establishment philosophy and the content of Article 173 of the Constitution and legislative approach in the introduction of the Constitution about women, require that the administrative justice court should be considered as a court of human rights; a right-based court that gives priority to protecting the rights of all people including the economic, social, and cultural rights of women.

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<sup>1</sup>. Ibid.

<sup>v</sup>. Ibid

<sup>vi</sup>. See United Nations Human Rights Committee, CCPR General Comment No. 28: *Equality of rights between men and women* (art. 3), CCPR/C/21/Rev.1/Add.10, Sixty-eighth session, 29/3/2000, paras. 3 to 32.

<sup>vii</sup>. Ibid.