

## **Commitment to Present Information and Balancing the Inequality of Information to Recipient of Bank Facilities in Credit Contracts with Comparative Study**

**Seyed Hossein Alamolhoda<sup>1</sup>**

*Ph.D Student in Private Law, College of Farabi, University of Tehran, Qom, Iran*

**Seyyed Ali Seyyed Ahmadi Sajadi<sup>2\*</sup>**

*Assistant Professor of Law, College of Farabi, University of Tehran, Qom, Iran*

**Sajad Mazlumi<sup>3</sup>**

*Ph.D in Criminal and Criminology Law, Islamic Azad University, Science and Research Branch, Tehran, Iran*

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### **Abstract**

Commitment to provide information and even advice to the recipient of facilities (consumer) after the industrial revolution and consequently, the formulation of the basic principles of consumer protection is the supplier's duties and in consumer credit contracts that are most commonly used in the banking system, this commitment also has a fundamental place. However, in contrast to complicated Islamic contracts in Iran bank system, they have no commitment to advice and guide the consumer and this matter has effected the free and conscious will of consumer. So the question arises whether the consumer who receives no information and advice, can express his will freely and consciously and in such circumstances, the contract will essentially be concluded? Therefore, in this paper, the task of providing information and advice to the provider of credit has been defined. with a comparative study Regarding the acceptance of consumer rights and the enforcement of consumer rights law Approved in 2009 in the banking system we conclude that banks should be based on good faith and the need for mutual agreement and the acceptance of the task of consulting and providing responsible credit has to provide clear and complete contractual information to the consumer in order to return contract balancing to the consumer credit contract.

**Keyword:** Banking Contracts, Commitment to Present Information, contact information, Clearness, Good Will, Recipient of Facilities, Consumer Credit.

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1. Email: halamhoda@yahoo.com

2. Corresponding Author, Email: Sahmadi@ut.ac.ir, Fax: +982536644081

3. Email: Sajad.mazloumi@gmail.com

## Comparative Study of the Dual Functions of the Precautionary Principle in Civil Liability

**Mohsen Izanloo<sup>1</sup>**

*Associate Professor of Faculty of Law and Political Science at Tehran University,  
Tehran, Iran*

**Zahra Asadi<sup>2\*</sup>**

*Ph.D. of Private Law of Faculty of Law and Political Science at Tehran University,  
Tehran, Iran*

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### Abstract

With the advancement of technology, the production of new products, and the creation of new activities, the community is sometimes exposed to serious risks. If these risks occur, considerable costs should be consumed to compensate them and, sometimes, the damage is irreversible. In the case of facing such dangers, the precautionary principle and the adoption of precautionary measures are deployed. This principle has been used in recent decades in domestic law, international procedures, and judicial procedures. In this article, by reviewing different votes issued in this regard in foreign courts, in particular, French courts, an attempt was made to examine the different aspects of this principle. The principle of precaution, as a legal and political principle, is used in two situations: 1) before the occurrence of damage 2) after the occurrence of damage. Thus, given the dual function of the precautionary principle, the two preventive and compensatory roles can be assumed for this principle, respectively. However, it is worth mentioning that the obligation to compensate for financial losses is only possible in the second case.

**Keywords:** The precautionary principle, Civil liability, Preventive role, Compensatory role.

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1. Email: izanloo@ut.ac.ir

2. Corresponding Author, Email: zahra.asadi55@yahoo.com, Fax: +982188631674

## Participatory Democracy and Municipal Referendums in Italian Legal System: A Model to Complete the Iranian Legal System

Alireza Jalali<sup>1\*</sup>

*Assistant Professor, Department of Law, Damghan University, Damghan, Iran*

Ali Akbar Gorji<sup>2</sup>

*Associate Professor, Public Law Department, Faculty of Law, Shahid Beheshti University, Tehran, Iran*

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### Abstract

Participatory democracy is considered as one of the democratic models of developed countries applicable to small local administrative contexts such as cities through the instrument of local or municipal referendum. In the Italian legal system these processes and tools exist, and the study of scientific foundations, rules and practices of all kinds of local and municipal referendums can be a good example for the scientific community and the developing legal system of Iran, which has so far been deprived of this instrument. The importance of the research is due to the possibility that the correct description of participatory democracy and municipal referendums in Italy can be an example for the Iranian system, given that the answer to these questions that can municipal referendums raise popular participation about governance and can they help to stabilize democracy and decentralization or not, it's a help to discuss methods for strengthen democracy in Iran. Exactly for this reason, in the various parts of this article we will analyze firstly the scientific basis of the concept of participatory democracy, also in relation to other types of democracy, like the deliberative one. Subsequently, starting from the constitution and from the ordinary laws we will limit the research field to the local communities and to the municipalities, i.e. to the administrative units of the Italian legal system. Describing the various types of municipal referendums mentioned by national and local regulations and laws, we will propose some examples of referendums performed in last years in Italian cities and thanks to the study of the judgments of the ordinary and administrative judiciary we will try to describe the features of these referendums, not only in theory, but also in practice. Finally, it will be demonstrated that participatory democracy, and in particular municipal referendums, will in some way guarantee legal development, popular participation, consolidation of the democratic system and decentralization in Italy, and developing countries such as Iran, providing strengths and weaknesses points are recognized, can benefit from this model and can promote their governance components.

**Keywords:** Decentralization, Governance, Italy, Municipal Referendum, Participatory Democracy.

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1. Corresponding Author, Email: a.jalali@du.ac.ir, Fax +982335220247

2. Email: gorji110@yahoo.fr

## Liability of Artificial Intelligence; the Reflection of Developments in the Liability Rules

Abdollah Rajabi<sup>1\*</sup>

*Assistant Professor of Law, University of Tehran – Farabi Campus, Qom, Iran*

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### Abstract

In the history of the law of torts, there is damages arising out of things. Some of these damages are because of things' actions, such as buildings collapses, animals' behaviors, and cars accidents and so on. At the first, who have liability for the victim's injuries and damages are the proprietor and possessors; but in pursuit of technical developments of the era, we shouldn't ignore liability of producers and designers of these products.

We all know that the technological progress of humankind is the cause of unbelievable innovations. One of this human incredible ingenuity is making of object acting similar to mankinds. For example, it can be a human-assisted robot, such as cleaning and cooking, or specializing in medicine, and the like. So there is a legal problem asking about legal situations of these creations.

Now, the smart object may not be a common issue in the community, but events show that we will have to confront with difficult issues in the near future. So, today we need to think about its legal dimensions and solve the problems arising from the personality, ownership, contract and responsibility of these digital age objects. Moreover, studying the emerging institutions sheds light on current issues in the light of which we can illuminate the dim dimensions of many current and traditional problems and illustrate the ways we have gone wrong.

The objects that are armed with a will, can have ownership on others objects and conclude a contract with persons and may harm others, either voluntarily or by the will of people realized in the object. For example, active home-based artificial intelligence can provide harm to guests or surgery or treatment robots can harm patients, or a driverless car may cause harms to pedestrian and create financial losses with accidents.

If the basis of liability is fault, the owner of the objects would be liable as much as it was at fault. A master is someone who has effective supervision or guidance on an object at the time of the crash, such as a car driver. In Iranian law, the responsibility of the owner is based on fault, whether living, inanimate, movable or immovable property. In addition to the owner and possessor, sometimes the creator and designer of the object is responsible for the caused damage.

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1. Email: Rajabya@ut.ac.ir, Fax: +982536766284

With all of the foregoing, we may still be considering new and separate AI. But first, we need to know that AI has three features: it understands the world, analyzes the information received, and then acts on it.

Machines are planned elsewhere and do not have means to act in the sense of freedom of the human will; now, is it right to hold them responsible? Today, it appears that there is less of a means to perceive, think and act independently. In fact, most machines are not independent and cannot think and decide.

The object may be autonomous in performing certain tasks, so people associated with the object, such as the artificial intelligence manager or the author of the program and its software, will be responsible for compensating for the resulting damage. Apart from that, we may have a personality for artificial intelligence and recognize him or her as a right-doer; in this case, in addition to being a person's representative and subject to responsibility, the robot may be itself responsible for its actions. In this situation, the robot knows the true meaning of 'act' and truly is realized.

The machine has many different types of autonomy and power. Some tools are human instrument and others have the power to act. Among the latter category, some may be in control of their affairs, and some are still involved in the determinacy of algorithms. Artificial intelligence is the criterion of self-responsibility, that is, the robot is able to manage its financial affairs. In that case, civil liability can be borne. Otherwise, the person is responsible for its actions and if it is damaged by a third party, the person responsible may be the owner or the developer or the creator.

Given the fact that there is still theoretically independent of the robots, it is necessary in the present circumstances to consider it a tool and hold others responsible for its actions. However, the legislator is supposed to prescribe rules on the personality and responsibility of artificial intelligence, and this is impossible unless the unknown dimensions of the presence of these electronic persons in society have been explored by lawyers.

**Keywords:** liability, legal person, Artificial Intelligence, machine fault, proprietor, product liability.

## Good Funding System for Election Campaign in Iran in Light of International Criteria

**Mostafa Zamanizadeh<sup>1</sup>**

*Public Law Student, the Islamic Azad University, Science and Research Branch, Tehran, Iran*

**Asadollah Yavari<sup>2\*</sup>**

*Associate Professor, Faculty of Law, Shahid Beheshti University, Tehran, Iran*

**Mohamad Jalali<sup>3</sup>**

*Associate Professor, Faculty of Law, Shahid Beheshti University, Tehran, Iran*

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### Abstract

Nowadays, fair elections are impossible without controlling the flow of money in elections all around the world. To control money in the electoral process, there are three types of financing campaign systems, including public, private, and a hybrid system which are made up of various tools and mechanisms such as restrictions and prohibition of costs, restrictions and prohibitions on contribution, and transparency of financial transactions. Despite the fact that, like other countries, money as a negligible factor in the electoral process has caused election-related political scandals in Iran, no actions have taken place to amend laws to establish a campaign financing system so far. While financial-political scandals have been the driving force behind electoral reform in many countries, a look at Iran's electoral law reveals a tangible gap in this regard. In this research, the authors attempt to provide a descriptive-analytical approach towards answering the research questions :a. what is the optimal pattern of financing electoral campaigns in Iran?, b. what are the features of this optimal model? The electoral campaign financing system operates within an environment that is closely linked to other circuits, meaning that the precondition for the establishment and success of this system requires changes in other relevant circuits including the rule of law as a key factor of good government, transparency of information, free access to information, independence and freedom of the media and civil societies, the existence of political parties and party activities, independent and specialized electoral law court and conflicts of interest which undoubtedly make it difficult to structure an optimal financing system. The general election policy is another obstacle in Iran, which, as an upstream document, leaves many of these efforts inefficient due to contradictions;

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1. Email: mostafa.zamanizadeh44@gmail.com

2. Corresponding Author, Email: yavariamir@hotmail.com

3. Email: mdjalali@gmail.com

certainly, the political will to change and electoral law reform are of the most important areas in the general system. In case of some changes in these areas, the favorable model of the Iranian financial system is a mixture of private and state aid reliance system because, in Iran, there is no private contribution and political party incomes through membership etc. In the current situation, political parties have little relevance to political activities in Iran in comparison to other countries. Therefore, the focus should be on individual candidates; and parties should be financed solely for current and routine activities such as staffing costs, etc. In addition, government assistance should not be allocated to their campaign activities in the condition of lack of criteria and effectiveness indicators. The focus of control tools in Iran should be on cost restriction and prohibition because firstly, costs are more controllable than aid. Secondly, cost constraint leads to lower costs. Thus, it reduces dependency on donors and the need for aid. Thirdly, Iranians are not acculturated with aid, especially small-aid. At the same time, large-scale and legal aid, which can lead to corruption and which are not usually provided without political and economic considerations, should be strictly regulated. For the financial exchanges to be clearly comprehensible, as a main regulatory tool, the public disclosure of financial transactions is essential. All of these regulatory tools are implemented by an independent, specialized supervisory body that can appeal its decisions to a higher authority.

**Keywords:** good system, financing system, election campaigns ,regulatory instrument.

# **Analysis and Assessment of Capability for Applying Open Source Legal Approach Innovation Development Model in Biotechnology Context based on User Innovation Theory with Universal Viewpoint**

**Seyyed Hasan Shobeiri Zanjani<sup>1\*</sup>**

*Associate Professor of Intellectual Property Law at Qom University, Qom, Iran*

**Jafar Nezamolmolki<sup>2</sup>**

*PHD in Private Law from Qom University, Qom, Iran*

Received: 2019/04/13 - Accepted: 2019/06/17

## **Abstract**

Enforcement of open source approach in software context has been a positive and efficient experience. Nevertheless some doubts about efficiency and desirability of this approach for legal protection of biotechnological innovations have been posed. Meanwhile On one hand, the first and the most fundamental action in assessment of applying this approach in biotechnology context, is explanation, analysis and compliance of its bases with innovations of this field; on the other hand considering the objective and practical notion of subject-matter, practical bases - particularly innovation development model- have a special situation in aforementioned assessment. Purpose of this paper , using library research method and statistics and real examples is analysing and assessment of capability for compliance and applying open source legal approach innovation development model, known as "user innovation theory", in biotechnology context .

Stickiness of information, heterogeneity of user's need, Free revealing, Collective invention, Peer production and Community support are conditions which capability of applying and compliance of user innovation theory, as innovation development model in open source legal approach, for biotechnology field is based on them.

Because of novelty, variable and perfectible notion of modern biotechnology as to information's notion Stickiness of information exist in here and even applying intellectual property cause and enrich the character in this field. Extent of biotechnology's scope, multi aspect and complicated notion of modern biotechnology innovation and necessity for attention to probable effects of them lead to Stickiness of information. Free revealing in biotechnology field will be possible

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1. Corresponding Author, Email: shshobeiri@yahoo.com, Fax: +982532103622

2. Email: jafarnezamolmolki@gmail.com



by equating source code to variance as to name of sequence, DNA Sequence in FASTA format. Necessity of innovative information revealing and depositing of a genetically modified microorganism prove possibility and capability of access to substitute of source code in biotechnology field. Lack of confidence to innovation, technological change or other opportunities for sharing information and also desirable level of standardization which could create Collective invention, totally exist in biotechnology field. Historical background for sharing in biotechnology field and successful experience and effect of this procedure on reducing costs for innovative activities and also fundamental and vital notion of human's need to biotechnology and it's innovations prove capability and even desirability of sharing information. Finally community support exist in biotechnology field in desirable and efficient level.

Based on the results of this research, in biotechnology context, all of user innovation theory conditions exist and in conclusion this theory, as open source legal approach innovation development model, is compliant and applicable in relation to biotechnological innovations. Indeed improving in membership conditions for open source biotechnology institution and networks and free revealing element will be efficient in this field.

**Keywords:** innovation development model, open source legal approach, user innovation theory, biotechnology.

## The Expansion of Electronic Letters of Credit in International Trade: Challenges and Solutions

**Amir Sadeghi Neshat<sup>1</sup>**

*Associate Professor, Faculty of Law and Political Sciences*

**Hossein Bagherinia<sup>2\*</sup>**

*LLM, Intellectual Property Law, University of Tehran*

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### **Abstract**

Today, paper-based letters of credit are common, despite the expansion of modern technology and communication. By considering the latest achievements in communication technology, and to slow-down the decreasing popularity of documentary credits, the International Chamber of Commerce (ICC) ratified the Uniform Customs and Practices for Electronic Documentary Credits (e-UCP) to encourage traders and bankers to employ electronic letters of credits (e-LCs). However, the current technical and legal problems of e-UCP have made the e-LCs useless in international trade. The current study presents a comparative analyses of e-LCs, in order to find the barriers of e-LCs expansion in international trade by using cloud computing and by presenting an amendment to the e-UCP.

**Keywords:** Electronic Letters of Credit, e-UCP, Cloud Computing, International Trade, Electronic Commerce.

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1. Email: asneshat@ut.ac.ir

2. Corresponding Author, Email: Bagherinia@ut.ac.ir, Fax: +982166498576

## A Comparative Study on Collateral Contract in English & Iranian Law

**Habib Talebahmadi<sup>1\*</sup>**

*Assistant Professor, Department of Islamic and Private Law of Shiraz University, Shiraz, Iran*

**Mohadese Eftetahi<sup>2</sup>**

*Ph.D Student of Private Law of Shiraz University Shiraz, Iran*

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### **Abstract**

A collateral contract is contract which co-exists side by side with the main contract, connected with it and at the same time independent. For example, a collateral contract is formed when one party pays the other party a certain sum for entry into another contract. Thus, the two contracts are connected and it may be enforced even though it forms no constructive part of the main contract. A collateral contract may be between one of the main contract's parties or a third party, it can usually be epitomized as follows: a collateral contract is one that induces a person to enter into a separate "primary" contract. It can thus provide a remedy for pre-contractual statements. For example, if A agrees to buy goods from B that will, accordingly, be manufactured by C, and does so on the strength of C's assurance as to the high quality of the goods, A and C may be held to have made a collateral contract consisting of C's promise of quality given in consideration of C's promise to enter into the main contract with B. Collateral contracts here is a way of evading the privacy of contract doctrine, which provides that a contract cannot impose obligations or confer rights on a non-contracting party. The promisor must have expressly or impliedly requested about the main contract and his promissory statement must have intended to induce the entry of the other party into the main contract. Collateral contracts are also Known as an exception to the "Parol Evidence Rule" The rule also prevents parties who have reduced their agreement to a final written document from later introducing other evidence, such as the content of oral discussions from earlier in the negotiation process, as evidence of a different intent as to the terms of the contract. This type of contract is usually made before or simultaneously with the main contract.

A collateral contract is often made because 1)Its terms conflict with those of the main contract and the evidence rules take precedence and thereby allow oral statements to be enforced as collateral contracts, 2)The main contract is wrongly

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1. Corresponding Author, Email: Talebahmadi@shirazu.ac.ir, Fax: +987136260421

2. Email: m.eftetahi@shirazu.ac.ir

drawn and has been written incorrectly .or 3)There is a difference in the contracting parties, needing to involve a third party. In order to recognize an agreement to be collateral, the Restatement requires a different subject matter. An essential ingredient required to establish the collateral contract is that the statement made by the promisor must be of a promissory nature, not a mere representation, and there must be reliance by the party alleging the existence of the contract.

Consideration in Collateral contract is mostly entering into main contract and the act of entering into the main contract provides consideration for the Collateral contract. A collateral agreement will not be found if the court considers that the written contract was intended to embody the entire agreement between the parties. It is controversial whether courts should enforce a collateral agreement inconsistent with the terms of the main agreement and of which the effect would be to contradict the terms of a principal written agreement or not.

In Iranian law the concept of Collateral contract is not known but there is no obstacle to accept it. By it contractual compensation is provided for plaintiff and the courts may at any time determine the independence of terms or representation based on the parties' intent and identify the collateral contract.

**Keywords:** pre-contractual statements, Main contract, Collateral contract, Implied contract.

## Domestic Violence against Women: A Comparative Study of Levirat and Sororat from the Perspective of Law and Culture

Jamshid Gholamloo<sup>1\*</sup>

*Assistant Professor, Faculty of Law and Political Science, University of Tehran, Tehran, Iran*

Sahere Sokouti Aliabadi<sup>2</sup>

*M.A in Iranology and Culture, Guilan University, Guilan, Iran*

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### Abstract

Violence is not just a legal concept, it is also a social and psychological concept that sometimes needs to be analyzed in a multi-disciplinary approach for a deeper understanding. Various social, political, and economic factors are responsible for the violence, but in some cases the violence is purely cultural. Violence against women has several types that most notably is domestic violence. Previous studies have shown that violence against women is not only influenced by individual (biological and psychological) factors, but sometimes by the cultural context. In fact, culture, which by its nature should facilitate the problems of (women) life, sometimes becomes a cause of harm or problems. For example, some behaviors that are considered violent according to legal and criminological criteria, are normal in the cultural context, and women and local society members have also accepted them as a norm. In this article, domestic violence against women was analyzed based on the factor of culture. The main question is “Does the normalization of violent behavior in a particular culture, remove the legal and criminological character of violence?” To answer this question, in a qualitative study with a case study method, the marriage patterns of the Levirat and Sororat in Guilan were analyzed. The findings showed that this pattern of marriage, which has cultural support and is commonplace by the family and members of the local community, imposes multiple harm to women. Therefore, from a legal point of view, such a cultural tradition can be an example of violence, except in cases where the parties are factual free to marry. According to the experiences of the samples, those patterns of marriage legally and criminologically are considered as a violence. Violence is not a subjective matter. Violence is violence, even if it be considered normal in the cultural context of a community. It seems when violence is created and supported in the context of culture, the most effective solution to it is to change cultural patterns that no longer have the necessary function in society.

**Keywords:** Domestic Violence, Culture, Women’s rights, Levirat, Sororat.

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1. Corresponding Author, Email: Jamshid.Gholamloo@ut.ac.ir, Fax: +982166498577

2. Email: ssokooti@yahoo.com

## The Best Interests of Children with Disabilities in the Light of Iranian Laws and International Instruments

Maryam G. Bafghi<sup>1\*</sup>

*Assistant Professor of Law, Kharazmi University, Tehran, Iran*

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### Abstract

#### Introduction

War, poverty, genetic diseases, lack of hygienic, malnutrition, etc. are usually considered as congenital and non-congenital causes of disability. The results are social isolation, discrimination, and violence. A disabled child based on a rather permanent deflection in his body or psych is more prone to vulnerability and thus demand special protection and support. In 2018 Iranian legal system ratified the Act of “Protection of Disabled’s Rights (PDR)” in the parliament after its joining to the Convention on the Rights of Persons with Disabilities (CRPD)”, in 2008. “Convention on the rights of the child1989 (CRC)”, CRPD and the new ratified Act are the main legal documents on disabled people in Iran. Article 3 of the CRC introduced the best interest of the child as a determining factor in the decisions related to the children. All the authorities in this field should consider this principle as a primary consideration. The paper aims to evaluate disabled children's situations in the above mentioned legal documents with the BIC factor.

#### Discussion

BIC is a flexible concept that can be interpreted in different situations. However, in this paper, the main criteria such as Non-discrimination, respect to privacy and family life, non-violence, right to education are focused. Disabled children experience more discrimination in comparison with their peers based on their special situation. Many live in institutions and orphanages instead of family. They are 3.6 times more likely to be victims of physical violence, and 2.9 times more likely to be victims of sexual violence. Some of the violence applies as a treatment or behavioral improvement via electroshock. Disabled children usually considered as the ones who are not capable of learning. Lack of tutorial instrument is also another problem for their education. Undoubtedly considering disabled child’s BIC need efficient means such as a child’s inherent dignity, individuality, and independence, giving

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1. Email: m.ghanizadebafghi@yahoo.com, Fax: +982166497912

weigh to the child's views, accessibility, and family empowerment. These strategies seem efficient in BIC's improvement and thus are analyzed in this paper.

### **Method**

The research method is descriptive and analytic in which the BIC's criteria and the strategies to consider them are explained and then they are analyzed comparatively in three legal documents in the Iranian legal system.

### **Conclusion**

The PDR has not specified disabled children's rights in a special part while the two other documents have mentioned their situation. PDR has a general and merely protective approach and its regulation is not design for empowerment. CRC and CRPD, on the contrary, have tried to recognize a disabled child as a member of the society by his special capacities and restrictions. This is spotlighted on the education issue. While on the PDR exclusive education is suggested, inclusive education and the child's appearance in normal schools to live among other peers has emphasized in CRC and CRPD. The two approaches of "Education to the children" and "Education for the children" as supplementary points are ignored in PDR. It seems that the protective approach of PDR and its inattention to disabled child independence, individuality, and the child's views is against BIC. Moreover, the comparison of the three legal documents shows that CRPD is more attentive to the BIC's criteria and PDR has the most gaps. This Act is a recent ratified document in Iran and many practical problems are not clarified yet. Hence, its coordinator and monitoring committee's report will be important and considerable.

**Keywords:** Convention on the Rights of Persons with Disability 2006, Protection of Disabled Act 2018, Convention on the Rights of the Child 1989, Best Interests of the Child.

## **A Comparative Study of Some Reported Items in the Reports of HRC Special Rapporteurs on the Situation of Human Rights in Iran with Iranian Legal System**

**Mostapha Fazaeli<sup>1\*</sup>**

*Associate Professor, International Law Department, Qom University, Qom, Iran*

**Masoud Ahsannejad<sup>2</sup>**

*Ph.D. Student of International Law, Qom University, Qom, Iran*

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### **Abstract**

The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advice on human rights from a thematic or country-specific perspective to the council or in case of request to the General Assembly of the United Nations. The situation of human rights in Iran has been raised both in Human Rights Commission and its successor Human Rights Council after the Islamic Revolution in Iran. Three rapporteurs i.e. Ahmad Shaheed, Asma Jahangir and Javid Rahman have so far been appointed to report on the situation of human rights in Iran which in result- to date- seven reports have been delivered to the Council and the General Assembly. The main idea in this article is to find an answer-irrespective of the claims made by Iran on the politicized and selective orientation taken by the Council in appointing the rapporteurs- to the questions that what kind of relation is dominant on the reports of the special rapporteurs on the situation of human rights in Iran and whether the human rights framework in Iranian legal system is compatible with the international legal system on human rights or not. As hypothesis of the article, the authors believe that the relation between these two is a challenging one. In some cases –discussed under the title of challenges as to the bases of Iranian legal system- the challenge is so high that in no way any reconciliation between the reports and Iranian legal system is imaginable. In other cases, the challenge is not so critical as that, and is mainly based on misacting or not complying with the Constitution and badly enacted Acts.

### **1. Challenges as to the bases of Iranian legal system- No Compliance is expected**

Two main subjects are discussed under this title i.e. the Religious Minorities not

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1. Correspondent Author, Email: m-fazaeli@Qom.ac.ir, Fax: +982532854499

2. Email: Masoud\_ahsannejad@yahoo.com



recognized in the Constitution of Islamic Republic of Iran and the Sexual Minorities. Regarding the religious minorities recognition is not possible due to the provisions contained in articles 4, 91 and 13 of the Constitution which limits the bases of granting rights, parliamentary enactments and recognition of religious groups to Islamic rules. However, Iran has insisted in its national reports to UPR on the citizen rights of all religious minorities whether recognized or not in the constitution. This is mainly based on another provision of the constitution i.e. article 23 which explicitly prohibits any investigation into a person's beliefs.

In respect of sexual minorities, the challenge is even more stricter than the previous one. That's why in the core human rights Conventions like other Muslim nations Iran puts reservation on the provisions contrary to Islamic rules.

## **2. Challenges resulted from misacting the provisions of the Constitution- Compliance is expected**

Under this title the rights of ethnic minorities are discussed in the reports and Iranian legal system.

The Constitution has gathered all the Iranians under the title of "Nation" and no discrimination is visible in its provisions as to economic, social and cultural rights. But in practice some shortcomings pave the way to criticism. In respect of civil and political rights discrimination is clear-cut and is rooted in the constitution which puts no way to religious minorities to reach some political positions as describes Islam as the main religion and Shite as the main school of thought.

## **3. Challenges resulted from badly enacted Acts- Compliance is expected**

Crimes against National Security and Drug related Crimes are the selected titles in this part. In crimes against national security there is an ambiguity in the Islamic Penal Code. This ambiguity was the result of generality of titles which included political crimes. By passing Political Crimes Act in 2016 it is hoped that the number of convicts to Crimes against National Security would decrease. Most of the death penalties were the result of drug related crimes. Iran has taken three different stages toward these crimes which the last one is more compatible with international standards.

**Keywords:** Human Rights Council, Special Rapporteurs, Compatibility or incompatibility, Iranian Legal System.

## Judicial Review on the Decisions of the Specific Authorities of the Administrative Hearing in Iran and Lebanon

**Ali Mohamad Fallazadeh<sup>1\*</sup>**

*Assistant Professor, Department of Public Law, Faculty of Law and Political Science, University of Allameh Tabataba'i, Tehran, Iran*

**Roholla Alidadzadeh<sup>2</sup>**

*Ph.D. Student in Public law, Department of Public Law, Faculty of Law and Political Science, University of Allameh Tabataba'i, Tehran, Iran*

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### **Abstract**

Administrative judgment is functionally very similar in Iran and Lebanon. In the highest level of administrative judgment in these two countries, there are two authorities of “Administrative Justice Court” and “the Council of the State”. In both countries, in lower levels of administrative hearing, the specific authorities have special positions and do the dispute resolution and decision-making in various subjects of administrative affairs. These authorities have plenty of types and they do not follow a single judicial law order. The legal system of Iran encounters a chaos in the field of judicial review of “Administrative Justice Court” in the way that sometimes the general courts are the ultimate authority to hear the contest of awards and sometime the “Administrative Justice Court” does so. The AJC does not take a unique judicial procedure in processing the verdicts of these authorities and a divergence of decisions is observed in this regard.

The main purpose of this research is to compare the judicial review on the decisions of the specific authorities of administrative hearing in these two legal systems. The methodology of the research is comparative and descriptive-analytical. The most important finding of this study shows that the “Administrative Justice Court” of Iran unlike the “Council of the State” of Lebanon, has not accepted its competency about all the specific authorities of administrative hearings.

**Keywords:** Judicial review, Specific authorities of the administrative hearing, The Administrative Justice court, The Council of the state.

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1. Corresponding Author, Email: amfallahzadeh@atu.ac.ir, Fax: +9864455150

2. Email: r.alidadzadeh@atu.ac.ir

## A Comparative Study of the Fiscal Arrangements of Petroleum Contracts and Benefits of Oil Producing Countries

**Abbas Kazemi Najafabadi<sup>1</sup>**

*Assistant Professor, Private Law, Faculty of Law and Political sciences, Allameh Tabataba'i University, Tehran, Iran*

**Mehdi Naseri<sup>2\*</sup>**

*Ph.D Student of Management of Oil and Gas International Contracts, Allameh Tabataba'i University, Tehran, Iran*

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### **Abstract**

Fiscal system of upstream petroleum contracts is a set of tools and elements such as royalties, bonuses, taxes, production sharing and fees that determine how the revenues from petroleum resources are divided between the International Oil Companies (IOCs) and the government. Which fiscal tools and elements to be employed in a petroleum contract depends on numerous considerations. By implementing a descriptive-analytical method of research, this study aims to review the main characteristics of fiscal arrangements in some of the major oil producing countries (including Norway, United Kingdom, Russia, Brazil, Venezuela and Iraq) and represent the effective factors on host governments' tendency in applying different types of fiscal features in their petroleum contracts. Subsequently, the status of the new Iranian Petroleum Contract (IPC) to be analyzed in this respect. So from this point of view and regardless of the type of applied petroleum contracts (i.e. concessions, production sharing contracts and risk service contracts), there are many considerable differences in the nature of fiscal tools applying in petroleum contracts of different countries which reflects the country's economic conditions and degree of its dependence on oil revenues and also supervisory power of government.

Analyzing the petroleum contracts of viewed countries shows that depending on economic situation, macro-fiscal policy and development objectives, oil producing countries have different priorities in their contracts. Countries with economy's dependence on oil resources seek different level of upfront revenue streams. So, they apply some fiscal terms such as considerable amount of royalties and bounces which provide an early form of revenues from the early stages of a petroleum contract. A number of local taxes are also implemented in some oil dependent countries in order

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1. Email: abaskazemi@gmail.com

2. Corresponding Author, Email: mahdi-naseri@nioc.ir, Fax: +982188937140

to develop their deprived areas. Furthermore, because of poor administration and supervision of government, applying transparent fiscal features with simple calculation basis so that the required payments are easy to determine and audit are more common in these countries in order to mitigate corruption. Thus, fixed-rate royalties, simple separate taxes, low cost limits, per barrel fee and so on, are widely used in their contracts.

On the contrary, the main focus of developed countries with good quality of administration is on maximizing the value of government revenue from petroleum projects in different economic conditions through variety of fairly complex fiscal arrangements such as complex income taxes with a wide variety of tax credits and allowance. All issues relating to environment protection are also clearly defined in the contracts of these countries.

**Keywords:** Petroleum Contracts, Fiscal Tools, Benefits Split.

## Methodology of Comparative Law

Elaheh Mohseni<sup>1\*</sup>

*Ph.D. in Private Law, Jean Moulin Lyon III University, France*

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### Abstract

The value of findings of comparative studies and their efficacy largely depend on research methodology. Therefore, one of the main issues in comparative law is understanding different research methods and approaches. Questions and debates related to research methods in comparative law were raised for the first time in the late 19<sup>th</sup> century by German lawyers. It was then followed and expanded by researchers in other countries, especially France, Italy and the United States; and along with the development of other sciences, new approaches to comparative law were increasingly developed. In Iran, however, the field has been very limited and largely confined to practical and scattered advices on how to do comparative law research.

In this paper, I try to introduce different qualitative and quantitative methods of comparative law research, with the focus on the state-of-the-art methods. The main methods (or approaches) of comparative law researches are the following: legislative method, descriptive method, evolutionary approach, conceptual method, functional method, factual method, textual approach v. contextual approach (the law-in-context method), historical method, method of classification of legal families, common core method and quantitative methods in comparative law as economic approach or statistical approach to comparative law.

I then describe the main steps necessary to comparative law research, existing and potential problems at every stage and ways to deal with them. There are five principle steps: definition of research topic and methodological approach, description, identification (comparison), explanation and finally evaluation and proposition.

Understanding different methods and steps of comparative legal research helps comparatists achieve their goal. With the expansion and development of sciences, in particular interdisciplinary sciences, including legal linguistics, law and political economy, legal psychology, sociology of law and anthropology of law, new approaches are also applied in comparative law that help jurists to better understand legal issues through their scientific analysis and evaluation, and to find more effective legal rules and solutions. In this way, the range and scope of comparative law researches is constantly expanding. Introducing and applying these effective and various methods and approaches to comparative law by Iranian jurists and comparatists would lead to enhance juridical knowledge and improve domestic legislation.

**Keywords:** Comparative law, methodology, steps of comparative study, research method, interdisciplinary approach.

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\* Email: mohseni.e85@gmail.com, Fax: +982166497912

## Waste Crimes in Iran and the United States of America: Smuggling and Illegal Disposal of Nuclear Wastes

Seyed Mustafa Meshkat<sup>1\*</sup>

*Graduated with a Ph.D. Degree in Criminal Law and Criminology at the Islamic Azad University of Qeshm*

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### Abstract

Waste crime is a new topic in the criminal law, which has a significant part of environmental crimes. Environmental crime has a wide range of environmental impacts, The most important of these effects are pollution. In this respect, waste crime as an environmental crime can cause extensive pollution. However, some waste such as nuclear waste, is more dangerous and more polluting. In fact, nuclear waste is dangerous to the environment because of its radioactive material. In this context, smuggling and illicit disposal of nuclear waste are among the most important aspects of waste crime. In fact, the radiation power of nuclear waste and its environmental impact have made it necessary to combat smuggling and illicit disposal of nuclear waste. In this regard, combating against the aforementioned acts require that the legislative system organizes in a proportionate manner. On this basis, it is appropriate to establish clear and transparent rules for the export, import, and disposal of nuclear waste and criminalizing each of these acts of smuggling and the illegal disposal of nuclear waste with the creating of proportionate punishments. Therefore, by studying the Iranian and federal legislation of the United States, it was discovered that Iranian legislator, in addition to not creating an updated and integrated regulation on nuclear waste management, has not yet to make appropriate criminal responses to the illegal disposal of the wastes. On the other hand, the federal legislator of the United States has adopted an appropriate approach to both nuclear waste management and the smuggling and illegal disposal of them. Therefore, during this paper, it attempts to study and analyze the criminal laws of Iran and the United States about the smuggling and illicit disposal of nuclear waste.

**Keywords:** Environmental crime, waste crime, nuclear waste, smuggling and illegal disposal of nuclear waste.

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1. Corresponding Author, Email: MustafaMeshkat@yahoo.com, Fax: +985138403281

## Comparative Study of Deprivation of Nationality in European Countries and its Conformity with International Human Rights Law (2012-2017)

**Reza Mousazadeh<sup>1\*</sup>**

*Associate Professor of International Law, School of International Relations, Tehran, Iran*

**Sepideh Darabi Rad<sup>2</sup>**

*M.A Graduated of Diplomacy and International Organizations, School of International Relations, Tehran, Iran*

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### Abstract

The concept of “Deprivation of Nationality” is the opposite of granting nationality and it refers to unilateral act by state in order to cut the nationality relation as a punishment against the citizen’s offenses and crimes. Although the law of deprivation of nationality is determined within the domestic law of each country, But the legitimacy of deprivation of nationality is conditional on observing International Human Rights Law. International rules have been identified which limits the competence and authority of states and if they don’t observe these rules on deprivation decision, it will consider arbitrary and illegitimate. These rules are including “prohibition of discrimination, prohibition of statelessness, and prohibition of deprivation against procedural standards ”.

In the summer of 2012 first reports emerged of so-called “Foreign Fighters” leaving their residence countries to join ISIS. The International Centre for the Study of Radicalization and Political Violence estimates that some 4,000 foreign fighters from Western Europe have joined ISIL. As the fighters join ISIL, many terrorist attacks took place in Europe. So the European countries including France, Belgium, and UK tried to extend the authorities of deprivation of nationality. Here’s a look at the rules on deprivation of nationality in UK, France and Belgium and the amendments they implemented after terrorist acts, and then the compliance of these rules with the provisions of international human rights will be reviewed.

The basis of nationality law in UK is The British Nationality Act 1981. After the emergence of foreign fighters phenomenon, section 66 of 2014 act amended section 40 of 1981 act which enable home Secretary to deprive person of British nationality whether or not it will render them statelessness where the person acquired

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1. Corresponding Author, Email: rmousazadeh8@gmail.com, Fax: +982122802747

2. Email: darabi.sepideh2@gmail.com

nationality as a result of naturalization and conducted in a manner seriously prejudicial to the vital interest of UK. The government response to those jihadists who had only British nationality, due to protection against statelessness, was “Temporary Exclusion Order” that prevents individuals from returning without permit of Secretary of State.

In France, citizenship deprivation is regulated by French Civil Code that sets down the rules for acquisition and loss of nationality. Citizenship deprivation is applicable only to naturalized citizens and citizens who are dual-national. The law of 2014 criminalized the individual perpetration to commit a terrorist act and other crimes related to terrorism. The new article 34 provides that we have an alternative for loss of nationality in cases that individual are single national and depriving them of nationality will render them statelessness, and that is deprivation of “The rights attached to nationality”( which comprises of civic rights) due to prevention of statelessness.

Deprivation of Belgian nationality are regulated by article 8 and 9 of the constitution and by the Belgian Nationality Code ( BNC). Starting in 2012, in a series of rapid changes the legal framework for deprivation was altered. A first modification was brought with the act of 4 December 2012 that makes it difficult to acquire Belgian nationality and also strengthened the provision on deprivation; a new article 23 made it possible to deprive a person of nationality in case of conviction for terrorist crime and sentenced to at least 5 years imprisonment. The mechanism of deprivation of nationality was extended to new terrorist crimes and there is no time limit about deprivation. Article 23 of BNC contains no provision that any deprivation should not take place if this would render the individual stateless. This would be contrary to article 7(3) of the European nationality law, The 1961 Convention on Reduction of statelessness and article 15 of Universal Declaration on Human Rights, which permit this only where the person acquired nationality by fraud.

Results of this investigation suggest that the three aforementioned countries have implemented significant reforms to expand the powers of deprivation of nationality. However, these countries have taken different paths in their reforms and, therefore, their compliance with the provisions of international law have not been the same. UK and France, while expanding powers of deprivation of nationality, have tried to observe the principle of avoidance of statelessness, and have resorted to other forms of punishment with regard to terrorist convicts with single nationality, unlike Belgium which has made no provision to guarantee the avoidance of statelessness in its reforms.

**Keywords:** deprivation of nationality, terrorism, human rights, Europe, statelessness.



## Comparative Study of Conditions of Candidate in Parliament of Islamic Republic of Iran and the Wolesi Jirga of Afghanistan

**Ayat Mulaee<sup>1\*</sup>**

*Assistant Professor, Law Department, Bu-Ali Sina University, Hamedan, Iran*

**Mahdi Manawi<sup>2</sup>**

*MA. In Public Law, Bu-Ali Sina University, Hamedan, Iran*

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### Abstract

Democratic systems are based on different conditions and contexts, It is impossible to imagine such a system without them. Like these fields, there are conditions for a healthy competition between the parties and the various candidates for the elected office of the country. Including conditions for healthy and democratic competition, the availability of the principle of equality of persons with access to government offices and people's equal right to self-determination and the principle of non-discrimination are inadequate. In election law, the required conditions of how to nominate a candidate in an election and the category of "candidates for elections" is one of the most important issues in electoral systems. This situation reflects the importance of the issue of the conditions of candidates. Looking at the electoral system in parliament of Islamic Republic of Iran and the Wolesi Jirga of Afghanistan indicates that the legislator of both countries has predicted some conditions for the parliamentary elections. Constitutional Law of the Islamic Republic of Afghanistan, has identified being elected alongside the right to vote as a fundamental right for the citizens of Afghanistan (Article 33) But this right is an absolute right, Rather, it is bound by conditions. Similarly in Iranian constitutional law, the administration of state affairs is based on public will Which is done through elections: the Majlis and so on (Article 6) Hence the various principles of the constitution as well as numerous Acts and regulations has dealt with the issue of elections and Have specified the process of conducting the elections.

This paper, from a comparative perspective and using the analytical–descriptive method, has tried highlighting while examining the similarities and differences between parliamentary elections: parliament of Islamic republic of Iran and the Wolesi Jirga of Afghanistan, Major damages caused by the electoral system of the Wolesi Jirga and the Islamic Consultative Assembly. At the end, it has been

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1. Corresponding Author, Email: a.mulaee@basu.ac.ir, Fax: +988134248056

2. Email: Mehdiqaderi862@gmail.com

concluded that: first, Iran's electoral system about candidate has determined at the same time, the "objective" conditions, such as: age condition and the "subjective" conditions, such as: belief in Islam. But the Wolesi Jirga electoral system has followed "objective" terms. In this respect, the "right to vote" is more complex in Iran's electoral system. Second, Legal system of Iran by identifying the condition of having a degree of education is leading of the electoral system in Afghanistan. In return, Afghanistan's Wolesi Jirga electoral system with prediction clause: "Payment of a specified amount and approval of a thousand people" for the candidates has prevented from imposing a futile expense to "bite- almale" and from this point of view the electoral system of Afghanistan is far ahead of Iran's electoral system. Third, the two systems have common borders in terms of citizenship, age and non - criminal record. In other words, Afghan and Iranian lawmakers have followed a common path with few differences. However, the Iranian legislator seems to be tightening up. Fourth, though both institutions: the Islamic Consultative Assembly of Iran and the Afghan Parliament, have the electoral system and so they have the character of a "republican" system" but it must be acknowledged that they are far from reaching the desired point in the electoral system. Fifth; to reach and consolidate the gates of democracy, we have to accept democratic norms and in that sense, both legal systems: Afghanistan and Iran, have to accept the demands of democracy Otherwise, the space for reconciling indigenous values with new and emerging values will continue to refuse.

**Keywords:** Parliament of Islamic Republic of Iran, the Wolesi Jirga of Afghanistan, Elections, Candidate, Vote.

## A Study of Gain-Based Damages for Breach of Contract in Common Law and Iranian Law

**Esmail Nematollahi<sup>1\*</sup>**

*Associate Professor, Faculty of Law, Qom University, Qom, Iran*

**Maryam Sadat Seyyed Ali Routeh<sup>2</sup>**

*Phd. Student of Private Law, Qom University, Qom, Iran*

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### Abstract

Breach of contract and damages for it are among the main discussions in the law of contracts. The breach might occur in several ways such as non-performance of contract, delay in performance and delivery of defective goods. Common law system has developed different remedies to face with the breach, the most important one of them is damages. In a general division, damages are divided into two groups: loss-based damages and gain-based damages. The most important kind of damages for breach of contract are expectation and reliance damages which fall within the loss-based damages group and seek to compensate the plaintiff. Gain-based damages, however, aimed at the benefits received by the defendant from his breach and not at the loss suffered by the plaintiff as a result of the breach, and are designed to deprive the defendant of those benefits.

The article tries to introduce this remedy in Common Law system and to give a brief account of its position in Iranian law. The distinguishing feature of gain-based damages is that it does not pay attention to the plaintiff's loss and whether the interest or value of the plaintiff asset has been transferred to the defendant assets, but to the profits that violator of the contract has received from his wrongful behavior.

Different bases have been mentioned for this damages but the best and most important of them is deterrence. It means that this damages prevents a defendant from profiting from doing wrong and ensures that both the defendant and the others who might be in a similar position are deterred from committing that type of wrong behavior where profit might be a motive or encouragement.

There are two methods for measuring this kind of damages: objective measure and subjective measure. The former pays attention to the objective value of the profit received by the defendant. According to the latter measure, the defendant must disgorge the actual profits he has received through the breach of contract.

There are limitations and conditions such as factual causation, legal causation and foreseeability for demanding gain-based remedy. Especially remote profits

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1. Corresponding Author, Email: Esmail\_nematollahi@yahoo.com, Fax: +982532103627

2. Email: m.seyedali64@gmail.com

cannot be demandable and "but for" test normally applied in this regard.

The study shows that this kind of damage is acceptable in a narrow scope in Iranian law and to such an extent that it is inconsistent with the proprietary right of the innocent party.

**Keywords:** breach of contract, contractual liability, compensatory damages, gain-based damages, loss-based damages.