

The Effectiveness of Behavior Monitoring Criteria and Discriminatory Rules in the International Human Rights System with a Glance to Religious Teachings.

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DOI: 10.22096/HR.2023.562266.1507

[Received Date: 17/09/2022 - Accepted Date: 22/01/2023]

Abstract

At the first glance, discrimination concept is so clear that no other clearer definition could be presented but its own definition. But in practice, it turns into a complicated and unresolved issue. Some rules are not apparently discriminatory but they lead to some discriminatory effects. Sometimes, internal intentions turn neutral actions into discriminatory behavior and some other times, positive measures which have been adopted to be compatible with equality turn into discriminatory behaviors in the end. It is essential for human right organizations and institutions and a main goal for the current research to present an evaluation criterion to determine whether a legal regulation or an action is discriminatory or not.

In this research, three evaluation models (the model based on deontological point of view, the teleological model-trace consequences- and finally the model based on religious teachings-Islamic view) have been presented which have been successful to recognize real discrimination. This research has analyzed the human right documents and popular points of view in international courts.

Ke words: Anti-discrimination rights; Equality; Deontology; Teleology; goodwill; good behaviour or deed.

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Bibliography

Holy Quran

African Charter on Human and Peoples' Rights (1981).

Alemzade, Noori, Mohammad. "meyarhaye arzesh raftarhaye jozee dar manabee eslami." *Journal of morality* 11, no. 40 (summer 2018): 27-46. [In Persian]

Alidost, Abolghasem. "Tabaeat ya Adam Tabaeat Ahkam Az Masaleh va Mafased Vaghee." *Journal of fegh va hoghogh* 6, no. 2 (autumn 2005): 9-32. [In Persian]

American Convention on Human Rights (1969).

Bagheriyan Khozani, Mohammad, and Mahmood Rajabi. "Taasir niyat bar arzesh akhlaghi amal az didgah Quran." *Journal of Quran shenakht* 14, no. 2 (autumn & winter 2014): 95-114. [In Persian]

Bindschedler, Rudolf L, Thomas Buergenthal, Karl Doehring Jochen ABR, Frowein, Gunther Jaenicke, Herbert Miessler, Hermann Mosler, Fritz Munch, Daniel P. O'connell, Karl Josef Partsch, Pierre Pescatore, Henry G. Schermers, Ulrich Scheuner t- Hans-Jurgen, Schlochauer, Max Sorensent, and Helmut Strebels. *Encyclopedia of Public International Law*. Netherlands: Elsevier Science, 1991.

Borchert, Donald M. *Encyclopedia of Philosophy*, Second edition. Thomson Gale, 2006.

Case of Anguelova V. Bulgaria (Application no. 38361/97), (13 June 2002).

Case of S.A.S. v. France (Application no. 43835/11), (1 July 2014).

Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, U.N. Doc. CERD/C/59/Misc.17/Rev.3 (2001).

Constitutional Council, Decision no. 2010-613 DC of 7 October 2010. Available at: "Human rights" accessed August 05, 2022, <https://www.conseil-constitutionnel.fr/en/decision/2010/2010613DC.htm>.

Convention on the Elimination of All Forms of Discrimination against Women (1979).

Council of Europe and European Union Agency for Fundamental Rights. Handbook on European non-discrimination law, Luxembourg (2011). <https://doi:10.2811/11978>.

Crawford, James. *Brownlie's Principles of Public International Law*. 8th Edition, trans. Mohammad Habibi Mojandeh. Qom: Mofid University publications, 2017. [In Persian]

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

- E. W. Vierdag. *The Concept of Discrimination in International Law*. Netherlands: Martinus Nijhoff, 1973.
- European Convention on Human Rights (1950).
- European court of human rights. Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention. Prohibition of discrimination (31 December 2020).
- European Social Charter, (1961), and European Social Charter (revised), (1996).
- Farahidi, Khalil Ebn Ahmad. *Ketab Al-Eyne*. Beirut: Dar Al-Helal letabaa va Al-Nashr. [In Persian]
- General Comment No. 18: Non-discrimination, Adopted at the Thirty-seventh Session of the Human Rights Committee (1989).
- Ghortobi, Shams Al-Din. *Al-Jame Le Al-Ahkam Al-Quran*. Cario: Dar Al-Kotob Al-Mesriyah, 1964. [In Persian]
- Haghpanah, Reza. "Edalat Ejtemae dar Quran." *Journal of Islamic social studies* 30 (autumn 2001): 63-90. [In Persian]
- Hermann Chroust, Anton. "Aristotle's Conception of Equity (Epieikeia)." *Notre Dame Law Review* 18 (1942): 119-128.
- Holmes, Elisa. "Anti-Discrimination Rights Without Equality." *The Modern Law Review* 68, no. 2 (2005): 175-194. <https://doi.org/10.1111/j.1468-2230.2005.00534.x>.
- Human rights in the administration of justice: a manual on human rights for judges, prosecutors and lawyers. Office of the High Commissioner for Human Rights in co-operation with the International Bar Association. Chapter 13: the right to equality and non-discrimination in the administration of justice. New York; Geneva: UN (2003).
- Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999).
- Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994).
- International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- International Covenant on Civil and Political Rights, Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966.
- International Covenant on Economic, Social and Cultural Rights, by General Assembly resolution 2200A (XXI) of 16 December 1966.

Joseph, Sarah, and Melissa Castan. *The International Covenant on Civil and Political Rights, Cases, Materials, and Commentary*. Third Edition. United Kingdom: Oxford University Press, 2013.

Kashif Ahmad v. Denmark, CERD/C/56/D/16/1999, U.N Committee on the Elimination of Racial Discrimination (CERD), (8 May 2000).

Mesbah Yazdi, Mohammad Taghi. Review of Moral schools. Qom: Imam Khomeini Educational and Research Institute, 2015. [In Persian]

Nardocci, Costanza. "Equality & non-discrimination between the European Court of Justice and the European Court of Human Rights. Challenges and perspectives in the religious discourse." *University of Milan-Bicocca School of Law Research Paper*, Series no. 18-12 (2018). <http://dx.doi.org/10.2139/ssrn.3301171>.

O'Connell, Rory. "Cinderella comes to the Ball: Article 14 and the right to non-discrimination in the ECHR." *Legal studies* 29 (2009): 211-229.

Ravasiayan kashi, Somaye. *The intersection of discriminations, review of the Convention on the Elimination of All Forms of Discrimination against Women*. Tehran: Shiraze publication, 2009. [In Persian]

Reyshahri, Mohammad. *Mizan Al-Hekmah*. Qom: Dar Al-Hadith, 2007. [In Persian]

Rostami, Hadi. "Taghabol vazifegeravi va ghayayt geraee faeede mehvar dar tojih keyfar." *Journal of criminal law* 14, no. 2 (autumn & winter 2016): 131-155. [In Persian]

Tymowski, Jan. Employment Equality Directive, European Implementation Assessment, European Parliamentary Research Service (February 2016).

Universal Declaration of Human Rights, (1948).

Wood, Nathan. *Virtue Rediscovered Deontology, Consequentialism, and Virtue Ethics in the Contemporary Moral Landscape*. London: Lexington Books, 2020.

Sites:

"Equality Act 2010", accessed June 21, 2022, <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

"Human rights," accessed September 10, 2022, <https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>.

"International law," accessed August 17, 2022, <https://www.un.org>.

"United Nations: Human rights," accessed September 11, 2022, <https://www.ohchr.org>.

"Vocabulary," accessed August 05, 2022, <https://dictionary.cambridge.org/dictionary/english/discrimination>.

- “Vocabulary,” accessed August 05, 2022,
<https://www.vajehyab.com/moein/%D8%AA%D8%A8%D8%B9%DB%8C%D8%B6>.
- “Vocabulary,” accessed August 05, 2022,
<https://www.vajehyab.com/dekhoda/%D8%AA%D8%A8%D8%B9%DB%8C%D8%B6>.
- “Vocabulary,” accessed August 17, 2022,
<https://dictionary.cambridge.org/dictionary/english/positive-discrimination>.
- “Voting Rights,” accessed August 25, 2022,
<https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-rights-restoration/disenfranchisement-laws>.