



APARTHEID: A CONCEPT FROM SEVERAL PERSPECTIVES

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Abstract

Some concepts may be assumed to have a mere historical relevance and studied only as a historical analysis; including to learn from the past. The concept of apartheid can be a clear example of such misapprehension. Because this word evokes the former South African regime whenever being said, heard or read; as if it has no other implication. But the fact is that humanity is never immune to similar ominous phenomena. Therefore, it is important to define the concept of apartheid based on both domestic and international case law as well as Islamic sharia, not only as a historical matter, but also as a human rights violation and a crime against humanity, which can occur anytime and anywhere. This may contribute to verify the incidents of apartheid in different territories and political regimes, especially in currently occupied Palestine and the occupying Zionist regime, and to establish adequate strategies them. The present study was aimed at this goal through desk research methods and descriptive analysis techniques.

Keywords: apartheid, human rights, crime against humanity, racial discrimination, Islamic sharia, Iranian Law

INTRODUCTION

Apartheid in the literal sense

The term apartheid consists of two words; “apart” with a Dutch/French origin, and the Dutch suffix “heid” (equivalent to “hood” in English) denoting a general status pertaining to human life (such as “childhood” and “statehood” which mean being a child or a state respectively)¹. Therefore, apartheid literally means being/having separated, and has engaged in the Latin lexicon as a synonym for discrimination, segregation, separation, bigotry, racism, racialism, narrow-mindedness, and other such words². It has been conceptually defined as “a political regime in which persons of different ethnic groups have distinct political and social rights, and are separated in their lives, excursions, leisure and other activities (Hornloy, 2000:45). Given the historical roots, it is an Afrikaans term standing for “racial separation”, “segregation” or “discrimination” and describes a socio-political system based on racism.

Apartheid in general term

Apartheid in political and legal terminology refers to a specific type of discrimination and segregation between people or social strata on an ethnic basis; such as the case in South Africa and its colonial territory in South West Africa (Namibia). The concept of apartheid represents a type of racial discrimination that reflects the specific historical and legal situation underlying its practice. Racial discrimination has been described by national and international legal instruments as denying the fundamental rights of individuals or groups in a political, economic, social or cultural context and unequal distribution and designation of resources or opportunities based on race, color or ethnic origin; including unequal access to public or private services, facilities, education and employment. International Court of Justice defines racial discrimination as: “constituting and applying distinctions, exclusions, limitations and deprivations merely based on race, color, lineage or national/ethnic origin, which may imply a denial of fundamental human rights.” (ICJ. Reports, 1971, Para. 131). The term was more comprehensively articulated in the International Convention on the Elimination of All

¹- see, etymonline.com/word/apartheid.

²- see, Thsaurus.com/browse/apartheid?s=t ; dictionary.com//browse/apartheid



Forms of Racial Discrimination, as “any segregation, exclusion, limitation or privilege based on race, color, ancestry, or national/ethnic origin, which is intended to or may result in denying or impairing equal recognition, enjoyment or enforcement of fundamental human rights and freedoms in political, economic, social, cultural or other social life contexts” (ICERD, 1965: Art. 1). Such definitions indicate a general understanding of racial discrimination; While the word “apartheid” denotes further implications. Although in many countries, some ethnic or racial groups may be partly deprived of some basic rights such as the right to participate in government, apartheid refers to institutional, widespread or even constitutional prohibition of exercising sovereignty by members of one or more racial groups due to their ethnic origins (Enuga S. Reddy, 1985:1). In other words, “apartheid” describes a political regime based on racism, where individual lives and freedoms are denied on ethnic grounds, and people of one or more specific races are separated from the dominant racial group, settled in disadvantaged areas with poor living facilities, and are subjected to labour exploitation (David Weissbrodt, 1986, 496). As declared by the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (known as the Apartheid Convention), “the crime of apartheid, which shall include similar policies and practices of racial segregation and discrimination as practiced in the [former] south African regime, refers to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group over other racial groups and their systematic oppression:

- a) Denying the right to life and personal freedom of any person of certain racial group(s) through: 1. murdering their members; 2. serious physical or mental harms by violating their freedom and dignity or subjecting them to torture or any cruel, inhuman or degrading treatment; 3. Arbitrary detention and illegal arrest.
- b) Deliberately imposing unfavorable living conditions on certain racial groups, so that results in their complete or partial annihilation.
- c) Legislative measures or any other affair to deprive one or more racial groups from political, economic, social and cultural participation in their country, and deliberately providing for their insufficient development; especially by denying their fundamental rights and freedoms, including the rights to employment, education, citizenship, leave and enter the country, freedom of movement and residence, establish recognized trade unions, freedom of opinion and expression and freedom of peaceful assembly.
- d) Legislative measures or any other affair aimed at racial segregation of the population, by allocating special places to one or more racial groups, prohibiting interracial marriages, and confiscation of properties belonging to certain racial groups or any of their members.
- e) Labor exploitation of members of one or more racial groups, especially through imposing forced labor.
- f) persecution against organizations or individuals opposing apartheid, by depriving them of fundamental rights and freedoms (ICSPCA, 1974: Art.2).

Thus, apartheid consists of a political, economic, social and cultural system, characterized not only by discriminatory treatments but also by an institutionalized racial discrimination in a legal regime based on racial segregation. Accordingly, given the deliberate geographic and social segregation based on race and skin color in the former South African government, it was not simply involved in a racially discriminatory policy, but rather demonstrates apartheid as a distinct type of political regime based on such policies (Dugard, p. 53; Encyclopedia of Public International Law, vol. 8, p.37).

Apartheid is well-known as a derivative word with historical roots in African language, meaning “racial separation, segregation or discrimination” and indicates a socio-political system based on racism. South Africa is one of the most obvious cases, where a white racial minority (mostly immigrants from the colonial era) ruled the country with an overwhelming majority of black population, deprived them of the right to exercise sovereignty and self-determination, and treated them like slaves rather than citizens. This regime was actually the outcome of colonialism in the country, because what happened in 1910 in South Africa was not decolonization and independence from Britain. The independence was granted to the colonizers instead of the colonized, who were neither involved in the negotiations nor listened to, and were consequently further dominated by the



colonial power (Reddy, 1985, p.10). In fact, the apartheid regime totally denied the legal personality of the vast majority of people due to their ethnic origins, deprived them of citizenship and other fundamental rights, and subjected them to extensive, continuous and oppressive racial discrimination.

Background

Discussions about the historical background of apartheid are mainly focused on more than forty years of a South African government, which started in 1948 and ended after the establishment of a democratic system in 1994. The year 1948 coincided with a series of well-defined restrictive legislations passed following the rise of the National Party, together with a small Pan-African party as its alliance partner (Thuli Mphambukeli, 2019, p.3). However, there is no doubt that the legal structure of apartheid or its psychological and social effects did not instantly emerge in 1948 and never ended after the establishment of democracy in 1994 (Peffer, 2009:XVI). While the term is generally used to describe colonial procedures and practices as well as racial discrimination that originated more than 300 years, more specifically, “apartheid” was the result of historical attitudes that had evolved during more than thirty years before 1948 (Mphambukeli, 2019, p.3). However, the genesis of apartheid in South Africa was particularly initiated by the codified law and customs in the four colonies that formed the Union of South Africa in 1910; including Cape, Natal, Orange Free State and Transvaal. Accordingly, apartheid has been considered a pervasive form of racial segregation based on previous legal and customary discrimination.

Following the victory of the Nationalist Party about four decades after the Union of South Africa was established, racial discrimination had deeply penetrated the political, economic and cultural system of South Africa, and when Dr. Daniel Malan eventually took power in 1948, apartheid was introduced as a new model of race relations supposed to achieve separate development of each racial and ethnic group based on mutual respect for other cultural identities. However, as the vast majority of the international community and even white critics of apartheid believe, this system did not progress in line with the asserted claims and premises, and contrarily led to complete exclusion of the black population from political participation in the Union (Encyclopedia of Public International Law, vol. 8, p.38). Racial segregation is a policy enforced in the early 1950s through a series of discriminatory legislations including the Population Registration Act (1950) which classified all South Africans with a racial identity number, and the Racial Areas Act (1950) which assigned racial groups to segregated residential and business areas (Stapleton, 2010). Such regulations consolidated in a strict and severe racial segregation system known as “the apartheid regime”, which accelerated and intensified racial polarization (Borstelmann, 1993). The South African government never denied such racially discriminatory law and practices, but tried to disguise the term “apartheid” as a “separate development” plan, which presumed to establish a multi-national or multi-racial pluralist democracy and provide all racial or ethnic groups with the opportunity to preserve its political, social and cultural identity (Encyclopedia of Public International Law, vol. 8, p.38). Still, the discriminatory laws and practices constituting a sociolegal system, founded apartheid as a political regime based on racism. Even the amendment to the constitution in 1983, which provided for greater political participation of colored people (with one black and one white parent) as well as Indo-Asian populations, also underpinned the inferior legal and social status of black people, who made up the majority (67%) of total population (24 million) in the country (Ibid).

1. Apartheid and Human Rights

Since the early stages of the development of human rights norms at both national and international levels, the principle of equality and non-discrimination has been recognized as one of the fundamental principles of human rights and has always been emphasized. Although the human rights movements can be traced back to anti-slavery activities in the 19th century or even to some national declarations such as the French Declaration of the Rights of Man and the Citizen or the American Declaration of Independence, but many have considered the establishment of the United Nations as the beginning of modern efforts to enforce human rights at the international level (Bildler, 1978:1.1). thereafter human rights have been the first universal ideology in the world (Weissbrodt, 1986:486).



The principle of non-discrimination, especially the prohibition of racial discrimination, is one of the first principles that have been included and emphasized in the earliest international legal instruments. The Charter of the United Nations obliges member states to “promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion” (Article 55 of the Charter of the United Nations), thus the prohibition of racial discrimination has clearly reflected by this Charter provision. According to the first article of the Universal Declaration of Human Rights, as an essential instrument of international human rights, which has been incorporated in many national constitutions and its provisions have mainly evolved into customary international law: “all human beings are born free and equal in rights and dignity”. The issue of non-discrimination and the prohibition of racial discrimination in particular has also highlighted in Article 2, which stipulates that: “everyone is entitled to all the rights and freedoms set forth in this Declaration without any distinction based on race, color, sex, language, religion, etc.” In addition to the Charter of the United Nations and the Universal Declaration of Human Rights, all regional and global international human rights instruments contain provisions prohibiting racial discrimination in general or specific aspects. Apartheid is a recognized form of racial discrimination, which is prohibited by all treaties and customary norms prohibiting on racial/ethnic discrimination. The first paragraph of article 2 of the International Covenant on Civil and Political Rights absolutely prohibits racial discrimination in implementation of the rights and freedoms recognized by its provisions. Article 26 of the covenant also emphasizes the equality of all human beings before the law and stipulates that “the law shall prohibit any discrimination and ensure that all individuals are completely and effectively protected against discrimination on any ground such as race, color, sex, language, religion, political or other opinions, national or social origin, wealth, ancestry, etc.” Moreover, general comment No. 18 of the human rights committee, which was established under the ICCPR, considered non-discrimination as a general and essential principle of human rights protection (CCPR/C/Rev.1/Add.1).

The 1965 Convention on the Elimination of All Forms of Racial Discrimination (entered into force on 4 January 1969) is specifically devoted to the issue of racial discrimination and obligates state parties to eliminate all forms of racial discrimination. According to this convention, the member states commit to prohibit racial discrimination in their domestic legal system, ensure equal enjoyment of rights by all human beings, and provide effective guarantees for protection of human rights in their territory (Shaw, 2008, p.286). Obviously, not only has the prohibition of racial discrimination been affirmed by conventional international law, but it also constitutes an indisputable rule of customary international law (ICJ, Reports, 1966, pp. 3, 293). The advisory opinion of the Permanent Court of International Justice concerning minority schools in Albania, clearly indicates the need to formally and substantially observe and consider the principle of racial equality, both in law and in practice (PCIJ, “1935”, Series A/B, No.64, p.19). In addition to being incorporated in several generic and specific international instruments of human rights and customary international law, which affirm the prohibition of racial discrimination as a general and fundamental principle, the prohibition of apartheid as the most obvious, severe and violent form of racial discrimination has been the main subject of specific international conventions; most notably the Apartheid Convention (entered into force in 1976), which as the title implies, was not restricted to repetitive prohibition of apartheid as a specific type of racial discrimination, but criminalized it and requires prosecution and punishment of its perpetrators. The International Convention against Apartheid in Sports (adopted in 1985 and entered into force on April 3, 1988) also obliges the member states to suppress all forms of apartheid in sports and sever any sports-related connection with the countries or athletes associated with apartheid at the national, regional and global levels. Therefore, in terms of conventional and customary international law, apartheid is completely against all human rights norms, and any political regime or government based on apartheid is known to be anti-human regime and government.

2. Apartheid as a Crime Against Humanity

Along with foreign occupation and colonization, apartheid is one of the concepts opposing the right to self-determination; accordingly, the struggle of populations under such conditions to exercise the right to self-determination is legitimate and internationally supported. Like the principle of non-



discrimination, the right of nations to self-determination is also one of *jus cogens* constituting *erga omnes*, which all states have an interest in complying with, and violating them is considered a crime against humanity (i.e., rape, genocide, slavery and racial discrimination). Accepting non-discrimination as a norm of *jus cogens* results in the fact that apartheid, as possibly the most terrible form of racial discrimination, is a flagrant breach of *jus cogens*. This is why the United Nations General Assembly declared apartheid to be a crime against humanity in 1973 (E. Reddy, 1985:15-16). Comparing the provisions of the Apartheid Convention and the Convention on the Prevention and Punishment of the Crime of Genocide (known as the Genocide Convention) reveals some mutual features in both categories; so that at least in some cases, apartheid can be considered as a crime of genocide. The Apartheid Convention should be interpreted and read in conjunction with related resolutions of the United Nations General Assembly and the Security Council, which have consistently labeled apartheid as a crime against humanity. This convention refers to apartheid as a serious threat to international peace and security, imposes international criminal responsibility upon its perpetrators and accomplices (Ibid, 16) and provides all member states with the jurisdiction to prosecute them. The United Nations General Assembly as the representative of the international community and the only universal organization with the authority to challenge the racist government of South Africa for violating international *jus cogens*, delegitimized the apartheid regime and thus rejected the credentials of the envoys sent by this regime to attend meetings at the General Assembly as representatives of South Africa. Since apartheid does not merely violate a single international norm, securing traditional implementation of international law cannot be sufficient.

Apartheid is a systematic, continuous and flagrant violation of *jus cogens*, opposing the fundamental values that have constituted and maintained the international community. Any state exercising such a regime is already illegitimate, and should be rejected by the United Nations as the representative of the international community, while still being responsible under paragraph 6 of Article 2 of the Charter. As demanded by the international community, the General Assembly has expressly banned all states from having diplomatic, consular, economic or other relations with an illegitimate regime. Meanwhile, frequent use of veto power by the three western permanent members of the Security Council regarding the former apartheid regime in South Africa indicates their self-interested and irresponsible political behavior in dealing with this criminal and anti-human regime (Reddy, 1985, p.17). Apartheid is also described as a crime against humanity by the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (entered into force in 1970). Article 1 of the Additional Protocol to the 1949 Geneva Conventions providing protection for victims of international armed conflicts (June 8, 1977) compares the anti-apartheid struggle with armed conflicts under international humanitarian law. Since the provisions of this protocol have become of customary law following its widespread acceptance, all governments must be committed to them, whether or not they have ratified the protocol.

The seriousness of the crime of apartheid further revealed by its inclusion into the Rome Statute of the International Criminal Court (1998). This Statute defined apartheid as “inhuman acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group(s), in order to of preserve and perpetuate the regime” (Article 7(2)(h) of the Rome Statute). Therefore, the commitment of governments and their officials to refrain from practicing any apartheid policy according to international law is a mandatory norm, the violation of which causes international criminal responsibility and can be prosecuted in national courts as well as the International Criminal Court (Dugard and Reynolds, 2013, p.867). It is noteworthy that apartheid should not be considered a mere historical phenomena with a single instance in the past, but it is a continuing concept and still applicable to any government practicing racial discrimination against any racial, ethnic or lingual group; even if not as severely as the former South African regime (Ibid). It is clearly confirmed by inclusion of this crime in the Rome Statute.

3. Apartheid in The Islamic Perspective

The term apartheid which refers to a certain 20th century phenomenon specifically occurred in South Africa, and has entered the regional and international legal literature thereafter, has no background in Islamic and Iranian legal discourse. However, since it denotes a specific manifestation of



discrimination in general as well as racial discrimination in particular, which as a socio-political regime provides a racial group with institutionalized and legal domination over the others, and deprives the dominated populations of fundamental rights and freedoms even though they may be the majority of society (as in South Africa), apartheid is decisively sentenced in Islamic and Iranian law as discrimination, especially racial discrimination and racism. Hence, it is necessary to review Islamic and Iranian legal framework for discrimination.

Discrimination in Persian means dividing and separating people or preferring some over the others; thus racial discrimination means considering one race superior to another (Moein, 1972). In general terms, it is perceived as any unfair preference for someone or something over another (Anvari, 1610). Social sciences have interpreted discrimination as imposing restrictions based on law, customs, or informal agreements against a specific person or group, such as a racial or religious group; and hence racial discrimination means any social, economic or political dominance of one racial group over another (Ashuri, 256). The issue of racial discrimination has provoked many wars and bloodshed throughout history (Makarem Shirazi, 1995, 375/1). Traditionally, racial and ethnic wars were prevalent among primitive Arab tribes in the Arabian Peninsula; while racial discrimination has been a common belief among Jews who considered themselves superior and special creations of God (Holy Quran: chapter 5, verse 18 and chapter 2, verses 8 and 111). Following the emergence of Islam, Arab tribes stopped the racial and ethnic bloodshed and embraced the spirit of brotherhood instead. The great Prophet of Islam carried out an extensive evolution and promoted the idea of fraternity by abolishing detrimental racial and tribal values. (Holy Quran: chapter 2, verse 138; Ibn Kathir 2/329-324). While the 12 tribes of israelites, each considered themselves superior to the others (Razi, Mafatih al-Ghayb, 6/186), Islam as a universal religion calling all mankind regardless of location, race or nation (Holy Quran: chapter 5, verse 128; Tabatabai, 206/16), stated that God has bestowed heavenly and earthly blessings on all human beings without any privilege or discrimination (Holy Quran: chapter 22, verse 78), and equally rewards and punishes everyone with no distinction (Makarem Shirzai, 4/141).

The universal character of Islam has been specially manifested by two significant advantages: 1) one is faith in one God; and 2) denying any ethnic or tribal privilege and affirming human equality. The great Prophet of Islam eradicated the ethnic hatred among Bedouin-Arab tribes, the polytheists of Mecca and Jewish communities all over the Arabian Peninsula (Moayedi, 1979, 101). When Islam started to emerge, nepotism and taking pride in tribe or race was quite prevalent among Arabs. In addition to being proud of their own tribes within the Arab society, they considered the Arab race superior to other nations along with the spread of Islam; in spite of their prophet, who never recognized discrimination and extremely combated such ethnic and tribal fanaticisms while emphasizing the principle of human equality: "All people are equal like the teeth of a comb since the creation of Adam. There is no superiority for Arabs over non-Arabs or for Indians over black people except through piety". (Ahmadzadeh, 2013, 126). O people, God has eliminated the false honors of primitive times and stopped you from boasting about lineages in the light of Islam. You are all descended from Adam and he was created from soil (Payandeh, 2010, Hadith 1044), and the noblest among you in the sight of God is the most pious one (Holy Quran: chapter 49, verse 13, and chapter 6, verse 98, and chapter 4, verse 1). Among the special companions of the Prophet, some non-Arabs such as Salman of Persia and some former slaves such as Bilal Habshi, Yasir and Sumayyah reached a noble position before the Prophet due to their faith and piety. Since Islam called for the fight against racism and aristocracy, slaves were among the first believers who were honored and respected by the Prophet.

Skin color has been one of the criteria for superiority throughout history, which has most frequently victimized black people whose suffering and oppression is beyond words (Heydari and Jowkar, 2015, 112). However, Islam has an explicit position on this issue. God has addressed all human beings equally by the Holy Quran and states in the verse 13 of chapter 49 (Surah Al-Hujurat) that "we created you all as males and females and we divided you into different branches and tribes, not to prefer some over the others, but only to recognize each other and organize your social affairs better" (Tabatabai, 1995, vol. 18, 488; Amin Esfahani, 1982, vol.10, 91). Also, verse 22 of chapter 30 (Surah



Al-Rum) considers the different colors and languages as signs of God and a way for wise people to recognize God, while the ignorant ones consider different colors and languages as means of humiliation and boasting. (Qara'ati, 2009, vol. 9, 190).

Accordingly, the idea of distinct evolution of human race from white, black, red and yellow couples, or the hypothesis which attributes the creation of human generations to different eras (in the old/new world) or geographical regions (as some regions such as America and Australia were discovered in recent centuries), are rejected by the verses that trace the entire human race back to Adam and Eve (Tabatabai, 1996, vol. 16, 257 and 258), and describe such differences as the necessity of creation and a cognitive motivation. Therefore, Islam has confronted any racial or ethnic discrimination through addressing all human beings to believe in a single religion, valuing individuals based on acquired virtues rather than inherent traits, calling everyone to justice and kindness, promoting and permitting marriages between different racial or ethnic groups, calling everyone to cooperate in goodness and piety, focusing on the common origin of all human beings and emphasizing the principle of equality and brotherhood (Mohammad Jafari and Jalali, 1390, 144).

4. Apartheid in Iranian Legal System

Iran has long been home to various tribes and ethnic groups. The presence of Kurdish, Baloch, Turkmen, Talshi, Azeri, Lor, Arab, and Lek ethnic groups alongside the Persian people on the one hand, and various religious believers including Zoroastrians, Armenians, Jews and Sabaeans alongside Muslims on the other hand, as well as hundreds of small and large tribes such as Bakhtiari, Shahsevan, Qashqai, Boir Ahmadi, Basseri, etc., all of whom have always coexisted peacefully within the broad context of Iranian culture and national identity, prove the plural unity in the national community of Iran (Fazaeli and Karami, 2016: 230; Salehi Amiri, 2009, 16-17). There is no reference to ethnicity as an identifying criterion for separating Iranian citizens in official statistics and censuses records. For example, the skin or hair color of people has no effect on the verification of their employment eligibility by the government, and belonging to an Iranian ethnic group has never caused any privilege or deprivation per se (Fazaeli and Karami, 2016, 231). Moreover, in a legal perspective, the historical review of Iranian laws and the constitutions before and after the Islamic Revolution in particular reveals that the eligibility of Iranian citizens for governance and political participation in the country has never qualified based on a certain ethnic or racial ideology; instead, inclusive expressions such as "Iranian nation" and "Iranian people" have always been used. (Ibid, 236).

The Islamic Republic regime of Iran is not based on ethnicity or any specific racial ideology, and the lack of ethnic criteria in the entire legal system indicates that (not) belonging to one ethnic group does not impose any legal consequence or privilege on Iranian nationals. (Ibid, 231). Imam Khomeini as the leader of the Islamic Revolution and the founder of the Islamic Republic of Iran, had always affirmed the principle of ethnic equality of the whole Iranian nation without any discrimination, both before and after the victory of the revolution (Mirtorabi and Mazani, 2014, 119). In his opinion, the mission of all prophets in general and the mission of the great prophet of Islam in particular was intended to save people from oppression and discrimination, namely between blacks and whites, Arabs and non-Arabs, and so on (Khomeini, 1/377 and 12/421). He introduced Islam as a religion with no racial discrimination (Ibid, 295/11), which trains its followers to fight against discrimination (Ibid, 42/5) and consider piety as the only criterion (Ibid, 49/9). He also described the Iranian nation as embracing all ethnic groups (namely Arabs, Turks, Baloch, etc.), and called ethnic discrimination a main cause of division and a major obstacle to national unity (Ibid, 487/18). As he stated regarding religious minorities: "Iranian religious minorities are free to practice their religious and social customs, and the Islamic government is committed to protect their rights and security, and consider them Iranian and respectable as other Muslim citizens" (Ibid, 641/4). Imam Khomeini declared "the Islamic state a truly democratic government and respectful of the complete freedom of all religious minorities, in which everyone can express their opinion..." (Ibid, 410/4). Imam Khomeini considered both the Israeli and (former) South African governments as obvious examples of racial discrimination, and thus required all states to at least terminate political and economic relations with them (Ibid, 340/5). He also compared the Baathist regime of Iraq with the Nazi Party as an example of racial discrimination, which simply sacrifices all humanity to stay in power. (Ibid, 379/14).



According to the Iranian-Islamic culture and doctrine, which are reflected in the historical background of the Iranian nation and in the explicit statements of Imam Khomeini and have underlain the Islamic Republic regime, the Constitution of the Islamic Republic of Iran prohibits any discrimination based on race, language or ethnicity (Articles 19 and 21). Also, belonging to a specific ethnic group does not cause any privilege or deprivation based on the regulations of the Islamic parliament or any other by-laws, approvals and state regulations. Moreover, the concept of ethnic minority has no legal implication in Iranian political-legal system, because none of Iranian ethnic groups, even if they are a numerical minority, have not been in a non-dominant position, and their participation in governance has not been subject to any ethnic, racial or linguistic criterion. Indeed, the “Islamic” and “Shiite” characteristic is the only distinction entailed in the Islamic Republic regime of Iran. The concept of religious minority in the Islamic Republic of Iran merely refers to the number of believers in other religions and Islamic sects, which is much less than the Shiite majority population; while none of the religious minorities are in a non-dominant position, and their participation in various levels of governance is totally ensured by the Islamic regime (Ibid, 139; Principles 12 and 13 of the I.R.I. Constitution). As a result, any Iranian ethnic group is entitled to all human rights equally, without discrimination and regardless of their ethnicity. Accordingly, Article 19 of the Constitution of the Islamic Republic of Iran (in chapter III concerning “The Rights of the Nation”) stipulates the equality of all Iranian people in enjoying rights without any ethnic discrimination. Therefore, Islamic and Iranian law not only completely condemns apartheid as the most severe and violent form of racial discrimination, but also prohibits any form of discrimination including based on color, race or ethnicity.

Conclusion

The concluding observations are as follows:


- . Although the term apartheid usually evokes the concept of racial discrimination, but it implies beyond this general concept. In fact, apartheid refers to an institutionalized or even constitutional separation and discrimination caused by a political regime, in which members of one or more racial/ethnic groups are considered inferior to the others and deprived of the rights to life, personal freedoms and sovereignty; and are exploited, alienated and confined in specific areas separated from the superior group(s).
- . Apartheid is an anti-human political, economic, social and cultural regime, that obviously opposes all international customary and treaty norms. Therefore, the international community is responsible for dealing with this anti-human phenomenon institutionally, coherently and effectively; as well as supporting any struggle by the affected racial, ethnic or national groups.
- . Since the right to self-determination, like the principle of non-discrimination, is one of international Jus Cogens rules entailing international obligations erga omnes, and its violation constitutes crime against humanity, apartheid has been considered a crime against humanity as well, due to its obvious contradiction with the right of affected populations to self-determination. Therefore, in addition to the international liability of the apartheid regime, anyone involved in such regimes should face international criminal liability and can be prosecuted based on international criminal law.
- . Although the world Apartheid and its equivalents are not recognized in Islamic literature, it should be noted that Islam strongly opposes any type of discrimination, and condemns it even in mildest degrees. Therefore, apartheid as the most violent and severe form of unjust and institutionalized discrimination has never been involved in Islamic juristic literature.
- . A historical review of Iranian law and the constitutions before and after the Islamic revolution indicate that the eligibility of Iranian nationals for governance and political participation in the country has never qualified based on a specific ethnic/racial ideology; instead, inclusive terms such as “Iranian nation/people” have always been used. The Islamic Republic regime of Iran was not established based on ethnicity or a specific ethnic/racial ideology. Article 19 of the Constitution of the Islamic Republic of Iran (in chapter III concerning “The Rights of the Nation”), specifies the equality of all Iranian people in enjoying rights without any ethnic discrimination.



Concludingly, Islamic sharia and Iranian law not only condemn apartheid as the most severe and violent form of racial discrimination, but also prohibit any discrimination based on color, race or ethnicity, etc. Moreover, while the territory has hosted various coexisting ethnic groups and populations, Iranian culture have always been devoid of racially discriminatory ideologies.

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