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Immigrant Rights in Iran and Canada and International Law

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Abstract

After World War II, migration, particularly in the post-Cold War became a global challenge. Today, there are 191 million migrants around the world that constitutes 3 percent of the world's total population. And it is a fact that has various social, economic, humanitarian, political and especially juridical dimensions and effects at the international level as an international issue. National Immigration Law is a part of the legal system governing the strangers in the host state whose provisions are determined by the domestic legal system of the recent state. Although the standards of international law are intended to govern migration, but in this case, however, the regulation of the source government is ineffective. Unless there are specific treaty arrangements while global recruits in the field of migration are specifically impossible and regional multilateral treaties can only be cited. This article tries to review and analyze the immigrant rights in Iran as a source country and Canada as a host country with their own different rights regarding the immigrants by a descriptive - analytical approach. Because of tangible vacuum in the literature of international law and the need to explore other sources of international law, according to the first paragraph of Article 38 of the Statute of the International Court of Justice, on the one hand and the necessity of this article in Iran as a transit country for migration and particularly to Canada on the other hand, conducting this research is of great importance.

Keywords: Migration, Rights of migrants, IOM, Canada, Iran.

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1. Introduction

This paper focuses on "immigrant rights in Iran and Canada and international law". Although the International Migration law put the general principles of this legal trend at the disposal of the internal domestic systems, but these legal systems also have gains that are considered as common legal principles of public international law sources. One of the achievements in the international arena is the distinction between legal and non-conventional approaches to migration that considers different legal consequences for them as well as the laws that immigrants benefit from and the causes that lead to migration.

This paper attempts to examine the public system and rules governing the rights of migrants by using the principles of international law and the possible outcomes mentioned above. This article will attempt to answer the following question as: What is the difference between the rights of refugees in Iran and Canada? Scientifically and comprehensively and since particularly international conventions do not exist in this regard; because of tangible vacuum in the literature of international law and the need to explore other sources of international law, according to the first paragraph of Article 38 of the Statute of the International Court of Justice, on the one hand and the necessity of this article in Iran as a transit country for migration and particularly to Canada on the other hand, conducting this research is of great importance. The lack of research on immigrant rights in Iran and Canada and international law is apparent. Although several books have been published in Persian in the field of migration sociology and some of these defended, especially in the field of asylum briefly addressed the issue of immigration; but do not have any direct relationship to the subject of the article. But we remained faithful and with an interdisciplinary perspective referred to the subjects mentioned in the context of this article. The purpose of this paper is to identify immigrants' rights under domestic legal procedures which are recognizable as joint actions among countries in the form of the general principles of international law divides Immigration procedures into two general categories, concession granted methods and acquired granted ones; and the second method is attainable through extreme methods in addition to the legal way but the former is the privilege that only applies to legal immigrants.

This descriptive and analytical paper examines immigration as the dependent variable and laws Iran and Canada as the independent variable and information contained has been extracted from library, Internet and official documents. As well as due to lack of scientific research with a view to immigration law in Persian and the absence of immigration laws in Iran, despite being affected by this phenomenon, on the other hand; the writer resorted to English and French resources to achieve goals and obtain answers to the above mentioned

question. And finally, it is tried to move a step further and to help to the recognition of immigrants' rights.

2. International Organization for Migration (IOM)

International Organization for Migration is an intergovernmental organization which was established in 1951 with the mission of organizing immigration affairs in the world. IOM has 132 member states, 97 observer countries and more than 460 offices in 100 countries. The main activities of the organization focus on both services and programs and policies in five main axes that include migration and development, facilitating migration, regulating migration, forced migration and interdisciplinary field (technical cooperation, research, international migration law, policy issues, designing policy, migrants rights, migration and health, migration and gender ...).

The question of whom and under what conditions to enter the country's territory is the fundamental right of every nation. Globally, governments take more comprehensive measures to prevent the entry of unqualified persons and instead make facilities available to eligible migrants. While the security concerns are more global, regulating migration for the countries to monitor who and for what gets enter to their soil has become much more important. Legalization mechanism should be fair and stable that not only reduces the risk for the immigrants but also provides the security for communities. A challenge here occurs that "How can security concerns will be achieved without eliminating the required virtual displacements and individual freedoms? To cope with these challenges, the International Organization for Migration helps governments in the development and application of immigration policy, legal and administrative structures. IOM provides technical assistance and training for governmental migration managers on border management, systems visas, residency and the possibility of collecting and using biological data. IOM has also a wide program to combat human trafficking that encompasses a wide range of prevention and assistance to victims. The organization also has plans to return and reintegrate the refugees, displaced and other affected persons and facilitate the needs of immigrant communities in the country of destination (<http://www.moi.ir>). International Organization for Migration helps governments in the development and implementation of immigration policies through regulations and legal and administrative mechanism. IOM is active in helping the migrants, homeless and people who were previously fighters, both in transmission and improving their living conditions.

The eighteenth day of December is named the World Migration Day because of respect for million people who have left their country in the hope of a better life. IOM says the migrants' jobs and the income that they send to their country forms an important part of the global economy. The organization warned all countries that the economic crisis couldn't be considered as an excuse for adopting measures that limits migration. According to the organization, immigrants have made great contributions to the growth and recovery of economics that is why rich countries shouldn't close their doors to them. According to UN officials, when unemployment is increasing, it seems probably reasonable to limit immigration, but actually statistics show that these two don't have a direct relationship together. Immigrants mostly have jobs that citizens in industrialized countries refrain from doing them. Also, according to the organization, by reducing the reproduction and increasing longevity in richer countries, many of them will face with labor shortages up to next 50 years.

On the other hand, the amount of money immigrants send to their countries is very useful for the economy of developing countries. Based on the IOM estimates, the total of these revenues is several times higher than Financial Assistance Fund which is intended to help them to develop. More importantly, IOM has warned that limiting the immigration laws not only doesn't keep them away but makes them to be preys to human smugglers (Ibid).

International Organization for Migration's experience in the field of migration and development indicates that the immigrants' participation strategies are possible in the development and rehabilitation of the country of origin and this would need to be developed. Projects carried out by the organization reinforces the view that immigrants from developing countries create skills, expertise and valuable financial instruments for countries of origin and immigrants participate based on their interests and personal motives, provided that the opportunities offered are reliable and will also be supported by the government of the origin (Ghaffari Namin, 2011: 36-37). IOM has managed public activities of immigrants and official policies of the countries to come closer to each other. This causes the creativity of immigrants to be more effective and more sustainable and thus provide better control of potential benefits of labor migration for countries of origin and destination as well as for migrants and their families. International migration organizations which have been established by the IOM support attempts to orient and organize immigration with the centrality of research but other international organizations such as WHO, the International Center for Migration and Health, ILO, Office of the High Commissioner for Human Rights and Refugees and key civil society organizations, have also studied the phenomenon of migration. To achieve the higher management of immigration, judicial organizations of host countries as a pillar of national immigration rules respect the right to have a confirmed counselor and advisor to proceed to

legal migration and prevent illegal and irregular migration for migration applicants. Meanwhile, if the applicant is rejected and is willing to reconsider the issue having an immigration lawyer at this stage is something necessary. So, there are centers in these countries that train qualified people, provide immigration law license or migration advice. (Ghaffari Namin, 2011: 36-37).

3. Means to obtain citizenship

Ways to obtain Canadian citizenship include:

1 - Birth in Canada: In general, any child who is born from 1947 onwards in Canada will gain the citizenship through the Canadian ground principle. The only exception to this is the children of diplomats of foreign countries which even they are born in Canada they can't be a Canadian citizen.

2 - Canadian citizenship through the blood principle: after February 15, 1977, any person who is born outside Canada from Canadian parents is considered Canadian children. But if the parents of the child obtained Canadian citizenship through the blood if their children don't any action to obtain citizenship before the age of 28 they lose their Canadian citizenship. Regarding the people outside of Canada, if they have not registered their birth before age two through the Canadian government between 1947 and February 15, 1977 they will not be considered as a Canadian citizen.

- Canadian citizenship application may be made to one of the following ways:

1 - Delayed registration of birth abroad (If a child is born outside Canada to Canadian parents and by the 1947 law, the parents of the child register his birth before age 2, it is subject to the law 1947. However, if the parents of the child do not attempt to register the birth of their child before the age of two, they can register the birth with delayed action).

2. If a child of a Canadian parent is born outside of the Canada before Canadian 1947 law, the Act of 1977 does not include and he is not considered a Canadian citizenship. A group of people who have obtained Canadian citizenship through inheritance and their parents registered them under the provisions of the 1947 law two years before their birth, but because their parents have acquired citizenship of another country and their Canadian citizenship is lost, they can act again to obtain Canadian citizenship according to the Canadian Parliament law in 2005 although they have not stayed in the territory of Canada.

3 - Admission to a Canadian citizen: those who have permanent residence in Canada can apply for Canadian citizenship after 3 years of residency. Naturalization requirements are as

follows: the age of the applicant must be 18 years or older- Permanent resident of Canada - be a resident of Canada for 3 years before 4 years of applying for the citizenship in Canada (i.e. a total of seven years must be resident in Canada) - The applicant must have information about Canada (the exam will be considered as a part of the process demanded and the examination will be taken of applicants between the ages of 18 and 59 years) - being aware of the rights and responsibilities of Canadian citizens. Documents required for the acquisition of citizenship for persons less than 18 years is different from those with 18 years. Children fewer than 18 must be permanent residents of Canada and the parents of these children should be Canada citizen or acted for the citizenship of Canada. It should be noted that the length of staying and other documents which are needed for adults are not necessary for persons under 18.

Formalities of Citizenship: All applicants for Canadian citizenship that are 14 years or older must participate in the naturalization ceremony which is considered as the last stage.

4 - Canadian citizenship through adoption: there are no provisions in law for granting citizenship to those who have been adopted by Canadian citizens in Canada and outside of Canada. According to the requirement of 16 July 2001 law, adults who already have been adopted by Canadian citizens can undertake a Canadian citizenship without having to stay in Canada based on Article 5 of Chapter 4 of Canadian citizenship. In 2006, the Canadian government has proposed a law to the Parliament to amend the citizenship law on adoption (Al Kajbaf, 2010: 128-133).

Ways to obtain Iranian citizenship include:

All foreign citizens under Article 979 of the Civil Code can request for Iranian citizenship if they have the following conditions: 1. They have reached the age of 18, 2. They have been legally resident in Iran for five years, whether consecutively or interrupted, 3. They have not escaped from military service in their country, 4. They have not been convicted for important misdemeanors or non-political crime in any country.

Meanwhile, those who have helped the Iranian public greatly, people who have Iranian wife and own children and persons who are academic authorities, they may be accepted to Iranian citizenship by the approval of the Cabinet and without observing the condition of residence if the government deems their entry into Iranian nationality faultless. People applying for the citizenship of the Islamic Republic of Iran can submit citizenship applications to the Department of Citizenship of Aliens and Foreign Immigrants and Provincial Government offices throughout the country if they have the qualities contained in Article 979 of civil law. Persons who have acquired or are going to acquire the Iranian citizenship can benefit from all

legal rights provided for Iranian citizens, but can not meet the following authorities: 1. The President and his deputies, 2. Guardian Council and interim Head of the Judiciary, 3. Ministry, Ministry of governors, Provincial Office and Mayor Office, 4. Membership of Parliament, 5. Membership in the province, city, and town councils, 6-7. Employment in the Ministry of Foreign Affairs as well as any diplomatic position or mission, 8. The highest ranks in the military and police corps positions, 9. Important intelligence and security positions (Article 982 of the Civil Code).

4. Categories of immigrant rights laws in Canada and Iran

This section examines the personal status laws related to immigrants in Canada and Iran, including marriage, divorce, property and inheritance.

4.1. Marriage

Marriage in Canada:

Marriage laws in Canada are in the hands of the federal government according to Article 91 of the constitution. However, some provincial governments can intervene in this field. In general, except for those who have blood relationship with each other or in the other word, are brothers or sisters or stepsisters or step brothers, other people can marry each other (whether of the opposite sex or the same one). Marriage between maternal and paternal cousins is not common but it's not illegal, too. In most Canadian provinces people marry at the age of 18 (except in British Columbia, which is 19). In other words, anyone who is 18 or older can marry. Those whose age is between 16 to 18 years can be married if they provide the consent of the parents. In some provinces, under certain circumstances (e.g. pregnant girl or licensing by the court) persons under 16 years can marry. And that's why it is necessary for both spouses who want to migrate to be 16 or more.

People are allowed to marry in a religious ceremony or the official one (or both). To get married officially, people usually have to go to the city hall in order to register it officially. Even if the marriage is not registered officially or in a religious way, if two people live under one roof for at least three years, or have a common child, then according to the existing law they are considered as partners and more or less all the rules relating to the spouses is true about them. Maybe that's why official marriages are reduced because people can be partners without legal hassles. It is customary in traditional sectors of Canadian society that women legally convert their surnames to their husbands' surnames after marriage, but it seems that they are not willing to do this anymore.

Marriage in Iran:

Iranian Muslim women are not allowed to marry a non-Muslim man based on Article 1059 of Iranian Civil Code. And on the basis of Article 1060 of this Law, an Iranian woman marriage with a foreign citizen is subject to special permission from the government of Iran even in cases where there is no legal impediment. Even the government can make the permission special for the marriage of some government employees, officials, and students to a woman who is holding foreign nationalities based on Article 1061 of civil law, otherwise, any foreigner who marries an Iranian woman without legal permission can be sentenced to correctional prison from one to three years. According to some rules and regulations, Iranian women can marry foreign men. According to the Regulations of Iranian women married to foreigners and in the application of Article 1060 of Civil Code, the Interior Ministry is allowed to give Iranian women allowance to marry if the relevant regulations are provided. These provisions include:

1. Request for marriage license by men and women holding on demand.
2. The official certificate from the country of origin for the man which permitted his marriage with Iranian women and the recognition of marriage in their country. It is worth mentioning, if is not possible for the man to get such a certificate, Interior Ministry can without receiving the above documents and if the woman is consented to the Marriage issue the marriage license. Otherwise, if the Iranian woman wants this certification, the Interior Ministry has no right to issue such a license. The important thing relating to the marriage of Iranian women with foreign men is the religion issue. Because in accordance with paragraph 3 of these regulations, if a non-Muslim man wants to marry a Muslim Iranian woman, male applicant must adduce evidence relating to conversion to Islam or submit it to the Interior Ministry. Otherwise, an Iranian Muslim woman can't marry a non-Muslim man. The issue of conversion to Islam is possible by reference to Islamic and cultural centers or scholars inside and outside the country.
3. In addition, a man who wants to marry an Iranian women, must also submit the following documents to the Interior Ministry:
 - A certificate stating that he is single or married from the diplomatic and consular officers or local authorities offered in the woman's country of origin.
 - Certificate of not having a bad background and criminal conviction of local authorities and consular envoys to the country of origin of the man, as well as criminal clearance certificate from the authorities of the country of origin of the woman (Iran) if he is an alien resided in Iran.

- Certificate from the local authorities or the diplomatic and consular authorities of the country of origin that a man can afford the expenses, as well as a commitment Inventory of the man mentioning that the man is able to pay the cost and maintenance of wife and children (including food, clothing, housing, medical aid and other essential things in life) and any other rights of a woman in the event of abuse or abandonment and divorce.

The Interior Ministry can demand foreign husband to perform tasks in accordance with the provisions of Iranian law for the welfare of Iranian women and a foreign man must fill out the forms that have been prepared in this regard by the Interior Ministry and provide full guarantees (www.seemorgh.com/lifestyle).

Iranians living abroad are subjected to Iranian law in terms of marriage; namely, must obey the law of the Islamic Republic of Iran for the marriage. But for the formalities of setting the marriage certificate, they should obey the country of setting the document. Non-Shi'a Iranians, the Sunnis and the other religions of the Book, like Judaism, Christianity, Zoroastrianism, are subject to the rules and habits of their religion in terms of marriage and personal status and when an issue related to their personal status is raised at home or abroad, their religious orders will be acted because they follow the rules of their religion. In accordance with Article 7 of the Civil Code, foreign nationals residing in Iran are subject to the rules and regulations of their respective governments with respect to matters relating to personal status and their originality as well as rights of inheritance and in treaties' limit.

4.2. Divorce

Divorce in Canada:

In 1985, the Canadian Parliament passed the law on divorce which contains 36 articles. In this paper, the above mentioned law and other regulations relating to divorce in Canada are examined briefly.

Divorce in Canada is governed by federal law. Under Article 7 of the Act, which the Parliament of Canada passed it in 1985; judge is competent to grant the divorce decree without a jury. In this regard, each of the spouses or both of them are able to get a divorce and disrupt their marriage. If one spouse or both are residents of that state for at least one year prior to divorce, the court has jurisdiction over their divorce and does not require that the parties are a Canadian citizen. Each of the spouses alone can decree for divorce and does not need the other side to accept. For example, in British Columbia claimant must offer divorce petition first and then wait for the defendant response. The period for someone who lives in British Columbia is 20 days, if he is outside of British Columbia but lives in Canada or

America, it is 40 days, and in other places it is 60 days. If there is no response, the claimant can act and demand divorce. In this case, the claimant must tell their reasons for divorce in court. After examining, the court verdict within 2 or 4 weeks. But regarding children, this time may be longer. In Vancouver, this type of divorce is done within 2 to 3 months. A copy of the court order must be sent by the plaintiff to the defendant's last address. After 31 days from the date of signature of the judge, the defendant can appeal, if the defendant responds in this period, the claimant must prepare themselves; especially on issues related to the protection and custody of children. In this case, processing time and hearing by the judge takes 8 months or more. The couple can separate by agreement that is good for them in terms of duration and cost, at the time of undergoing a divorce, she can choose her former name or any name that she tends to it. Of course, in order to change children names the husband's consent is needed.

Child custody: The court is obliged to convince itself that there is a logical sequence for child protection; otherwise, it delays granting divorce to determine these agreements. The court may issue an order or injunction regarding alimony and child support by one spouse or both, and other circumstances of each spouse and their children will be considered for whom requests support that includes the duration of the marriage, the tasks performed by the couples during the life and any agreements relating to married couples.

About child custody, the court considered the facts such as who has took after mostly of the children? Who did take him to the doctor and dentist? Who has set extra-curricular activities for him/her and who has been in contact with children and teachers? The ability of each to fulfill their duties as well as physical and mental health will be addressed. Regarding children custody, usually children in the family will live together unless circumstances dictate that they should be separated. Usually the court will consider the wishes of children, especially if they are young.

When the command is issued relating to the protection of the couples; past and future will be considered separately in relation to the couples and their children. Child support orders and responsibilities of spouses in respect of each child will be considered and this financial commitment depends on the ability of each partner in the implementation of these commitments. With the receipt of the request by either spouse or both of them or by a third party, the court may issue the custody order of all or some of the children. The court can grant exclusive or shared custody. Joint custody means joint decision on all matters relating to children, including discipline, school, holidays and other important occasions. Custody is not a barrier for the child's relation with his father or mother who does not have custody and the court can decide on this issue. This meeting will be an afternoon in a week, on weekend or a

holiday. The parent has the right to research and get information about health, education and social services for their children. In some cases, the judge can decide that they cannot spend their time with parent without custody for the benefit of children. The court's attention only will be focused on the best interest of the children to consider. Parents' past behavior should not be taken into account; unless the person's behavior has an impact on their ability to fulfill their duty as a parent. In any case, both parents are obliged to finance their children even after the divorce. If one parent disregards court orders after divorce, the other party can go to the court and seek obligation to orders. The court order is subject to change, and each party can ask for changing in the new situation and circumstances. That it would be in agreement with or without the agreement of the parties, and in any case the court will address it. The division of property in Canada depends on the regulations of each state, and each of the states has imposed particular regulations in this regard. In most cases, property is divided in such a way that both parties benefit fairly from marital property. Of course, the pre-marriage property and inheritance and gifts to every one of them is belonging to their owners and will not be divided. In dividing property, the court will consider the following items: marital period - role of each partner in life. The important point to consider is that the division of property should be such that none of them bear subsequent economic problems and financial losses. Especially someone who has custody of his children should not be assumed to be damaged. The judge can order that one spouse pay an amount within a fixed period or indefinitely to the other side. Another issue regarding the division of property and financial support is that the court does not pay attention in any way to past behavior of the parties and who was to blame.

Divorce in Iran:

Divorce in Iran according to the Article 1133 of the Civil Code that states divorce as the: "A man can divorce his wife whenever he wishes" is done to the will of the man and women can request the court for divorce in specific cases. Iran's divorce law is derived from the jurisprudence of the CSP and the first coherent law in divorce was approved by the National Assembly in 1934. Family Protection Act of 1346 is the first step of legislature in limiting the powers of the men in divorce. Because at that time, the right to divorce was in the man's hands in accordance with the law and if he would wishes he could divorce his wife without her consent. But the Family Protection Act of 1346 empowered the courts that only in exceptional cases they issue certificates of the impossibility of compromise agreements at the request of the couple.

According to the law, the divorce of each spouse should have been based on valid reasons. With the adoption of the Family Protection Act in 1974, absolute authority of men over divorce was abolished and each of the couples applying for divorce offered their divorce

petition in court based on documents to one of the cases mentioned in the law. The recognition of these cases was with the court. Divorce laws were revised in conformity with sharia after the Islamic Revolution. There are three types of divorce in civil law: 1) the will of the male in divorce 2) divorce by the female request 3) agreed divorce.

It is worth mentioning if only the husband or wives are living outside of Iran; the issue of divorce is addressed in an Iranian court that the opposite side resides in. If both people are expatriates, local courts in which one has temporary residence in Iran will issue the divorce proceedings. And if any one does not stay in Iran even temporarily, divorce issue should be raised in the courts in Tehran. According to Article 7 of the Civil Code, all the inhabitants both interior and foreign nationals are subject to Iranian law, except in cases where the law has exceptions. It contains local principle of law in international relations. So, in order to remove the conflicts in rules, where doubts are in Iranian or foreign law enforcement, the implementation of the law is on residents (Katouzian, 2014: 28).

According to Article 6 of the Civil Code, laws on personal status such as marriage, divorce and the qualification of persons and the heirs shall apply on all Iranian nationals, even if they are resident abroad. In accordance with Article 7 of the Civil Code, foreign nationals residing in Iran are subject to the rules and regulations of their respective governments with respect to matters relating to personal status and originality, as well as rights of inheritance and treaties limits. And in the case of divorce of non-Shi'a Iranians that their religion is recognized in Iran, according to the observance of personal status of the law concerning the permission of non-Shia Iranian, is in conformity with man's religion.

4.3. Property

Property rights in Canada:

Generally, buying a house or better to say a piece of land, apartments or villas is possible for foreigners in Canada. Except for some specific points which are prohibited or restricted even for residents of Canada, foreign individuals can buy and sell property (immovable property apply) in most parts of Canada. Typically a foreign person can borrow to buy a house up to 65% of the cost of housing. Since the mortgage is issued in exchange for housing by the lender, many banks do not refuse to pay the rest in loans if at least 35% of housing costs is paid by the customer. However, in view of the fact that most foreign people normally do not have a history of finance and credit in Canada, this needs a valid intermediary (such as an international company specializing in loans to foreigners). There are no plans to grant permanent residence through the housing purchase in Canada (at least up to today).

Property rights in Iran:

The general principle is that every foreigner in the country can enjoy all the civil rights except for special cases by law. Article 961 of the Civil Code states the principle that: "Except in the following cases foreign nationals will also enjoy civil rights:

1. In legal cases that law limited to Iranian nationals exclusively and denied from foreign nationals explicitly;
2. The rights relating to personal status that its governmental law did not accept their foreign nationality;
3. In the case of special rights created solely from the point of view of Iranian society."

It should be noted that the implementation of this general principle is subject to compliance with paragraph 8 of Article 43 of constitution "foreign economic domination over the country's economy" as well as the general principle of Article 153 of that law that stipulates: "Any agreement resulting in foreign economic domination over natural resources, economy, etc., is forbidden." and other provisions relating to the acquisition by foreign nationals. So in the Iranian Civil Code, aliens enjoy the private rights, except in exceptional cases. Foreign nationals are in need to use private rights as citizens and if it is necessary to limit them, it should be clearly indicated and as long as does not confirm the deprivation of any right alien conditions are as domestic citizens. Article 8 of the Civil Code says: Immovable property owned or to be owned by foreign nationals in accordance with the conventions will be subject to Iran law. Article 966 of the Civil Code clearly and publicly stated this principle and stipulates: And rights and possession of movable and immovable objects will be subject to the law of the country where objects are located there. In the case of acquisition of immovable property by aliens Article 967 of the Civil Code provides: Movable or immovable wand of foreigners that is located in Iran only in terms of original law, including rules relating to the determination of heirs and the amount of their inheritance and the diagnosis of the part that the decease could acquire based on the will, could be subject to the law of the state of nationality of the deceased. Article 8 of the Civil Code was issued because immovable property is in the territory in which it is located is not apart from the government. The interests of the state and the owner are located in one direction and require that the immovable property is sponsored by the government in which the property is located. Inland law enforcement (the location of the object) to immovable property is always accepted for the following reasons:

1. Maintaining order and ensuring the security of the transactions relating to immovable property is the responsibility of the state in which the property is located.

2. It is by the law of the immovable location that provisions relating to registration of immovable and immovable notice are regulated.

3. Law enforcement of immovable place is the basic condition to execute a warrant that is issued to them.

4.4. Inheritance

Inheritance in Canada:

Will is a signed written document in which a person determines their last demands particularly in relation to their property after death. This document has credit for running after a person's death. As soon as a person who has a will dies, the costs related to funeral rituals and all his debts are deducted from his assets and then his property is divided by the will. In some cases, there are some obstacles and the law takes precedence on what is in the "deceased" will. So:

- If the deceased has a spouse, children or relatives who were being funded and led by him, the property may accrues to them before their dividing according to the names listed in the will.

- If the deceased person has property in cash or a certain common interests jointly with another person (such as insurance or a joint bank account), such assets may accrue directly as gifts to the survivors of the deceased. In addition, if the survivors need financial help, they can claim the property. Although the assets are divided after the death of the person and based on a valid will, but at the same time, each person is free to a certain extent to leave what they hold for those who plan. For example, a person cannot give all the assets to children from his first marriage and ignore his present wife. In 1998, the Alberta Court intervened in a case in which the deceased ignored his second wife's rights and had given their entire legacy to the children of his first marriage. The two sides were old at the time of remarriage, and their finances were kept separate from each other, the husband pretended to his second wife that he did not have any savings until his death, while she had a substantial asset that had grown at the time of their marriage. After the death of her husband, her income was not enough to cover his living expenses. In this case, the court ordered that based on moral rules she had some rights, and she should have the same lifestyle they enjoyed during the marriage. In addition, she is entitled to receive certain pension costs in the future to cover the possible health and the treatment. If the couple had a marriage contract between each other, there may be different results.

Division of property without a will: If the deceased doesn't have a will or the available will generally deemed to be invalid, the division of property and assets will be done according to the law. In Ontario, the law of inheritance amending specifies how to divide property. According to this law, except in the case of a person who is financially dependent on the deceased person and require rights in this regard; the first 200 thousand dollars of the assets of the deceased will be allocated to his wife provided that the spouse require the right. Another possibility is asking for half of the net assets of the family. The amount in excess of 200 thousand dollars will be divided between the spouse and children (children and grandchildren) jointly and in accordance with the relevant provisions. If there is no spouse, children are considered as heirs of the deceased property. In case of death of one of the children, their children (grandchildren of the deceased) will be the heir inheritance. In the absence of wife, children and grandchildren, parents of the deceased inherit property equally. If the parents are not alive, brothers and sisters of the deceased are the heirs of the property. In the case of brothers or sisters' death, their children inherit inheritance. If none of the brothers and sisters is living, their children (nieces and nephews) will equally inherit the assets. At the same time, if the nephew or niece is dead, their inheritance will not be transmitted to their children. If the heir was alive at the time of the death of a relative, but he died before dividing the assets, heirs of such a person are eligible to receive the inheritance. If the deceased person's will is lacking, those of his relatives who have a blood relationship with him are heirs. Children from relationships outside of marriage or those that have been adopted are considered among the heirs. Step-relatives share in the inheritance evenly with non-step relatives.

Inheritance in Iran:

First class: father, mother, children and grandchildren in the absence of a child. As it known, grandchildren inherit if the deceased parents are alive.

Second class: the paternal and maternal grandparents hierarchically, maternal and paternal brother and sister, or maternal and paternal brother and sister and their children. In this class, the close heir prevents heir inheriting away. For example, with grandfather and grandmother's being, their father and with brother and sister's being, their children do not inherit; although their children inherit with the great-grandfather and mother's being.

Third class: uncle, aunt, uncle and aunt and their children in their absence, except for the case that paternal cousin and maternal cousin and their paternal uncle are together. In this case, cousin is first to uncle. The heirs of this class - in the absence of uncle, aunt, uncle and aunt of the deceased and their children - are the uncle, aunt, uncle and aunt of the father of the dead person. If the first class is alive, the second class does not inherit. As well as if the second

class is just alive, the third class does not inherit. For example, if a person dies and two years later his father dies, too; the child could not inherit his grandfather.

Woman Inheritance: The woman inherits one-eighth if they have children and if the guy has three or four permanent wives just this one-eighth is divided between them. And if she had no children, she inherits a quarter and if he has a few wives, just this quarter is divided between them.

Man inheritance: A man inherits a half if the woman does not have a child and a quarter if the woman has children. And if a woman dies and doesn't have any the heirs, the husband inherits all her wand. But if the husband dies and doesn't have any heirs, the woman gets just her own portion and the rest of the property of her husband like a twig without heirs, is given to the government. If the fetus is born and just cry and die inherits from parents and if it dies unborn we leave aside the share of a son for him.

In accordance with Article 1159 of the Civil Code every child who is born after the dissolution of the marriage belongs to the husband provided that the mother is still unmarried and from the date of dissolution of the marriage until the day of birth is more than ten month unless it is proved that from the date of intercourse and the birth is less than six months or more than ten months. Or doubt about the death of two people who died at the same time. In this regard, in accordance with Article 874 of the Civil Code, if there is inheritance between the people who die and death date of one is known and the other is unknown regarding the precedence, only the person whose date of death is unknown inherits from another. For example, two people die at sea in a shipwreck and the time of the death is determined for one of them dead and the other is not specified, the person whose date of death is unknown inherits.

Adoption: Regarding the custody, the adopted child is the same as the family's children but the foster child does not inherit of the couple and the parents of the adopted child are not among the heirs.

Parliament amended the 946 and 948 articles of the Iranian Civil Code in February 2008. With this reform and contributing the wife in land prices, significant changes in inheritance law of the husband's property was made for the wife. This development thanks to a clear statement of a contemporary jurists which provided the grounds for proposing by Parliament members. In civil law, passed in 1928, following the Shi'a jurists a woman is deprived of the same and the price of land and is only entitled to buildings and trees. By the amendment of the above items, the ground was also covered in women's share of marital property. At the same time, women have benefited from the price of immovable property, but the same is

denied. Although, Article 948 of the reform is still emphasized on a woman's right to demand the same immovable property in case of the refusal of other heirs to pay the price, but it seems that the legislator should distinguish the couples who have a child from those who don't and considered the wife with children eligible of the same.

The things that prevent inheritance are:

-Murder; killer does not inherit the victim's property unless in error that inherits the property of the deceased; but it does not inherit from blood money.

- LAN; the LAN child doesn't have genetic relations with his father and relatives, but has genetic relation with her mother and maternal relatives.

- Born of adultery, children born from adultery don't have any genetic relations with either their father and mother, that is born of adultery does not inherit from parents and father and mother do not inherit from him.

- Heresy; any infidel is not entitled to inherit from a Muslim, whether the main infidel or apostate.

- Rqyt; the slaves do not inherit of the free.

Sometimes because of an obstacle the highest share of the heir reduced to the lowest, for example, children reduce the husband's share from half to one-fourth and the share of a woman from one-fourth to one-eighth. Islamic scholars have interpreted this type of obstacle to lack of modesty. If someone died and left financial after deducting the burial expenses of the deceased and its equipment such as cedar camphor, cost of transportation of the body, etc. the remaining is divided between the heirs. Where women inherit as men include: The parents of the deceased if the deceased has children which each inherits one-sixth of their parents and father's share of the property is not more than the mother's share. Mother's stigma, i.e. deceased's brothers and sisters who inherit equally not differently, so that, the deceased maternal sister inherits the deceased's share equally not less than his brother.

Where women inherit less than men, such as: Daughter of Guy and parental stigma, i.e., maternal and parental brothers and sisters of the deceased, in which, she (the sister of the deceased) inherits half of men (the brother of the deceased).

Where the share of women is higher than the share of men like:

The case of a deceased that has no other heir except his father and daughter in which, the father takes one-sixth and the daughter more. Also, a deceased who has grandchildren and his children have died during his life time, which in this case, the grand son takes more and the grand daughter less.

According to Article 6 of the Civil Code of the Islamic Republic of Iran, the current inheritance rules run for all Iranian nationals residing abroad. And in accordance with Article 7 of the Civil Code of the Islamic Republic of Iran, in terms of inheritance rights, foreign nationals residing in Iran are subject to the laws and regulations of their respective governments.

5. Conclusion and Recommendations

Immigration to different countries is a phenomenon which has always attracted the people and authorities of the Islamic Republic of Iran in recent years. Although, the population mobility has always existed in history and in the geographic area of the world, but immigration from developing countries to developed (industrial) countries, including the US, Canada, Australia and Europe in the twentieth century is completely different from the past. Attracting the savings and wealth of poor nations and, more importantly life attractions in advanced industrial countries for experts and scholars of the so called Third World countries, has turned the brain drain, intellectual capital and elites to a serious disaster for the people of these country. The main reasons for attracting the Iranian elites to research centers in other countries can be summarized in the following cases: 1. Ignorance regarding the position of science, 2. Economic factors, 3. Political and legal factors, 4. Lack of meritocracy, 5. State monopolies, 6. The hope for the future (<http://www.aftabir.com>).

Proposed solutions can be useful to this issue: Reforming the educational system and research from primary school to university, trying to nurture creative human resources, decision-makers, researchers and problem solvers, promoting a culture of research in the country and carrying out the research results, linking educational and research centers to industry and institutions, products and services, running practical programs to respect the elites and scientists and creating an appropriate atmosphere for the growth and development of their creativity. Of course, the brain drain from the country is not limited only to academics but also financial elite have adopted a way to go abroad, especially with a variety of programs running in some countries to attract funds and investors in which, those who bring ten millions of dollars to several hundred million and invest in these country are allowed to stay and to be citizens.

In this regard, of course, much has been said and written but it is natural that if the conditions in the country are not ready to host the proper brains and capital, this trend will continue without any complimentary and the treasures of the country will be depleted of ideas and capital. It is clear that the burden of the development is also on the intelligent and elites of any

society. The human capital that is the main asset of developing countries will be at the hands of the developed countries very cheaply and every year billions of dollars are lost through brain migration. Comparing to natural sources such as oil, the educated workforce would have much more value. Certainly, the damage of this process to the development of Iran is irreversible. So we should discard the disregarding of this capital, and to face the challenges of globalization, the causes of the emigration of skilled manpower should be studied and serious measures must be envisaged to deal with it in national development programs. It should be noted that erasing the problem is only a way to escape it, because with the evidences that suggest the existence of brain drain problem in Iran, the Western countries hoped to penetrate the young generation in order to maintain political, cultural and economic influences in third world countries. So, the teaching of children, respect for the national and Islamic traditions and culture, and the interest to serve the people of the country must be stressed.

In addition to the reasons mentioned in the article, they mainly migrate due to lack of scientific capacity within the country. In fact, they are seeking better tools for human services, scientific production and spreading their ideas. Therefore, instead of limiting the scholars and making problems for them, we should seek to enhance the capabilities and the abilities and to create a healthy environment in our country. Only in this way, we can help Iranian economic recovery, growth of management and an increase in production and export of non-oil goods and reduce the country's dependence on oil.

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