

Diagnosis criteria of worker and non-worker in Iran and France rights

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Abstract: Inclusion range of labor law and the necessity of allegiance of working and employer are of labor law. In some cases, the shape and the style of contract have been accepted in a way that apparently has no other title except labor contract and essentially no written contract has been set between parties. This is evident in labors which are temporary or direct beneficiaries of services are non-encapsulated. But according to imperative features of labor law and being non-formal the contract, the 7 and 8 articles of labor law, the manner and form of contract, especially being written or oral, it cannot have any influence on nature and type of relationship. Therefore, to establish working relationships, apart from shaping aspects, substantive criteria should be used which are consistent with legal standards. In this base, studying the unity votes of procedures of court staff shows using of various criteria and different figures to recognize labor and employee relationships and as a result drawing the different domains in inclusion range of labor law. Today's, stability and job security of workers are related to fundamental labor rights. So, international instruments related to labor (Treaties and ...) and civil law of countries behaves with the particular sensitivity in both constitutions and common law. On the other hand, due to the importance of subject for employers and workers, it contains significant social and economic impacts, such as create sustainable employment, reduced or increased unemployment, amount of capital and employers in the production, determine the finished cost and price of goods, impact on economic competitiveness and the possibility of change in production structure and updating industries, reduced or increased of inflation, control of social and economic crisis and other subjects related to it. According to labor law (Adopted in 1369), handling to claims of employers and employees is the responsibility of specialized reference as the reference of dispute resolution (recognition staff and dispute resolution) composed of representatives of employers, employees and governments. These references have the competency to handling the individual and collective claims of workers and employers in the field of labor relations based on legal standards. Present research is discussed about the procedure of labor rights of Iran and France, with the goal of obtaining the accurate measures to establish the labor relations and to supply the job security of workers and accurate regulation of labor relations. **Research history:** Similar cases have not found that related to my article except the article of Ms. S. Ali Pur, in an article with this title: "workers and employers". **Research method:** Using of taking note, library and descriptive methods and valid sources of articles and books of labor law and legal sites.

[Mahshid Mahtabi, Alireza Shakarbigi, Ghobad Naderi, Amir Ahmadi. **Diagnosis criteria of worker and non-worker in Iran and France rights.** *World Rural Observ* 2014;6(1):19-25]. ISSN: 1944-6543 (Print); ISSN: 1944-6551 (Online). <http://www.sciencepub.net/rural>. 4

Key words: worker, employer, workplace, labor contracts, labor law.

1. Introduction

The components of employer and employee relationship

Three main components form workers and employers relationships, workers, employers and workshops. a) Worker: a person who works against receiving salary by orders of employers. So, the workers criterion is to receive salary and follow of other. His work is in the service of others.

According to the above definition, the criterion of being worker is the legal relationship with the other party.

b) Employer: a person who has capital and equipment

of an office or manufacturing or service organization. But, to produce goods and continue services, he should use the labor of others. From a legal perspective, the employer is the party of contract. His assets are assurance to perform commitments that he is responsible for worker.

c) Workshops: It is a place where worker works in it by employer's request.

Section 1: Who is worker?

In the word, worker means working and who works in factory or workshop and receives wage and being in front of employer. In legal terms, it is also near its lexical meaning. In the law, worker is a person

who receives wage for work and there is causality relation between him and who give wage. Workers are the noblest people of the society and the development of the country is impossible without their presence.

Legal criteria worker recognition

In the base of legal definition, legal criteria worker recognition is as follow:

A. Having a real character

According to worker definition in labor law, worker should be a real person.

B. Receiving wage from the employer

Worker should work to receive try right including wages, salaries and other benefits because work contract is gratuitous contract which creates working relationship. So, it is different from all or some non-gratuitous contracts.

C. Following of employer

The other characteristic of the worker is his following of another in performing the work. So, those who are self-employed, and do not take orders from anyone in performing the work are not worker. Worker's compliance of the employer must follow of two types of compliance:

1. Legal compliance

That is, the worker starts to work by employer order and the employer has control on performing the work. It means that someone works under the direct or indirect supervision of another. And the employer can only ask him to work in his range of information and expertise. In these works, worker's compliance of the employer is not absolute. The worker has not technical compliance into the employer. The worker may abuse of the title such as engineers, doctors, accountant, lawyer and worker. The employer has not sufficient expertise in all bases to interfere in details. What can be mentioned is that it is not necessary the worker be ordered directly by employer in legal compliance but he may operate according to job description.

2. Economic compliance

It is another type of worker's compliance of the employer. It means that the worker is economically dependent on the employer because the worker needs the wage that receives from the employer and work duration. The worker takes tools and instruments of the work from the employer. In fact, the worker follows the employer in economic dimension. In addition to legal compliance, he is economically the subordinate of the employer. So, if someone, who works in non-profit institutions, does not receive any wage, he or she will not be a worker. Someone who has known as a worker in civil law is not the worker, and the article NO.188 of labor law is mentioned to these cases and establishes: (people included in state employment law or other law and specific provisions of the employment and also the workers of family workshops who their work has been done by wife and

relatives of the first degree, are not included in this law.

Note. The statement of this article does not prevent of performing the other that has stipulated at different seasons into above cases."

Note.

Section 2: The concept of "working class" and its current position in contemporary social movements

In political literature, there is a conflict to "working class" category in development process and its position in contemporary social movements by some portions of the left forces in Iran. This turbulent conflict caused the components and intellectual properties such as "by the end of class revolution", "the most consistent democratic force", "smashing of capitalism", "constructive socialism" is attributed to this category. Of course it is not match to reality. It is clear that any surface impression of this category has negative effect to determine slogans, strategies, and tactics in social activity, and effective association of forces, plan codification, processing of political philosophy and attracting the workers to radical movements which its base should be searched in Marxist dogmatic theory. Marxist dogmatic refuses to epistemology to enrich theories and ideas and verify them. He does not want to change the previous socio-political formulation with analysis method which had been formed in the 19th century and reconstructs it based on the real fact of today. According to this formulation, the worker is located as at the top of social movements without being affected by serious situations at work and in life in dramatic changes in social relations and altering the composition of the class and due to social he is peerless creator instead of capitalism. The list of such interpretations is so great that in this brief should not be repeated. Although dogmatic forces are trying to pretend himself as a realist, they are located in idealism position with nominalism impression of social and political concepts. One of the fundamental differences of individuality of dogmatic Marxism with Marx is that the individuality of this Marxism has not any determined faces. But Marx puts this individuality based on alive and real person.

It is natural that we cannot reach to objective result by the validity of the general concept of "worker". Worker of a century ago and worker of today has fundamental differences in many cases: Working and living conditions and psychology, class relation, the degree of actual linkage and association nationally and globally. With these considerations it can be understood that wherefore none of the socialist revolution did not become successful which is based on the narrative of "Leadership of the working class in socialism building". Ignoring the actual position of the working class in political sociology and valuing the

role of workers in community building and slighting of the role of other workings in social evolution is the major reason of these failures.

A. Work crisis, crisis of social situation of workers

Over the past decade, especially since the mid-1970s, the world of work remains in critical condition. Since the class formation of workers and labor movement, it is the most acute crisis. Understanding this situation require whole analysis of its constituent elements. Early reviews of this crisis have essential aspect, because it influences on the existence of the workers and more accurate in their intellectual, political, ideological activities and the ideas of whom has directed their specified actions and practical activities. First, we are facing to scenario of structural crisis of capital which is shaking overall economies of capitalism in beginning in 1970. According to "Istvan Mészáros" the intensity of this impact is so deep that is forced the capital to develop "large reproduction material activities. These activities will figure the apparition of general destruction of production system which its result is to reduce the cost of satisfying human needs." Therefore, the crisis has forced the capital to extensive reconstruction that based on it can circulate its reproduction cycle. This strongly influences on work world. Very important results of these changes in the production process are:

1. Reducing the number of manual workers in any factory;
2. Incremental increase in the number of non-proletarian forms or making the work unstable through development of small, temporary and discontinuous business which has increased globally in third world country and also central country.
3. Dramatic increase in the number of women in working field. In global scale, this increase is mainly in the parts in which the work contracts are unstable.
4. Because of Rapid technological changes, the number of people who receive wage and depend on middle strata confront to massive unemployment especially in service sector which has immense growth.
5. Rejecting the young and middle-aged workers, "40-45" years old, of labor market in the central capitalism countries.
6. Intensifying the work and exploiting the people who receive wage as a result of growing use of migrant labor and development of child labor in criminal condition in different region of the world such as Asia and Latin America.
7. The development of structural unemployment which reached to an explosive level and has been coupled with unstable work and it approximately includes one milliard of workers.
8. We face to the development which Marx named it combined social work. In this kind of work, the

workers participate in services related to the company in different regions of the world. This phenomenon eliminates the working class but leads to insecurity in working conditions, intensify in exploitation and vary the using of them. It is clear that in this situation, working class becomes Sectional, diverse and complex. In this base, almost all agree with this analysis that "working class" has not the central location which has it more than a century. Since the mid-19th century until 20th century when social and political arbitrators focus on working class in advanced capitalist countries, it were thought that this class has distinguished situation in the base of complete transformation of social order. Therefore, social problem is basically the worker's problem. It means that the basic subject of social conflict will be the confrontation of two militant groups that Marx has presented the more radical formulation. This problem was reflected in different levels of social and political struggle and proposed two approaches for the problem: Maintain or destruction the social system? Reform or revolution? Today, according to current status, the working class has no facilities in social organization in advanced capitalist countries. Based on the hegemony of the working class, designing the problem does not match with reality of living world. On the other hand, this conclusion is generally incorrect that the working class has no quantitative existence according to quantitative decrement and has no social significance. Therefore, the type of existence and the roles which this class plays should be discussed. Accurate study shows that the working class is lost destruction talent due to social and political retreats. There are many reasons that can help to understanding this change. Of course, we cannot check all these reasons one by one. We can say that the working class has not the political encounters of same working class in other world. Lose of exclusive position is related to two basic steps: one is industrial society passing to receiving wages society and the other is being trembling the receiving wages society which appears in 1970s and now we are in it.

B. The receiving wages society

In industrial society, the working class is the public carrier of community organization. In this class, the worker knows his ideological power and is particular for him and is based on its especial devices, parties and syndicate. But, however, the worker was socially subordinate and basically he did not have important situations which make it possible to assess wealth, credit and power. This representation of working class was based on sociological combination of receiving wage in that period. Since 1970s, determinant transformation has been occurred qualitatively. As for example, among two statistics of 1975 and 1982, the number of industry professionals decreased up to one million people in France while

services sector increased up to 1/3 million people as now more than 60% of people who receives wage belong to this sector (services). Every year since 1982 nearly 200 thousand jobs in the industry has disappeared. So, regardless of serious internal transformations in working class that should be clearly analyzed, it is noted that receiving wage in non-labor has been surpassed in large scale into receiving wage in laboring and dispossess this class of previous central and homogenous position. Therefore, the structure of the society that receive wage have become different that consisted of receiving wage of industrial institute, manufacturing sectors in small pieces, services including trade, banks, insurance, utilities, various sellers, transportation, storekeepers, environment, product introduction and all things that are done within the workflow process.

It is clear that. The basic social and political problem which has discussed in this base, it is not the revolution problem. But, the problem is more fairly distribution of social wealth or reducing the inequalities. This is not due to shifting of working class in the society. But, it is generally due to improve condition of receiving wage. So, it has seen that despite working class is central in the receiving wage society and ignoring the generalization and classification of receiving wage - which goes beyond of receiving wage of worker - great events of May 1968 in France has occurred without leadership and active role of worker. This movement displays incompatibility of the receiving wage society or it is better to say that it shows important stage of the process of modernization of French society and the European countries in which working class was not the stimulus of distinguished access. In this movement, the students have central role.

C. Unemployment and instability

Since the second half of the 70s, when the "crisis" became the steady state of economic system of advanced capitalist societies, two important phenomena of unemployment and instability has strengthen this process and this has been done in two ways: we know that due to the order which has resulted in social stratification, unemployment and instability has differently influenced on different social categories. As the proportion of unemployed cadres are clearly less than the unemployed worker cadres. And among worker, unemployment of unskilled workers is often more than skilled workers. So, new job opportunity creates disagreement between different categories of receiving wage against lower layers of receiving wage. So, we can say that new inequalities crisis has been arisen beside classical inequalities, simultaneously, such as income inequality which is growing. There has been a huge difference between someone who will keep their jobs and social destiny of

who remain unemployed for a long time. Lack of activity period comes following one another. This huge disparity between receiving wage with the same situation decomposes the solidarity within the group which is based on collective organizing of the work and conformance in requirements and broad masses of working people are involved in it. In fact, in the last analysis, the classic concept of the working class was based on the existence of workers groups which rooted in specified subscription of conditions and benefits. Marx is the first one who knew it. Of course, this identity is never entirely occurred, because working class never has absolute unity in the base of ideological or political situation. Yet, speaking of "class" without emphasis on collective determined domination on individual is inappropriate. Reviewing this domination is important in current conditions. Because based on this domination, we can talk easily about working world. Unemployment risk leads to receiving wage competition. They are directed to view their differences rather than rely on what is common among them. Thus it is seen that there is deep connection between what called "becoming non-standard the work" and recourse to collective strategies in new situation. Furthermore, the working world will be minced with developing the inappreciative contracts, enhancing "non-typical" forms of job, incomplete work, administrative work, new forms of independent work. In this case, there are not any focal points for organizing and joint activity which big sample institute showed it. In addition, it seems that working conditions is unstable and workers forced to organize themselves and through retail business subsist and avoided to being involve in abnormal condition.

When a person deprived of supporting groups, he is faced to abnormal condition. Working-class history shows that workers achieved a certain independence based on popular organizing and entering to collective groups. Therefore, various social groups are unequally equipped to confront with new impose. Holders of low specialty experience the most losses, people who not only have low interest of economic capital but also cultural and community capital.

Workers' rights in the constitution of Iran

With an overview at the situation in our country, we find that yet the workers have a direct role in the production. Unlike European and American and other developed countries where discussed to worker operations of direct role to regulatory role (it means that all work carried out by robots and workers are active as a supervisor on the performance of devices), current Iranian workers are working directly with small dependency. It means that worker's work is more important and active than the role of investment and investor. To be more precise we can say that yet

Iranian workers sell its workforce which is mostly resulted in their physical activities. The workers have known as an integral member of revolution history. Undoubtedly, they have large rights. By looking on the bright performance of workers, we will see:

Despite the complete eradication of labor movement in years after August 1332, hidden potential of workers as a decisive movement beside new middle class and enter final impact on regime which was unkindly with workers. Since the second half of the 57 industrial strikes began to textile factory of Mazandaran, machinery of Tabriz, automobile trade of Tehran, powerhouses in large cities and expanded the wave of revolution that eventually led to the revolutionary council. Domain strikes of middle class and worker was more strongly on September 57. Refineries in Tehran, Tabriz, Isfahan, and Shiraz entered to strike. Eventually, Puzzle pieces of the despised Pahlavi regime falling became complete by striking the workers of oil industry on May 1357. Quote "Ervand Abrahamian" in "Iran between two revolutions" book, in fact, if we consider two middle classes as line breakers of revolution, urban working class were the main ram. Oil workers pushed the government to the edge of bankruptcy and made the transport workers and industrial factories paralyzed. Thus, decreasing more than 400 thousand barrels of per Iranian oil per day entered irreparable impact on heart of corrupt regime of capitalism and bring forth the revolution. In difficult sections after the Islamic revolution and over the full period of the procrustean war, the workers attend in front and also launched the wheels of industry and economy. However, as a member of the Iranian family, the workers could break the claws of capitalism regime and proved that not only capitalism system is bad but also it is declining and this regime and under its own internal contradictions and conflicts will be felt. Many years have passed of revolution of Iran, but unfortunately, the government gave wrong information to people with interfering in money arena and interest rates. This has altered their assessment of the value of goods and services with investments. When the savings rate is low and as a result the interest rates is high, in this situation, when the government has the power to lower the interest rates artificially. It means that it had created disorder in economic system of the country and was published incorrect information. When the interest rate is lowered by the government in order, financiers imagine that the capital become cheap, they go towards the capital-intensive production. In the stock market, they has bought the corporate shares or invested in housing sector. The illusion that the savings of people are high (while it is low) creates disorder in market system that is not caused by market and it caused by an external factor named government

which interfered in money market and published wrong information. The workers has known as the main loser of this action due to strength financial weakness, dependence on the market and capitalist and lack of adequate support from the government.

However, if the situation was disordered in early revolution and was supercritical in war time and being restored in construction period and being reform and prosperity in reformation period, "now, the last three years to be named as wealthy period of the country." Great wealth that resulting from the sale of above \$ 140 a barrel of oil and in addition was other exports of the country, are the workers are happier during the wealthy period of the country which coincides with dominion of tenth government? Are they more comfortable? Do all workers satisfy of their livelihood? Do they have job security? Do they can talk about their problems without being worry of deposal??? Are they ashamed of their family???

We have to respect the workers in both law and in our religious orders; With regard to workers' rights in law, we will talk in detail:

Working conditions:

Undoubtedly, we all know the hard conditions of work for workers. Construction workers are working with no insurance, no safety equipment, no food and no travel costs in the long hot summer days and cold winter days for morsel of bread. Industrial workers in factories are often working 12 continuous hours with minimal rights in different ways. Private workshops in the cities also have tragic situation. Dark, damp and small places with no toilets and minimal facilities create difficult situation for workers. But, it is interesting to have brief look to the text of constitution based on the working conditions of workers:

Labor law adopted on 29 November 1369

"The right for trying"

Article 24: By the validity of labor contract, all legal receptions to workers such as Wage or salary, family assistance favorites, the costs of house, foodstuff, transportation, non-cash benefits, reward of increased production, annual profits and so on has been called the right for trying.

Article 35: wage is cash or non-cash payment or total of them which has been paid to worker for performing the work.

Note 1. If wage is associated with hours of work, it has been called "hourly reward", and if it is based on the amount of work or produced product, it has been called "wage", and if it is based on produced product or the amount of performing work in determined time, it has been called "hourly wage".

Note 2. The orders and benefits of hourly reward, hourly wage and wage and inclusion job of this article that adopted by the minister of labor and social affairs have been determined that the maximum working

hours mentioned in this article should not exceed the maximum legal working hours.

Also the article 36 -50 has related to work conditions and type of fees.

“Time”

Article 51: In this article, the hours of work is the time when the worker puts his power and time to employer for working. Apart from the cases which have been excluded in this article, workers working hours should not exceed 8 hours per day.

Note 1. The employer can decrease the working hours on certain days of the week and increase it on another days provided that the total hours do not exceed 44 hours every week.

Note 2. In agricultural work, the employer can set the working hours according to work and common law and different seasons with accordance to workers.

Article 52: In the hard work and underground work, the working hours should not to exceed 6 hours per day and 36 hours a week.

Note. Hard work and underground work will be according to regulations that have prepared by council of technical protection and work sanitation and higher council of work and have adopted by labor, social affairs and sanitation and treatment and medical education ministers.

Article 53: Labors day are the works which has been done from 6 AM to 22 and labors night are the work which has been done between 22 to 6 AM. Complex task is the work which some part of it has been done in day and the other part has been done at night. In complex task, the worker can use of the extraordinary of the subject of article 58 in hours which considers as a part of labor night.

Also, in articles 54-61 has been discussed about this case.

Section 4: Rights of workers in France before the revolution

In Roman law, human labor has been considered as an object and obeyed general rules for rent. This concept could not be accepted in France before revolution. Because personal working relationship was considered and was not associated with objects rent. Therefore, the studies of authors of French civil law of before revolution have not been used. Since the Renaissance of doctor yen, based on the beliefs of the ancient Roman lawyers, it was too effective in thoughts and ideas of the French lawyers that we face to same concepts in Pothier 's writings that existed in Roma rights.

Pothier has discussed about services rent as object rent. When he counts the rentable objects he also notes to services of free men besides some objects like houses, land, and movable property. So, this lawyer believes that services rent are the kind of object rent. But, in his mind, the services rent are exclusively

imaginable about post and rateable to money jobs, such as (employers, workers, professionals and artisans). But, those who has done services, but their work is not rateable to money due to their social dignity, their contract has considered as attorney. What that the contract party paid is not considered as wage, such as barrister. We note that the work relation not at all be on based of contract that Pottier mentioned in France before revolution. The work relationships were personal on that time. It means that because of the feudal system in villages and trade system in cities, the relationships of those who worked and master and workman was based on trade systems and regulations arising from the feudal system who had considered hierarchy in works. For example, learner not only was presented his work to workman in trade system but also personally committed to have necessary respect to professor and follow of his disciplinary power. The professor mutually obliged to have parental and human behavior.

According to France law (article 1134) the contracts which have been signed into law are considered as law.

The concept which has been reflected in article one of Iran law “the private contracts are influent if they are not clearly against law” “Because according to general principle related to rule will, as people have same freedom, they can freely consider necessary condition and secure their bilateral conference and contract benefits setting. “What is based on contract is fairly.” According to these principles the government has refused to interfere in contractual relations between the parties and his observation is limited to cases in which the contract was good deal against public and ethics system. What has been prescribed specifically about human rent is article 1780 France law and article 514 Iran law in which “servant or employee cannot be hired except for a certain period or doing certain work”. The regulations of this article were legislated to prevent the regeneration of feudal and trade system.

Employer about previous period payment and subsidies is the most amazing rule of article 1781 France law that according it, the promise of lord about a future payment was acceptable.

According to the authors of this article, in dispute cases, the promise of one of party should be prior, and lord has more merit if they are trusty.

A variety factors have led to the gradual failure of the work contractor will become clear as the basic and exclusive source of labor relationships. Various philosophical, social, economic schools attracted the attentions of lawmakers to interfere in work relations and necessity to legislate subsidiary rules to improve workers condition and advocate of their rights unto employers.

In liberal principles which are reflected on principles of France revolution and France law, work rights did not mean today's meaning, and the contract of services rent was natural and exclusive source which determine the worker and the employer relationships and as a result it was the determiner of workers condition. The reason of this is numerous and we do not have enough time to study them comparatively.

Conclusion and policy implications

Despite losing the capacity of leadership and the political and ideological culture in advanced capitalist countries, working class has certain validity in new forms of class struggle. It considers as one of effective component in compare to social movements that are more modern and real. But in the periphery country that Iran is one of them, the working class can be valid for civil and social movement if it organizes in independent labor organizations and creates global alliances, due to the heterogeneity, dispersions in work arena which caused by lagging and dependent economy of the country and also the existence of intense cognitive ideological disagreements. It can help to design and implement of independent national and social policy and advocate of freedom and democracy and the establishment of a national and democratic system.

1/8/2014

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